



UNITED NATIONS
DISPUTE TRIBUNAL

Ten years of the new administration
of justice system at the United Nations

2009–2019

Ten years of the new administration of justice
system at the United Nations

Digest of Case Law
2009–2019

United Nations
New York, 2019

Note

The Office of Administration of Justice (OAJ) is responsible for the overall coordination of the formal components of the internal justice system at the United Nations.

The case law summaries contained in the present Digest were prepared by OAJ for informational purposes only. They are not official records and should not be relied upon as authoritative interpretations of the Tribunals' rulings. For the authoritative texts, please refer to the judgment or order rendered by the respective Tribunal. The Tribunals are the only bodies competent to interpret their respective judgments, as provided for under article 12(3) of the United Nations Dispute Tribunal Statute, and article 11(3) of the United Nations Appeals Tribunal Statute.

Any inaccuracies in the publication are the sole responsibility of OAJ, which should be contacted directly for any correction requests. To provide comments, please contact OAJ at oaj@un.org.

United Nations Office of Administration of Justice
2 United Nations Plaza
New York, NY, 10017
Email: oaj@un.org
www.un.org/en/internaljustice

Copyright © United Nations, 2019
All rights reserved

Printed at the United Nations, New York

Appointment.....	14.....
Appointment – appointment of family member – conditions of appointment – retired staff member – retiree – when actually employed contract – family relationships – request to resign – constructive dismissal (Latimer, 2019-UNAT-901).....	14.....
Appointment – conversion – permanent appointment – denial – discretion – individual consideration – suitability (Baig et al. 2013-UNAT-357).....	15.....
Appointment – conversion – permanent appointment – eligibility – previous agency – prior service (O’Hanlon, 2013-UNAT-303).....	16.....
Appointment – former staff member – new appointment – re-employment – terms of appointment – EOD – ASHI – enrolment – eligibility (Duquet, 2015-UNAT-574).....	16.....
Appointment – indefinite appointment – permanent staff – abolition of post – alternative employment – suitable post (Timothy, 2018-UNAT-847).....	17.....
Appointment – terms of appointment – conditions of appointment – professional and higher level – renouncement of permanent residency (Maki-Erk, 2012-UNAT-276).....	18.....
After-Service Health Insurance (ASHI).....	19.....
ASHI – enrolment – eligibility – former staff member – new appointment – re-employment (Couquet, EOD 2015-UNAT-574).....	19.....
Basic rights and obligations of staff	19.....
Basic rights and obligations of staff – private legal obligations – indebtedness to third parties – national court order – alimony – child support – implementation of court order – salary deduction – amount to be deducted – Administration’s discretionary authority (Ozturk, 2018-UNAT-892).....	19.....
Benefits and entitlements.....	20.....
Benefits and entitlements – home leave – lump sum payment – acceptance – calculation – amount – right to appeal (Pavelis, 2010-UNAT-031).....	20.....
Burden of proof.....	21.....
Burden of proof – non-renewal of contract – arbitrary or improper motives – complainant – shift of burden of proof (Oudeijn, 2012-UNAT-201).....	21.....
Compensation.....	22.....
Compensation – award of interest – jurisdiction to order interest – interest rate (Warren, 2010-UNAT-059).....

Non-renewal.....	51.....
Non-renewal of appointment – reasons – arbitrary or improper motives – burden of proof – complainant – shift of burden of proof (Obdeijn 2012-UNAT-201).....	51.....
Performance management.....	52.....
Performance management – performance evaluation – procedural irregularities – poor performance – separation from service – standard of review (Sewar 2017-UNAT-757).....	52.....
Privileges and immunities.....	53.....
Privileges and immunities private legal obligations waiver of official’s immunity – decision to waive immunity – administrative decision – receivability (UNDT) (Kozul-Wright 2018-UNAT-843).....	53.....
Procedure (UNDT).....	54.....
Procedure (UNDT) – due process rights access to justice right to file appeal request for extension of time – summary judgment – procedural error (Subramanian et al 2016-UNAT-618).....	54.....
Procedure (UNDT) – order for production of documents – discretionary authority – interest of justice – failure to execute UNDT order (Bertucci 2011-UNAT-121).....	55.....
Reassignment.....	55.....
Reassignment – broad discretion – non-renewal – performance evaluation – harassment (Rees, 2012-UNAT-266).....	55.....
Reassignment – lateral – restructuring – discretion (Cohr, 2012-UNAT-236).....	56.....
Receivability (UNAT).....	57.....
Receivability (UNAT) – appeal – competence – interpretation of UNDT judgment (Tadonki 2010-UNAT-010).....	57.....
Receivability (UNAT) – application for execution of judgment executable judgment (Ocokoru 2018-UNAT-826).....	58.....
Receivability (UNAT) – interlocutory appeal – UNDT order – discretionary authority – case management – production of documents – –	

Receivability (UNAT) – jurisdiction – Standing Committee of UNJSPB – Standing Committee decision – appeal (Zakharov 2015-UNAT-607).....	63
Receivability (UNAT) – <i>ratione materiae</i> – CAO Council decision – administrative decision (Cherif 2011-UNAT-165).....	64
Receivability (UNAT) – <i>ratione temporis</i> – application for correction of UNDT judgment – appeal – judgment on merits – time limit (Harrich, 2015-UNAT-576).....	64
Receivability (UNAT) – <i>ratione temporis</i> – time limit – date of service of UNDT judgment (Ocoroş 2015-UNAT-604).....	65
Receivability (UNAT) – right to appeal – prevailing practice (Saffir and Ginivan 2014-UNAT-466).....	65
Receivability (UNDT).....	66
Receivability (UNDT) – abolition of posts – General Assembly decision – restructuring – non-renewal of contract (Kagizi et al. 2017-UNAT-750).....	66
Receivability (UNDT) – administrative decision – decision to waive immunity – waiver of official’s immunity – private legal obligation (Közül-Wright 2018-UNAT-843).....	67
Receivability (UNDT) – ICSC decision – impact – terms of appointment – administrative decision (Pedicelli 2015-UNAT-555).....	67
Receivability (UNDT) – General Assembly resolution – Unified Salary Scale – administrative decision (Lloret-Alcañiz et al. 2018-UNAT-840).....	68
Receivability (UNDT) – management evaluation – time limit – notification of administrative decision (Roig, 2013-UNAT-368).....	70
Receivability (UNDT) – <i>ratione materiae</i> – administrative decision – failure to request management evaluation (James 2015-UNAT-600).....	70
Receivability (UNDT) – <i>ratione materiae</i> – administrative decision – learning and development opportunities – terms and conditions of employment (Yunus UNDT/2019/004).....	71
Receivability (UNDT) – <i>ratione materiae</i> – management evaluation outcome – administrative decision (Kalashnik 2016-UNAT-661).....	72
Receivability (UNDT) – <i>ratione materiae</i> – OIOS reports – administrative decision (Koda 2011-UNAT-130).....	72
Receivability (UNDT) – <i>ratione materiae</i> – OSLA – legal services – administrative decision (Larkin, 2011-UNAT-135).....	73
Receivability (UNDT) – <i>ratione personae</i> – intern – offer of internship – offer withdrawn – appeal – internal justice system – administrative decision (Basseko 2011-UNAT-139).....	73
Receivability (UNDT) – <i>ratione personae</i> – status of complainant – letter of appointment – offer of employment – acceptance – offer withdrawn – appeal – internal justice system – administrative decision (Sabaldon 2011-UNAT-120).....	74
Receivability (UNDT) – <i>ratione temporis</i> – delayed management evaluation response (Neault 2013-UNAT-345).....	75
Receivability (UNDT) – <i>ratione temporis</i> – management evaluation – extension of time – good faith – estoppel (Dieng, 2019-UNAT-941).....	75
Reclassification.....	76
Reclassification of posts – increase in duties and responsibilities – substantial change – classification review – harm – compensation – maximum amount – higher compensation – exceptional circumstances – egregious circumstances (Alves et al, 2016-UNAT-622).....	76
Revision of judgment.....	77
Revision of judgment – discovery of decisive new facts – new jurisprudence (Eid, 2011-UNAT-145).....	77

Revision of judgment –

Foreword

In its resolution 61/261, the General Assembly decided to establish a new internal system for the administration of justice at the United Nations to provide formal and informal mechanisms for staff members of the Organization to resolve workplace disputes. The new system, which came into effect on 1 July 2009, is an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice, consistent with the relevant rules of international law and the principles of the rule of law and due process, to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike. The system is a marked improvement over the previous system in terms of expeditious review of cases and independence and impartiality in the adjudication of disputes.

The formal part of the system includes a management evaluation function and a two-tiered adjudication process, through a first instance tribunal – the United Nations Dispute Tribunal (UNDT) – and an appellate tribunal – the

issues addressed in UNDT cases contained in the Digest may have subsequently been overturned. The Digest will be updated periodically to reflect developments in the jurisprudence of the Tribunals.

The body of case law that has developed and the legal principles that have been clarified or established indicate that, on the whole, ten years on, the internal justice system is contributing to fostering a harmonious and respectful workplace—a valuable consideration in ensuring that the United Nations Organization can fulfil its mandate.

While there is a robust internal justice system to address work-related disputes, informally or formally, reduction or minimization of such disputes must continue to be a priority for all who enter the United Nations workplace. That requires a high level of self-awareness, on the part of each and every one of us, of how we impact the work environment, how we communicate across cultures and how we contribute, through each encounter with colleagues, to promoting a healthy and harmonious workplace. Managers must know and apply the rules, regulations, policies and principles of the Organization in their conduct and decision-making; staff members must uphold and properly discharge their obligations. All of us must demonstrate integrity, professionalism and respect.

We must each commit to bringing our best self to work every day.

Alayne Frankson-Wallace
Executive Director
United Nations Office of Administration of Justice

Acknowledgements

The present Digest of Case Law 2009–2019 was prepared by the Office of Administration of Justice (OAJ). The

Abbreviations and acronyms

AAS	Appeals and Accountability Section
ABCC	Advisory Board on Compensation Claims
AJAB	Advisory Joint Appeals Board
ALS	Administrative Law Section
ASG	Assistant Secretary-General
ASHI	After-Service Health Insurance
CPI	Consumer Price Index
DESA	Department of Economic and Social Affairs
DFS	Department of Field Support
DGACM	Department for General Assembly and Conference Management
DM	Department of Management
EOD	Entry on Duty
FRO	First Reporting Officer
FTA	Fixed-term appointment
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICSC	International Civil Service Commission
ICTY	International Criminal Tribunal for the former Yugoslavia
IJC	Internal Justice Council
ILOAT	Administrative Tribunal of the International Labour Organization
JAB	Joint Appeals Board
JIU	Joint Inspection Unit
MEU	Management Evaluation Unit
MINUSTAH	United Nations Stabilization Mission in Haiti
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
OAJ	Office of Administration of Justice
OCHA	United Nations Office for the Coordination of Humanitarian Affairs

UNJSPF	United Nations Joint Staff Pension Fund (Pension Fund)
UNMIS	United Nations Mission in Sudan
UNMISS	United Nations Mission in South Sudan
UNOG	United Nations Office at Geneva
UNOPS	United Nations Office for Project Services
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNRWA DT	United Nations Relief and Works Agency for Palestine Refugees in the Near East Dispute Tribunal
UNSPC	United Nations Staff Pension Committee
UNSU	United Nations Staff Union
USG	Under-Secretary-General

Digest of cases

Abandonment of post

Judgment 2019-UNAT-942 (El Shaer)

Abandonment of post – intent to abandon – absence from duty – separation from service – disciplinary cases-reinstatement

Applicable law:

- Article 9 of the UNAT Statute
- UNRWA Area Staff Rule 109.4
- UNRWA Area Personnel Directive A/9/REV.10

Legal principle: A staff member who has failed to report for duty but demonstrates that he or she did not intend to abandon his or her post, may be open for censure or discipline, but may not be separated for abandonment of post.

UNRWA DT judgment: Following allegations of misconduct, the staff member was temporarily reassigned to a different position, pending investigations. He was subsequently cleared of the allegations and requested to return to his original position which, out of fear of retaliation, he declined to do. Instead, he kept reporting to the position he had been re-assigned to. He was subsequently separated from service for abandonment of post. UNRWA DT dismissed the staff member's appeal (01.1 (A A)34 o)12I t11disane ,2 (m)4.1 52.3.1 (A D)6.8it epoc.1 (s)-8 (9 (d)0 -1.433 Td [(t)-6 2.1 (r)-96 (e)-4.9 (d4.1 (e)1 (m) (h)3.

Abolition of post

UNAT ordered rescission of the contested decision; alternatively, the Secretary-General was ordered to pay 12 months' net base salary as compensation in lieu of rescission. UNAT vacated UNDT's award of compensation for moral damages as the staff member did not present evidence of any harm.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2017-080.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-847.pdf

Judgment 2017-UNAT-759 (Hassanin)

Abolition of post–permanent staff member termination–alternative employment–priority consideration

Applicable law:

- Article 101(3) of the Charter of the United Nations
- Staff Regulation 9.3
- Staff Rules 9.6 and 13.1

Legal principle: The organization has the obligation to give priority consideration to permanent staff members facing termination due to abolition of post. Staff members, on the other hand, have the obligation to timely submit completed applications for positions for which they are suitable and qualified.

UNDT judgment: Several former staff members in the Publishing Division of DGACM filed applications before UNDT challenging the decision to terminate their permanent appointments following the abolition of posts in DGACM. UNDT found that the Administration had failed to act fully in compliance with Staff Rules 9.6 and 13.1 by subjecting permanent staff members to the requirement of competing for available posts against other non-permanent staff members and by failing to reassign permanent staff members as a matter of priority to another post matching their abilities and grade. UNDT ordered, in all cases in which staff members had not secured another position with the Organization at the time of their application with UNDT, rescission of the termination decision or, in lieu of rescission, two years' net base salary minus any termination indemnity paid to him or her. In addition, UNDT awarded compensation for emotional distress.

UNAT held: UNAT vacated UNDT's compensation orders in the cases in which staff members had secured alternative employment, finding that the applications had become moot. In the remaining cases, UNAT considered that any permanent staff member facing termination due to abolition of post must show an interest in a new position (for which he or she is suitable and qualified) by timely and completely applying for that position. However, once the application process is completed, the Administration is required by Staff Rule 13.1(d) to consider the permanent staff member on a preferred or non-competitive basis for the position in an effort to retain the permanent staff member, which the Administration failed to do in this case.

compensation, albeit, unlike UNDT, not reducing the total amount by the termination indemnity paid but vacated the award of moral damages for lack of evidence of harm; in the latter cases, UNAT vacated UNDT's order of in-lieu compensation and moral damages.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2016-181.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-759.pdf

Abuse of process

UNAT Order 353 (2019) (Nouinou)

Abuse of processaAb

Judgments 2013-UNAT-328 (Gehr) and 2013-UNAT-333 (Gehr)

Abuse of process – manifest abuse – appeal lacking merit – frivolous

Applicable law:

- Article 9(2) of the UNAT Statute

Legal principle: Where UNAT determines that a party has manifestly abused the appeals process, it may award costs against that party.

UNAT held: The staff member appealed seven UNDT judgments. UNAT found that, by continuously filing

Acquired rights

Judgment 2018-UNAT-840 (Lloret-Alcañiz et al.)

Acquired rights – General Assembly resolution – Unified Salary Scale – transitional allowance

Applicable law:

- General Assembly resolution 13(I)
- General Assembly resolution 70/244
- General Assembly resolution 71/263
- Article 2(1) of the UNDT Statute
- Staff Regulation 12.1

Legal principle: In any contract of employment, an acquired right means a party's right to receive counter-performance in consideration for performance rendered. Thus, the aim of the intended protection is to ensure that staff members' terms and conditions may not be amended in a way that would deprive them of a benefit once the legal requirements for claiming the benefit have been fulfilled – in other words once the right to counter-performance (the salary or benefit) has vested or been acquired through services already rendered. Staff members only acquire a vested right to their salary for services already rendered.

The limited purpose of Staff Regulation 12.1, therefore, is to ensure that staff members are not deprived of a benefit once the legal requirements for claiming the benefit have been fulfilled. The protection of acquired rights therefore goes no further than guaranteeing that no amendment to the Staff Regulations may affect the benefits that have accrued to, or have been earned by, a staff member for services rendered before the entry into force of the amendment. Amendments may not retrospectively reduce benefits already earned. The doctrinal protection of acquired rights is essentially an aspect of the principle of non-retroactivity. The aim is to protect individuals from harm to their vested entitlements caused by retrospective statutory instruments.

UNDT judgment: Prior to 1 January 2017, staff members of the Organization in professional and higher categories

UNAT held: UNAT found that the appeal raised significant questions of law about the power of the Organization to unilaterally alter or reduce the compensation of staff members of the Organization. For that reason, the President of UNAT in terms of Article 10(2) of the UNAT Statute elected to refer the appeal for consideration by the full bench of UNAT.

UNAT recalled that an administrative decision is a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory

Applicable law:

The Secretary-General's decisions implementing the binding decisions of the General Assembly are administrative decisions that may adversely affect the terms of employment. The power the Secretary-General exercises is a purely mechanical power, more in the nature of a duty. However, such exercises of power are administrative in nature and involve a basic decision to implement a regulatory decision imposing the terms and conditions mandated by it. Therefore, while such decisions are reviewable administrative decisions, the scope of review is limited to grounds of legality.

UNDT judgment: Prior to 1 January 2017, staff members of the Organization in professional and higher categories were paid their net salary at either a single or a dependency rate, depending on their family status. In 2015, the General Assembly adopted the introduction of the Unified Salary Scale, providing one net salary for all staff members without regard to family status. In 2016, the General Assembly acceded to the Secretary-General's request to amend the Staff Regulations for the implementation of the approved changes. As the gross and net base salaries of the staff members who were previously paid at the dependency rate would be reduced, they would receive a progressively depreciating transitional allowance of six per cent of net remuneration for a six-year period.

Five staff members claimed that these unilateral variations of their remuneration were illegal and in breach of their contracts of employment and their acquired rights. UNDT held that the decisions implementing the Unified Salary Scale constituted administrative decisions in terms of Article 2 of the UNDT Statute since they negatively impacted the staff members' terms and conditions of appointment. UNDT accordingly held that the applications challenging these decisions were receivable. It held further that there was a normative conflict between General Assembly resolutions 70/244 and 71/263, adopting the Unified Salary Scale, and the Staff Regulations, which provided for a dependency rate. The UNDT found that the Secretary-General's decision to implement the Unified Salary Scale was in breach of the Staff Regulations and that the staff members were entitled to a progressively depreciating transitional allowance of six per cent of net remuneration for a six-year period.

conflict between the resolution 13(I) of 1946 and resolutions 70/244 and 71/263. Absent any normative conflict, the Secretary-General did not act illegally in implementing Resolutions 70/244 and 71/263. UNAT further held that the fact that the staff members' letters of appointment stated that their initial salary "may rise" did not constitute an express promise by the Organization to continue to increase their rate of pay and never to reduce it. The salary entitlements of staff members may be unilaterally amended by the General Assembly.

As for the staff members' cross-appeal claiming that UNDT erred in finding that it lacked jurisdiction to examine whether the decision of the General Assembly to provide for the transitional allowance was illegal, discriminatory and in violation of Article 8 of the Charter of the United Nations, UNAT held that UNDT was correct to decline jurisdiction on the basis that only appeals in relation to administrative decisions are receivable by it.

UNAT upheld the Secretary-General's appeal, dismissed the staff members' cross-appeal, and vacated the UNDT judgment.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2017-097.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-840.pdf

Judgment 2011-UNAT-165 (Cherif)

Administrative decision – ICAO Council decision – appeal – receivability (UNAT)

Applicable law:

- Article 58 (Chapter XI) of Convention on International Civil Aviation, Chicago, 4 April 1947

Legal principle: The decisions of the governing body of ICAO are not, within the mandate of UNAT, administrative decisions. These decisions are regulatory decisions that are not subject to judicial review by UNAT.

UNAT held: The ICAO Secretary General contested two decisions taken by the ICAO Council, the governing body that employed him. In those decisions, the Council required that the ICAO Secretary General obtain the written approval of the President of the Council for any hiring, appointment, promotion, extension and termination of P-4 employees and above. UNAT held that the contested decisions of the ICAO Council are not, within the mandate of UNAT, administrative decisions. These decisions are regulatory decisions that are not subject to review by UNAT.

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2011-unat-165.pdf

Judgment 2015-UNAT-555 (Pedicelli)

Administrative decision – ICSC decision – impact – terms of appointment – appeal – receivability (UNDT)

Applicable law:

- Article 2(1) of the UNDT Statute

Legal principle: For the most part, a decision implementing an ICSC decision is of general application and there

an “appealable administrative decision” in that the contested decision was made by the ICSC and the Secretary-General had no discretionary authority in proceeding with implementation of the ICSC’s decision. UNDT further found that the contested decision was not taken solely with respect to the staff member, and that she did not establish that the renumbering exercise gave rise to legal consequences that adversely affected her.

UNAT held: e Secretary-General was duty bound to implement decisions by the ICSC as directed by the General Assembly and that for the most part, such decisions are of general application and therefore not reviewable. UNAT found, however, that where a decision of general application negatively affects the terms of appointment of a staff member, such decision shall be treated as an “administrative decision” within the scope of Article 2(1) of the UNDT Statute. Based on the staff member’s Personnel Action Forms, before and after implementation of the ICSC’s renumbering exercise, UNAT found that the exercise had a direct adverse impact on her salary. UNDT failed to give any consideration to the staff member’s Personnel Action Forms and thus erred in law and fact in concluding that her application was not receivable. UNAT vacated the judgment and remanded the matter back to UNDT.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2014-087.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-555.pdf

Judgment 2017-UNAT-746 (Auda)

Administrative decision – non-renewal – date of notification – verbal notification – written notification – appeal – time limit to request management evaluation – time bar

Applicable law:

- Staff Rule 11.2(c)

Legal principle: Written notification is not a prerequisite to contest an administrative decision.

UNDT judgment: The staff member contested the decision not to renew his fixed-term appointment. UNDT found that the application was receivable since the staff member had requested management evaluation within the prescribed time limit on the grounds that the time limit started to run from the date of the written notification of the previously verbally communicated non-renewal decision. On the merits, UNDT concluded that the staff member had not met the burden of proving an “express promise” in writing containing a “firm commitment” of the Administration to renew his fixed-term appointment, so as to support his contention that he had a legitimate expectancy of renewal.

UNAT held: e fact that the non-renewal decision was communicated verbally was, by itself, of no consequence since there is no explicit requirement in law for such notification to be in writing. Staff Rule 11.2(c) does not require a written notification as a prerequisite to contest an administrative decision. UNAT affirmed the UNDT judgment dismissing the staff member’s application, but set aside its finding that the application was receivable.

Legal principle: While reports and recommendations made by OIOS do not constitute administrative decisions, an administrative decision that is taken on the basis of an OIOS report or recommendation may be impugned.

UNDT judgment: The applicant contested the decision to constructively dismiss her. UNDT found that she was not constructively dismissed and held that OIOS' decision, regarding the content of its audit report, was not within its jurisdiction.

UNAT held: UNAT affirmed the UNDT judgment. UNAT held that OIOS operates under the "authority" of the Secretary-General, but has "operational independence". It further noted that, insofar as -3 (i)1 (h.112 (h5(4) (p

Judgment 2012-UNAT-199 (Worsley)

Administrative decision – OSLA – legal services – representation – legal assistance – impact – terms of appointment –

that the response to a request for management evaluation is an opportunity for the Administration to resolve a

UNAT held: UNDT exceeded its jurisdiction and erred in law in reviewing the legality of Staff Rule 4.7(a). As Staff Rule 4.7(a) was approved by the General Assembly, the Tribunals had no authority to examine whether or not it is in accord with the Charter of the United Nations or any other higher norms. Nonetheless, UNAT found that Staff Rule 4.7(a) only forbids the Secretary-General “to grant an appointment” to a person who has a close family relationship but does not provide a legal basis to revoke a staff member’s appointment. Accordingly, UNAT concluded that the termination of the retired staff member’s 2016 WAE appointment was unlawful and annulled the termination of the 2016 WAE appointment. However, it found the in-lieu compensation awarded to be excessive and reduced it to USD 2,000.

As for the decision not to grant the retired staff member a WAE appointment for 2017, UNAT noted that there was merely an informal e-mail exchange between the retired staff member and the Administration regarding a potential 2017 WAE appointment and no valid contract, or quasi-contract, had been concluded. Therefore, UNDT erred in finding that the retired staff member had a valid WAE contract for 2017. As for future WAE appointments, UNAT held that the retired staff member’s eligibility will depend on whether or not his daughter remains employed by the Organization. For as long as she is a UN staff member, Staff Rule 4.7(a) will apply and the Administration will be precluded from granting an appointment to him. Consequently, UNAT vacated UNDT’s order with regard to eligibility for future WAE appointments.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2018-066.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-901.pdf

Judgment 2013-UNAT-357 (Baig et al.)

Appointment – conversion – ppy & ßiò • iove(a)86 (e)1 ()C ()Tj EMC (-)Tj /Span<</ActualText<FEFF2009>>FF2009>

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2012-129.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-357.pdf

Judgment 2013-UNAT-303 (O'Hanlon)

Appointment – conversion – permanent appointment – eligibility – previous agency – prior service

Applicable law:

- Secretary-General's Bulletin ST/SGB/2009/10 (Consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 June 2009)
- Staff Rule 4.9(a)

Legal principle: A staff member's service with his/her previous entity must be counted in determining whether

UNAT held: UNAT found that UNDT erred in concluding that the staff member's eligibility for ASHI should be determined based on the date of her recruitment to the ICTY in October 2006 instead of her appointment to UNAKRT in October 2009. Under Staff Rule 4.17, the date of recruitment that is relevant for determining the terms of appointment of a former staff member who receives a new appointment after separating from the Organization is the date of the new appointment. In the staff member's case, her new appointment with UNAKRT was a re-employment under Staff Rule 4.17 and not a reinstatement. Therefore, her eligibility for ASHI was properly determined by reference to the date of her recruitment to UNAKRT in October 2009. UNAT allowed the Secretary-General's appeal and vacated the UNDT judgment.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2014-112.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-574.pdf

Judgment 2018-UNAT-847 (Timothy)

Appointment – indefinite appointment – permanent staff – abolition of post – alternative employment – suitable posts

Applicable law:

- Article 101(3) of the Charter of the United Nations
- Article 10(5) of the UNDT Statute
- Staff Rules 9.6(e) and 9.6(f)

Legal principle: The Administration is under an obligation to make proper, reasonable and good faith efforts to find an alternative suitable post for a redundant staff member holding an indefinite appointment at his or her grade level or even at a lower grade, if, in the latter case, the staff member concerned has expressed an interest. Staff members holding a continuing or indefinite appointment facing termination due to abolition of post are obliged to fully cooperate by applying for suitable vacant posts.

UNDT judgment: The staff member, who held an indefinite appointment at the GS-7 level, contested the decision to separate her from service. UNDT found that the decision to terminate her appointment for abolition of post and to separate her from the Organization had not been taken in line with the mandatory legal framework and was unlawful. UNDT ordered rescission of the contested decision and awarded the staff member three months' net base salary as compensation for moral damages.

UNAT held: UNDT was correct in concluding that the Administration's decision to terminate the staff member was unlawful, since it did not fully comply with its obligations under Staff Rule 9.6(e) and (f) to make all reasonable and bona fide efforts to consider her for available suitable posts, as an alternative to the abolished one. UNAT noted that the phrase "suitable posts" is not defined in the Staff Rules, and that nothing in the language of Staff Rule 9.6(e) and (f) indicates that the obligation of the Administration to consider the redundant staff member for suitable posts, vacant or likely to be vacant in the future, was limited to the staff member's grade level. UNAT held that the Administration was under an obligation to make proper, reasonable and good faith efforts to find an alternative post for the displaced staff member at his or her grade level or even at a lower grade, if, in the latter case, the staff member concerned had expressed an interest. Thus, UNAT concluded that the staff member should have been considered not only for suitable posts at the same level as her abolished G-7 post in New York, but also for all the lower available suitable posts in New York, for which she had expressed her interest by way of application thereto.

Nonetheless, UNAT found that UNDT made several errors of law: a) UNDT erred in finding that it sufficed, in order for the staff member to be retained in service, to have a relative competence for the new suitable post. UNAT held that if the redundant staff member was not fully competent to perform the core functions and responsibilities of an alternative suitable post, the Administration

After-Service Health Insurance (ASHI)

Judgment 2015-UNAT-574 (Couquet)

ASHI – enrolment – eligibility – former staff member – new appointment – re-employment – EOD

Applicable law:

- Staff Rule 4.17

Legal principle: The EOD for the purpose of determining the terms of appointment of a former staff member who receives a new appointment after separating from the Organization is the date of the new appointment.

UNDT judgment: The staff member filed an application with UNDT contesting the Administration's decision that she was ineligible for enrolment in the ASHI programme as she had not reached the 10-year threshold. UNDT concluded that the staff member's eligibility for ASHI should be determined based on the date of her recruitment to the ICTY in October 2006 instead of her appointment to UNAKRT in October 2009. UNDT held

UNDT held that the Administration was incorrect in assuming that it had no discretion regarding the amount

Legal principle: The acceptance of a lump-sum option for home leave does not preclude a staff member from claiming before UNDT wrongful calculation of it.

UNDT judgment: The staff member (and two other applicants) contested the calculation of the lump-sum payment for home leave travel. UNDT rejected the application as inadmissible, noting that the staff members, by opting for the lump-sum payment proposed, forfeited any right of appeal.

UNAT held: UNAT noted that the staff members had accepted the lump-sum calculated by the ICTY travel unit while reiterating their disagreement with the calculation. UNAT held that UNDT erred in finding that by accepting a lump-sum payment for home leave travel, the staff members forfeited any right to contest the calculation of the amount of the lump sum payment. It remanded the case to UNDT for consideration on the merits.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2009-077e.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2010-unat-031.pdf

Burden of proof

Judgment 2012-UNAT-201 (Obdeijn)

Burden of proof–non-renewal of contract–arbitrary or improper motives complainant–shift of burden of proof

Applicable law:

- General Assembly resolution 63/253
- Article 2(1) of the UNDT Statute
- Staff Rule 4.13

Legal principle: As a general principle, a staff member bears the burden of proof of showing that a decision was arbitrary or tainted by improper motives. However, the Administration's refusal to disclose the reasons for the contested decision shifts the burden of proof so that it is for the Administration to establish that its decision was neither arbitrary nor tainted by improper motives.

UNDT judgment: The staff member contested the Administration's decision not to renew his fixed-term appointment without disclosing the reasons for the non-renewal. UNDT found that the Administration had

Compensation

Judgment 2010-UNAT-059 (Warren)

the basis that no exceptions were possible was not lawful. In its judgment on Remedies, UNDT awarded moral damages, finding that the staff member “must have suffered some distress at the unlawful decision”.

UNAT held: UNAT found that there was no evidence of damages or injuries in this case. UNAT reaffirmed the principle that an award for moral damages must be supported by specific evidence.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2009-030.pdf

www.un.org/en/internaljustice/files/undt/judgments/undt-2010-071.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2011-unat-109.pdf

Judgment 2011-UNAT-131 (Cohen)

Compensation – harm – maximum amount – higher compensation – exceptional circumstances

Applicable law:

- Article 10(5)(b) of the UNDT Statute
- Universal Declaration of Human Rights

Legal principle: When the Administration elects to pay compensation in lieu of the performance of a specific obligation ordered by the Tribunal, in addition to the compensation that the Tribunal ordered it to pay for the damages suffered by the applicant, that election may render the circumstances of the case exceptional within the meaning of Article 10(5)(b) of the UNDT Statute. In such a situation, the Tribunal is not bound to give specific reasons to explain what makes the circumstances of the case exceptional.

UNDT judgment: The former staff member contested the decision to summarily dismiss her for serious misconduct. UNDT concluded that the Secretary-General had not presented facts supporting the grounds for misconduct and summary dismissal. UNDT ordered the reinstatement of the staff member or, in lieu thereof, payment of two years’ net base salary. It also ordered that the staff member be paid compensation for lost earnings in the amount of 30 months’ net base salary and for the breach of her right to due process in the amount of two months’ net base salary.

UNAT held: UNAT recalled that Article 10(5) of the UNDT Statute limits the total compensation awarded under subparagraphs (a) or (b), or both, to an amount that shall normally not exceed two years’ net base salary of the applicant, unless the Tribunal orders the payment of higher compensation and gives the reasons for that decision. In cases where UNDT rescinds an illegal decision to dismiss a staff member, the Administration must both reinstate the staff member and pay compensation for loss of salaries and entitlements. If the Administration elects to pay compensation in lieu of the performance of a specific obligation such as reinstatement, in addition to the compensation that the Tribunal ordered it to pay for the damage suffered by the applicant, that election may, depending on the extent of the damage, render the

Applicable law:

- Article 10(5)(b) of the UNDT Statute

Legal principle: In exceptional cases, compensation may be ordered in excess of two years' net base salary. Article 10(5)(b) of the UNDT Statute does not require a formulaic articulation of aggravating factors; rather it requires evidence of aggravating factors which warrant higher compensation.

UNDT judgment: The former staff member contested the decision to impose on him the disciplinary measure of separation from service without notice. UNDT found that the Secretary-General unfairly dismissed the former staff member and ordered reinstatement with loss of earnings up to the date of reinstatement. In the alternative, UNDT ordered compensation for loss of earnings up to the date of judgment and an additional amount of compensation of two years' net base salary.

UNAT held: UNAT affirmed the UNDT award of compensation for loss of earnings for seven months from the date of the staff member's separation from service to the date of the UNDT judgment (as an alternative to the order for reinstatement of the staff member) plus an additional amount of two years' net base salary. The Secretary-General maintained that, while the total of these amounts exceeded the compensation limit of two years' net base salary, UNDT did not particularize any reasons to justify an increased award under Article 10(5)(b) of the UNDT Statute. In the opinion of UNAT, Article 10(5)(b) does not require a formulaic articulation of aggravating factors; rather it requires evidence

(expert or otherwise) a finding that non-pecuniary harm has indeed occurred is not satisfactory proof to support

UNDT judgment: The staff member appealed the decision to reassign her to another post. UNDT held that the Administration provided balanced and objectively verifiable reasons for the decision to reassign the staff member from one post to another. However, it found that the way the Administration handled the situation caused the staff member unnecessary stress and anxiety. Therefore, it awarded one-month net base salary as compensation for suffering and stress.

UNAT held: The Administration paid the compensation ordered by UNDT and the Secretary-General subsequently filed his cross-appeal challenging UNDT's decision to award compensation. UNAT found that, by paying the compensation ordered, the Secretary-General accepted the UNDT judgment and his cross-appeal was therefore moot.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2009-028.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2010-unat-035.pdf

Contempt

Judgment 2014-UNAT-410 (Igbinedion)

Contempt – absence of compliance – UNDT interlocutory order – suspension of action – appeal –

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2013-024.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-410.pdf

Disciplinary cases

Judgment 2018-UNAT-811 (Aghadiuno)

Disciplinary cases

Legal principle: A Tribunal's order directing the ASG/OHRM to "institute" disciplinary proceedings impinges upon the discretion of the ASG/OHRM. The appropriate order is one directing the ASG/OHRM to act in terms of section 5.18(c) of ST/SGB/2008/5.

UNDT judgment: The staff member filed a complaint against her former supervisor and former colleague, pursuant to ST/SGB/2008/5. The complaint alleged improper deprivation of functions, discrimination and abuse of authority, retaliation through performance appraisals, defamation and preferential treatment of another staff member. The complaint was investigated by two separate fact-finding panels resulting ultimately in the decision

Discrimination

Judgment 2019-UNAT-914 (Oglesby)

Discrimination – sex discrimination – sexual orientation – same-sex marriage – equal treatment – marital status – marriage after separation from service – UNJSPF – survivor's benefits – widower's benefit – prospective survivor – competence of tribunal power to grant relief

Applicable law:

- Article 2(9) of the UNAT Statute
- Article 8 of the Charter of the United Nations
- Universal Declaration of Human Rights
- 19.9 (t)10 (er o)10 (f t)8 (h)7 (e /Span<</48 0 Td ((t)10 0 1 Tf 2009>3c-1.233 Td -(h)7 (e U)37 (n)16.1 (

the Regulations did not afford retrospective recognition of their marriage in 2018; and the Regulations specifically regulated the situation of the former staff member by providing for an annuity under Article 35. Before, UNAT concluded that under the express terms of Articles 34 and 35, the former staff member's spouse was not entitled to a survivor's benefit.

Nonetheless, UNAT found that "[t]here was (...) merit in [the appellant's] line of argument" that the differentiation between spouses in heterosexual marriages and homosexual persons in same-sex relationships was unfair and discriminatory. UNAT, however, held that unfortunately it had no remedial power to grant the relief sought. UNAT emphasized that it did not have the prerogative to apply the Charter of the United Nations or the Universal Declaration of Human Rights directly, nor the power to strike down internal or subsidiary legislative provisions inconsistent with the norms it enacts. UNAT further held that it was not akin to a constitutional court and its jurisdiction was restricted by Article 2(9) of its Statute to determining whether there had been "non-observance" of the UNJSPF Regulations. UNAT concluded that in this case, UNJSPF acted in keeping with its Regulations and if there was indeed any enduring discrimination on the grounds of sexual orientation inconsistent with the Charter, that was a matter for the Secretary-General or the General Assembly. Accordingly, UNAT concluded that the appeal "regrettably" had to fail.

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-914.pdf

Due process rights

Judgment 2016-UNAT-618 (Subramanian et al.)

Due process rights – access to justice – right to file appeal – procedure (UNDT) – request for extension of time – summary judgment – procedural error

Applicable law:

- Articles 2(1) and 8(3) of the UNDT Statute
-

Judgment 2013-UNAT-302 (Applicant)

Due process rights – accused – sexual harassment – disciplinary sanction – summary dismissal – right to confront accusers

Applicable law:

- Standards of Conduct for the International Civil Service
- Staff Regulation 1.2(b)
- Staff Regulation 10.2 (100 Series)

Legal principle:

basis at the European Patent Office (EPO). In 2010, she informed the Security Service of the Registry of a “medical emergency situation” involving the Head of the ICJ Library. In March 2013, she informed the Registrar of a second incident again involving the Head of the Library. The Head of the Library in turn complained that the staff member had interfered in the management of her service, that she had failed to provide medical assistance to a staff member visibly in distress and breached medical ethics. She also alleged that the medical doctor was the subject of similar complaints at EPO and the French Medical Board. She followed up several times, each time copying others, including the ICJ President and the Staff Committee on her correspondence.

In September 2013, the Registry informed the staff member of the allegations against her and of the Registrar’s decision to launch an investigation into the allegations. She responded in order to “formally complain” about harassment, requesting that appropriate measures be taken and “a disciplinary or investigative process” be undertaken. Subsequently, she submitted a formal complaint about the defamation and slander committed by the Head of the Library. That same day, the Regist ecgainst 9 (r)-29-s0 [(t)-5 523(g)2 (a)aT. (e)0.5 (F

UNDT judgment: The staff member contested the decision to summarily dismiss him for serious misconduct. UNDT rejected his application.

UNAT held: UNDT erred in law by upholding the decision to summarily dismiss the staff member, which was taken in violation of the requirements of adversarial proceedings and due process. The Tribunal held that, while the use of statements gathered in the course of an investigation from witnesses who remain anonymous throughout the proceedings, including before UNAT, cannot be excluded as a matter of principle from disciplinary matters, a disciplinary measure may not be founded solely on anonymous statements. UNAT ordered rescission of the contested decision to summarily dismiss the staff member; alternatively, the Secretary-General was ordered to pay 12 months' net base salary as compensation in lieu of rescission.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2010-041.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2010-unat-087e.pdf

Judgment 2017-UNAT-742 (Kallon)

Evidence – evidence of harm – moral harm – sole testimony of complainant – compensation

Applicable law:

- Article 10(5) of the UNDT Statute
- Article 9(1) of the UNAT Statute

Legal principle: Harm for which compensation is requested must be supported by evidence. A staff member's testimony alone is not sufficient to present evidence supporting harm under Articles 9(1)(b) of the Appeals Tribunal Statute and 10(5)(b) of the UNDT Statute.

UNDT judgment: A staff member at MINUSTAH contested, before UNDT, the administrative decisions to remove his designation as Chief Procurement Officer (CPO) at MINUSTAH and to deny him the required designation to take up the post of CPO at another duty station. UNDT rescinded the decisions finding they were taken in reaction to allegations that the staff member had failed to properly exercise his delegated authority and without due process or substantiation. UNDT declined to reinstate the staff member's designation but ordered USD 50,000 in non-pecuniary damages with interest for the stigmatization, reputational damage, stress, anxiety, and moral injury caused to the staff member.

UNAT held: The Secretary-General's appeal was decided by a full bench of UNAT. The majority of the judges upheld UNDT's findings that the contested decisions were substantively and procedurally flawed and dismissed the appeal. As for UNDT's moral damages award, the majority noted that the purpose of the amendment to Article 10(5)(b) of the UNDT Statute, made following General Assembly resolution 69/203, was to introduce an express requirement that compensation for harm can be awarded only when there is a sufficient evidentiary basis. The majority held that evidence of moral injury consisting exclusively of the testimony of the complainant, if credible, reliable and satisfactory in material respects, may be sufficient to discharge the evidentiary burden. The three dissenting opinions took the view that evidence consisting exclusively of the complainant's testimony is not sufficient without corroboration by independent evidence (expert or otherwise). The majority included one concurring opinion which agreed with the three dissenting judges on the requirements of compensation, but joined the majority in the outcome of the case.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2015-126.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-742.pdf

Judgment 2017-UNAT-787 (Auda)

Evidence – evidence of harm – moral harm – sole testimony of complainant – corroboration – compensation

Applicable law:

- Article 10(5) of the UNDT Statute
- Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)

Legal principle: Testimonial evidence without corroboration by independent evidence (expert or otherwise) is not satisfactory proof to support an award of moral damages.

UNDT judgment: A staff member filed an application before UNDT contesting the Administration's decision to close an investigation into his complaint filed under ST/SGB/2008/5. UNDT concluded that the decision to close the complaint without further action was improper as the investigation was tainted by serious procedural bc2 (a)13 (dr)

of the new system of administration of justice is rendering timely judgments; cases before UNDT could seldom proceed if either party were able to appeal interlocutory decisions. UNAT held that in this case, it saw no reason to depart from the general rule that only appeals against final judgments are receivable. UNAT dismissed the Secretary-General's interlocutory appeals as not receivable.

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2010-unat-062.pdf

Judgment 2011-UNAT-160 (Villamorán)

Interlocutory appeal – UNDT interlocutory order – preliminary suspension of action – administrative decision–execution of order pending appeal

Applicable law:

- Article 2(2) of the UNDT Statute
- Articles 8(6), 13 and 19 of the UNDT Rules of Procedure

Legal principle: Where the implementation of an administrative decision is imminent and takes place before the five-day period provided for under Article 13 of UNDT Rules of Procedure has elapsed, UNDT has the discretion to grant a preliminary suspension of action pending its consideration of the application for suspension of action. Such an order rendered by UNDT requires execution even in cases where the order is being appealed.

UNDT order:

Judgment 2014-UNAT-410 (Igbinedion)

Interlocutory appeal – UNDT interlocutory order – obligation to obey – suspension of action – administrative decision – management evaluation – appeal – receivability (UNAT) – excess of jurisdiction

Applicable law:

-

Statute and Article 14 of the UNDT Rules of Procedure by ordering during the proceedings suspension of the contested decision as an interim measure in a case of appointment, promotion or termination.

UNDT orders: On 6 October 2011, the staff member requested management evaluation of the decision not to extend his appointment beyond 22 October 2011. On 17 October 2011, the staff member asked UNDT to suspend the implementation of the contested decision, pending management evaluation. On 19 October 2011, UNDT issued Order No. 129 by which it ordered the suspension of the contested decision until 10 November 2011, to “allow the filing of the Respondent’s comments, the hearing and the determination of this matter”. The Secretary-General requested that the Order be discharged. On 31 October 2011, Mr. Benchebbak filed an application on the merits with the Dispute Tribunal as well as a request for interim relief. That same day, UNDT issued Order No. 136, by which it rejected the Secretary-General’s request to have Order No. 129 discharged. On 3 November 2011, the Dispute Tribunal held an oral hearing.

On 10 November 2011, UNDT issued Order No. 142 by which it disposed of Mr. Benchebbak’s application for

Applicable law:

has a degree of discretion as to how to conduct a review and assessment of a complaint and may decide whether to undertake a fact-finding investigation into all or some of the allegations. UNAT affirmed UNDT's conclusion that the former Executive Director did not comply with ST/SGB/2008/5 by hiring two consultants from outside the Organization to conduct the investigation. Under ST/SGB/2008/5, the responsible official must entrust the fact-finding investigation to a panel of two persons from the department who are trained for that purpose or, if that is not possible, appoint two persons from the roster maintained for that purpose by OHRM. UNAT remanded the matter to the former Executive Director to establish a new fact-finding panel in accordance with ST/SGB/2008/5. However, UNAT determined that the staff member had not experienced any inordinate delay with regard to the handling of her complaint which would merit the award of damages and vacated UNDT's award of CHF8,000 in moral damages.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2014-004e.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-518.pdf

Judges

Judgment 2010-UNAT-001 (Campos)

Judges – appointment of judges – Internal Justice Council – staff representative – recusal request – conflict of interest

Applicable law:

- Article 4(2) of the UNDT Statute
- Article 3(2) of the UNAT Statute
- Articles 27 and 28 of the UNDT Rules of Procedure
- Articles 22 and 23 of the UNAT Rules of Procedure

Legal principle: The judges of UNDT and UNAT are not appointed by the IJC whose mandate is limited to identifying and recommending potential judicial candidates to the General Assembly.

UNDT judgments: The staff member contested a) the decision not to nominate him as a staff representative on the IJC and b) all decisions taken by the IJC which he alleged was illegally constituted. He also filed several motions to have the judges of UNDT recuse themselves on the ground that they all had a conflict of interest by having been recruited and recommended by the IJC for judicial appointment. UNDT rejected the staff member's applications.

UNAT held: UNAT affirmed the UNDT findings that there was no flaw in the procedure used by the Staff Management Coordinating Committee to select the staff representative on the IJC. It also affirmed the UNDT judgments rejecting the staff member's allegations of conflict of interest on the part of the UNDT judges. UNAT further rejected the staff member's request that UNAT judges recuse themselves from the hearing of the appeal, noting the limited role of the IJC in the appointment of the UNAT judges and the lack of any professional relationship between the person appointed as a staff representative and the judges. As for the request that UNAT be dissolved, UNAT held

Jurisdiction

Judgment 2015-UNAT-607 (Zakharov)

Jurisdiction – competence – receivability (UNAT) – Standing Committee of UNJSPB – Standing Committee decision – appeal

Applicable law:

- Article 2(9) of the UNAT Statute
- Section K and Article 48 of the UNJSPF Regulations

Legal principle: UNAT's jurisdiction over the UNJSPF is limited to hearing appeals of decisions of the Standing

Applicable law:

- Staff Rules 11.4(d) and 11.5(d)
- Article 12 of the UNDT Rules of Procedure
- Article 13 of the UNAT Rules of Procedure

Legal Principles: i) The services provided by OSLA and the way the representation is implemented can have an impact on a staff member's terms of appointment and therefore constitutes an administrative decision subject to review by UNDT.
ii) The right to receive legal assistance by OSLA does not amount to a right to representation by OSLA. OSLA has the discretionary power not to represent a person.

UNDT judgment: The staff member contested OSLA's decision to refuse to continue to provide legal assistance to her on the basis that the lawyer/client relationship had broken down irretrievably. UNDT was of the view that the contested decision was a legitimate exercise of the discretionary authority vested in OSLA. UNDT held that the right to receive assistance by OSLA does not amount to a right to representation by OSLA.

UNAT held: UNAT recalled its holding in a previous case "that the services provided by OSLA and the manner in which the representation is implemented can have an impact on a staff member's terms of appointment and therefore can fall within the jurisdiction of UNDT, without interfering with the professional independence of [the] counsel[s]". UNAT held that the discretionary power of OSLA not to represent a person is not unfettered, however, in this case, the staff member had failed to show how OSLA's actions affected her case. UNAT affirmed the UNDT judgment.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2011-024.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2012-unat-199.pdf

Judgment 2011-UNAT-135 (Larkin)

Legal assistance – OSLA – representation – conflict of interest – administrative decision – receivability (UNDT) – *ratione materiae*

Applicable law:

- Article 2(1) of the UNDT Statute
-

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2011-028.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2011-unat-135.pdf

Management evaluation

Judgment 2013-UNAT-345 (Neault)

Management evaluation – delayed response – appeal – time limit – receivability (UNDT) – *ratione temporis*

Applicable law:

- Article 8(1) of the UNDT Statute
- Article 7 of the UNDT Rules of Procedure
- Staff Rule 11.2(d)

Legal principle: When the management evaluation is received after the deadline of 30 or 45 calendar days but before the expiration of 90 days for applying to UNDT, the receipt of the management evaluation response will result in setting a new deadline for seeking judicial review before UNDT.

UNDT judgment: The staff member contested the decision not to select her for a G-5 post. UNDT found, *inter alia*, that the staff member's application was receivable, *ratione temporis*, as it had been filed within 90 calendar days of the tardy MEU response.

UNAT held: UNAT considered it both reasonable and practical to provide for two different dates from which the

an application with UNDT. Whereas, if a response is received after the expiration of that 90-day time limit, the receipt of the response does not reset the clock for filing an application with UNDT.

ii) The MEU is competent only to make recommendations to suspend or extend the relevant deadlines concern

Applicable law:

- Article 8(3) of the UNDT Statute
- Staff Rule 11.2(a) and (c)

Legal principle:

UNAT held: UNAT affirmed UNDT's finding that the staff member's claims that the Organization was negligent in carrying out his unsuccessful cataract surgery, owed him compensation of USD 2 million and failed to separate him in a timely manner on health grounds were not receivable because he was required to request management evaluation of these claim under Article 8(1)(c) of the UNDT Statute and Staff Rule 11.2(a) but failed to do so. UNAT rejected his contention that the impugned decisions were based on the advice of technical bodies, namely

Applicable law:

- Staff Regulation 1.2(b)
- Administrative Instruction ST/AI/2011/4 (Education grant and special education grant for children with a disability)

of former staff members, and to ensure they reflect the staff member's performance and conduct during his or her period of employment, did not lapse upon the staff member's separation from service. Therefore, UNAT granted the appeal and vacated the UNDT judgment in part with respect to this holding and UNDT's order to remove the reprimand from the former staff member's Official Status File.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2016-038.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-706.pdf

Judgment 2013-UNAT-302 (Applicant)

Misconduct – sexual harassment – disciplinary sanction – summary dismissal – due process rights – right to confront accusers

Applicable law:

- Article 16(2) of the UNDT Rules of Procedure

Legal principle: The appeal in a disciplinary case requires consideration of whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence. A de novo hearing into findings on misconduct might not always be necessary. Much will depend on the available evidence and the circumstances of the case.

UNDT judgment: The staff member contested the decision to separate him from service. The decision was based on the finding that he had engaged in sexual harassment, specifically, by making unwelcome sexual advances towards a colleague. UNDT held that the Administration had failed to discharge its onus to prove by clear and convincing evidence that the staff member had committed misconduct in the form of sexual harassment. By way of remedy, UNDT ordered rescission of the disciplinary measure and remanded the matter to the Administration to resume the disciplinary procedure and obtain a new decision. (o)011116 25(01)12 T0.2 (i)12.5 (n)19.6 (t)6.4 (c)16<(e b)s

effects on the staff member, such as a decision not to renew a fixed-term appointment, where the staff member requests it or the Tribunal orders it. The refusal to disclose the reasons for a contested decision shifts the burden of proof so that it is for the Administration to establish that its decision was neither arbitrary nor tainted by improper motives, and the Tribunal is entitled to draw an adverse inference from the Administration's refusal. UNAT affirmed the UNDT's finding that the contested decision was unlawful and the award of USD 8,000 for moral injury. However, it vacated the award of six months' net base salary for economic loss, finding that the staff member was unable to establish any economic loss.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2011-032.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2012-unat-201.pdf

Performance management

Judgment 2017-UNAT-757 (Sarwar)

UNAT held: UNAT found that the UNDT's determination that the decision to terminate the appointment was unlawful on account of the repeated non-compliance with ST/AI/2010/5 was formalistic. While obviously a workplan should be finalized at the beginning of a cycle, UNDT found that there was nothing in ST/AI/2010/5 that held any failure to generate a workplan at the commencement of a cycle to be a procedural flaw resulting axiomatically in any subsequent decision to terminate an appointment being unlawful. Likewise, there is no such consequence for not holding a midpoint review in a timely manner. UNAT found that the use of the non-peremptory words "should" and "usually" confirmed that the provisions of ST/AI/2010/5 in this respect were directory not mandatory. Additionally, ST/AI/2010/5 did not provide for any minimum duration for a performance improvement plan. UNAT found that the question of procedural fairness was whether the staff member had been aware of the required standard and had been given a fair opportunity to meet it. In the present case, UNAT found that the staff member had been acquainted with what was expected of him, was properly assessed in numerous assignments, was afforded an opportunity to improve and failed to do so in key performance areas, thus demonstrating his unsuitability for the position. UNAT concluded that in the premises, there was no basis for finding the separation decision unlawful and vacated the UNDT judgment.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2016-178.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-757.pdf

Privileges and immunities

Judgment 2018-UNAT-843 (Kozul-Wright)

Privileges and immunities private legal obligations waiver of official's immunity decision to waive immunity – administrative decision – receivability (UNDT)

Applicable law:

- Article 105 of the Charter of the United Nations
- Convention on the Privileges and Immunities of International Organizations (1946) (1948) (1949) (1950) (1951) (1952) (1953) (1954) (1955) (1956) (1957) (1958) (1959) (1960) (1961) (1962) (1963) (1964) (1965) (1966) (1967) (1968) (1969) (1970) (1971) (1972) (1973) (1974) (1975) (1976) (1977) (1978) (1979) (1980) (1981) (1982) (1983) (1984) (1985) (1986) (1987) (1988) (1989) (1990) (1991) (1992) (1993) (1994) (1995) (1996) (1997) (1998) (1999) (2000) (2001) (2002) (2003) (2004) (2005) (2006) (2007) (2008) (2009) (2010) (2011) (2012) (2013) (2014) (2015) (2016) (2017) (2018) (2019) (2020) (2021) (2022) (2023) (2024) (2025)

UNDT judgments:

Legal Services Section I, United Nations Office on Drugs and Crime (UNODC) and to laterally reassign him to the position of Senior Legal Adviser within the Office of the Chief of the Terrorism Prevention Branch (TPB). UNDT found that the restructuring of the TPB was a valid exercise of the Secretary-General's discretion. It further found that the staff member's post had not been abolished; rather, the staff member had been reassigned against the same budgeted post and his functional title and responsibilities were eventually changed to those of Senior Legal Adviser. UNDT was satisfied that the reassignment was justified by the restructuring of the TPB which entailed a redistribution of functions. UNDT dismissed the application and the staff member appealed.

UNAT held: UNAT recalled the well settled jurisprudence of the ILOAT that "an international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the

UNAT held: UNAT rejected the Secretary-General's interlocutory appeal against the UNDT order as not receivable, finding that UNDT had discretionary authority in case management and the production of evidence in the interest of justice. UNAT found that UNDT had decided on a measure of inquiry, the necessity of which it had sole authority to assess. UNAT held that it was not in the interest of the internal system of justice to consider an appeal against a simple measure of inquiry receivable.

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2010-unat-032e.pdf

Judgment 2010-UNAT-005 (Tadonki)

Receivability (UNAT) – interlocutory appeal – UNDT order – excess of jurisdiction – suspension of action – pendency of management evaluation

Applicable law:

- Article 2(2) of the UNAT Statute
- Articles 2(2) and 10(2) of UNDT Statute

Legal principle: Generally, only appeals against final judgments are receivable. However, when it is clear that UNDT has exceeded its jurisdiction, a preliminary matter may be receivable. Under Article 2(2) of the UNDT Statute, UNDT has competence to order suspension of that decision only during the pendency of the management evaluation.

UNDT order: The staff member filed an application for suspension of action of the decision not to renew his contract. UNDT ordered that the contested decision be suspended pending the final determination of the substantive appeal and that the staff member's salary be paid from the date of the order until the final determination of the case.

UNAT held:

the five-day period provided for under Article 13 of the UNDT Rules of Procedure has elapsed, UNDT has the

granting it. Nonetheless, having judged that the impugned decision not to transfer the staff member to UNMISS was not manifestly unreasonable, the Tribunal found that the decision was not manifestly unreasonable and thus not liable to be set aside. (T)

UNDT could seldom proceed if either party were able to appeal interlocutory decisions. UNAT held that in this case, it saw no reason to depart from the general rule that only appeals against final judgments are receivable. UNAT dismissed the Secretary-General's interlocutory appeals as not receivable.

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2010-unat-062.pdf

Judgment 2012-UNAT-231 (Ortiz)

Receivability (UNAT) – jurisdiction – ICAO Secretary General – AJAB recommendation – administrative decision

Applicable law:

- Article 2(10) of the UNAT Statute
- Article XI of the ICAO Service Code

Legal principle:

Judgment 2011-UNAT-165 (Cherif)

Receivability (UNAT) – *ratione materiae* ICAO Council decision – administrative decision

Applicable law:

- Article 58 (Chapter XI) of Convention on International Civil Aviation, Chicago, 4 April 1947

Legal principle: The decisions of the governing body of ICAO are not, within the mandate of UNAT, administrative decisions. These decisions are regulatory decisions that are not subject to judicial review by UNAT.

UNAT held: The ICAO Secretary General contested two decisions taken by the ICAO Council, the governing body that employed him. In those decisions, the Council required that the ICAO Secretary General obtain the written approval of the President of the Council for any hiring, appointment, promotion, extension and termination of P-4 employees and above. UNAT held that the contested decisions of the ICAO Council are not, within the mandate of UNAT, administrative decisions. These decisions are regulatory decisions that are not subject to review by UNAT.

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2011-unat-165.pdf

Judgment 2015-UNAT-576 (Harrich)

Receivability (UNAT) – *ratione temporis* application for correction of UNDT judgment – appeal – judgment on merits – time limit

Applicable law:

- Article 7(1) of the UNAT Statute

Legal principle: An application for correction of a UNDT judgment (or other post-judgment motions) does not extend the time limit for filing an appeal against the UNDT judgment on the merits.

Facts: The staff member filed a motion for correction of Judgment UNDT/2014/109 (UNDT judgment), which UNDT denied. The staff member filed a second motion for correction of the UNDT judgment, arguing that UNDT made erroneous factual findings in the judgment. UNDT denied the second motion. The staff member subsequently filed an appeal against the UNDT judgment more than a month after the expiration of the 60-day time limit for filing an appeal. The staff member argued that the 60-day deadline ran from the date that his second motion for correction of judgment was denied on 4 September 2014 and that his appeal was therefore timely.

UNAT held: A staff member cannot extend the statutory deadline to appeal by filing post-judgment motions. To hold otherwise would allow the parties to set their own deadlines for appeal of a UNDT judgment and under mine the mandatory nature of the statutory deadline in Article 7(1)(c) of the UNAT Statute. UNAT rejected the appeal as time-barred.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2014-109.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-576.pdf

Judgment 2015-UNAT-604 (Ocokoru)

Receivability (UNAT)

Applicable law:

-

Receivability (UNDT)

Judgment 2017-UNAT-750 (Kagizi et al.)

Receivability (UNDT) – abolition of posts – General Assembly decision – restructuring – non-renewal of contract

Applicable law:

- Staff Rule 4.13
- Section 3.7(b) of Administrative Instruction ST/AI/2013/4 (Consultants and individual contractors)

Legal principle: The General Assembly is the ultimate decision-making organ in the Organization and its decisions are not subject to challenge in the internal justice system. Generally speaking, applications against non-renewal decisions are receivable. However, where the challenge of a non-renewal of appointment has been intertwined with a challenge of a decision of the General Assembly to abolish posts, the application is not receivable.

UNDT judgment: The fixed-term appointments of 51 applicants, all former Language Assistants at the General Service level with MONUSCO, expired on 30 June 2015 and were not renewed because the posts encumbered had been abolished by a decision of the General Assembly with effect from 1 July 2015. The applicants challenged the non-renewal of their appointments and several ancillary matters before the Tribunal.

Legal principle: The Secretary-General's decision to waive a staff member's immunity does not constitute an administrative decision. Rather, it is an executive or policy decision.

UNDT judgment: The staff member contested the Secretary-General's decision to waive his diplomatic immunity with regard to his dispute over the lease of an apartment at his duty station in Geneva. At the request of the Permanent Mission of Switzerland to the United Nations, the Secretary-General lifted the staff member's immunity with respect to the execution of a judgment issued by a Geneva court ordering the staff member to pay compensation to the landlord. UNDT found the application to be receivable on the grounds that the decision to waive immunity constituted an administrative decision which had a direct impact on the staff member. It concluded, however, that the Administration had properly exercised its discretion to waive immunity and it had acted reasonably and properly, taking account of all relevant considerations, in lifting the immunity.

UNAT held: When responding to requests for the waiver of an official's immunity, the Organization must comply with its legal obligations to the requesting Member State under the relevant international instruments, which limit immunity to official acts and oblige the Secretary-General to cooperate at all times with the appropriate authorities to facilitate the proper administration of justice and to prevent the occurrence of any abuse in connection with the privileges and immunities. UNAT noted that the Secretary-General is best placed to appreciate the nature of the Organization's obligations to a Member State, what form of cooperation will be in the interests of the Organization, and whether non-waiver is necessary for the fulfillment of the purposes of the Organization. The factors he will take into consideration often may be political in nature and will involve issues of comity. These considerations imbue a decision of the Secretary-General to waive immunity with an executive or political character, negating the categorization of the decision as one administrative in nature. Accordingly, UNAT held that the staff member's application to UNDT was not receivable *ratione materiae* and therefore vacated the UNDT judgment.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-843.pdf

Judgment 2015-UNAT-555 (Pedicelli)

Receivability (UNDT)- ICSC decision – impact – terms of appointment – administrative decision

Applicable law:

- Article 2(1) of the UNDT Statute

Legal principle: Decision implementing an ICSC decision is of general application and therefore not reviewable.

of Article 2(1) of the UNDT Statute. Based on the staff member's Personnel Action Forms, before and after implementation of the ICSC's renumbering exercise, UNAT found that the exercise had a direct adverse impact

UNAT held:

management evaluation of these claim under Article 8(1)(c) of the UNDT Statute and Staff Rule 11.2(a) but failed to do so. UNAT rejected his contention that the impugned decisions were based on the advice of technical bodies, namely the ABCC, the Medical Services Division and the Medical Board, and that he was therefore not

Judgment 2016-UNAT-661 (Kalashnik)

Receivability (UNDT) – ~~ratione materiae~~management evaluation outcome – administrative decision

Applicable law:

- Article 8(1) of the UNDT Statute

Legal principle: The outcome of the MEU's rev(. F2009>>> BD)-2 (g)-1.9 (a)-59t<FEF1 0 g /GS1 gs 0 TL/Fm0 Dtra

Judgment 2011-UNAT-135 (Larkin)

Receivability (UNDT) – *ratione materiae* OSLA – legal services – administrative decision

Applicable law:

- Article 2(1) of the UNDT Statute
- Secretary-General's Bulletin ST/SGB/2010/3 (Organization and terms of reference of the Office of Administration of Justice)
-

www.un.org/en/internaljustice/files/unat/judgments/2011-unat-139e.pdf

Judgment 2011-UNAT-120 (Gabaldon)

Receivability (UNDT) – ~~ratione personae~~ status of complainant – letter of appointment – of fc

for filing an application with UNDT. Since the MEU's response was received after the expiration of the 90-day period, it did not reset the clock for the staff member to file an application. UNDT therefore initially made no error of law in concluding that the staff member's application was not receivable *ratione temporis* because it was filed outside the regulatory time limit.

However, by applying the principles of good faith and of the regularity of administrative proceedings to the facts of the case, UNAT found that UNDT erred in dismissing the staff member's application as time-barred. It held that the MEU is competent only to make recommendations to suspend or extend the relevant deadlines concerning the management evaluation process, whereas the authority to extend a management evaluation deadline is reserved for the Secretary-General, who has not exercised it in the present case. Though not bound to do so, the MEU advised the staff member that the 90-calendar day deadline for his filing of an application with UNDT started to run from 23 July 2018. Based on that misrepresentation, the staff member filed his application with UNDT untimely. UNAT concluded that, in the circumstances and by applying the principles of good faith and

three years' net base salary. In light of the particularly egregious circumstances of the case and the accumulation of aggravating factors, UNAT found that the increased award, exceptionally exceeding the equivalent of two years' net base salary pursuant to Article 9(1)(b) of UNAT's Statute, was just ed.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2015-031.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-622.pdf

Revision of judgment

Judgment 2011-UNAT-145 (Eid)

Revision of judgment#discovery of decisive new factew jurisprudence

Applicable law:

- Article 12(1) of the UNDT Statute
- Article 29 of the UNDT Rules of Procedure

Legal principle: The issuance of new jurisprudence by UNAT is an issue of law and does not constitute a new fact.

UNDT judgment: The Secretary-General submitted an application with UNDT for revision of its judgment, under Article 29 of the UNDT Rules of Procedure. The Secretary-General considered the new decision of UNAT to fix the interest rate applicable to pre-judgment compensation at the US prime rate to be a "decisive

the party applying for revision. A “party” in this context is to be understood as the staff member and/or the Secretary-General (or the Administration at large) and does not include their counsel. Therefore, a counsel’s discovery of a decisive new fact does not constitute a ground for revision of judgment, provided that the decisive fact was known to the party they represent.

UNDT’s Holding: In August 2017, UNDT rendered Judgment UNDT/2017/068 (Judgment), ordering rescission of the contested “decision to exclude [the staff member] from the recruitment exercise” for an S-3 level position, or alternatively, payment of USD 20,000 as compensation in-lieu of rescission, together with USD 5,000 for loss of opportunity for career advancement and for loss of job security. One of the main factors in UNDT’s assessment of compensation was its assumption that the staff member had been deprived of an opportunity.

had a significant chance for promotion. There must be a link between the irregularity and the non-promotion decision. Thus, where the irregularity has no impact on the status of a staff member, because he or she had no foreseeable chance for promotion, he or she is not entitled to rescission or compensation.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2010-179e.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2011-unat-172.pdf

Judgment 2017-UNAT-802 (Riecan)

Staff selection – non-selection – interview panel obligation – performance – e-PAS

Applicable law:

- Article 101(1) of the Charter of the United Nations
- Staff Regulation 4.1
- Administrative Instruction ST/AI/2010/3 (Staff selection system)

Legal principle:

Legal principle: Rules, policies or procedures intended for general application may only be established by duly promulgated Secretary-General's bulletins and administrative issuances. The "Instruction Manual for the Hiring Manager on the Staff Selection System" (Instruction Manual), at most, provides guidance on the responsibilities of the hiring manager and does not have the legal force. A candidate is not entitled by virtue of the Instruction Manual to be apprised of the composition of the interview panel prior to the interview.

UNDT judgment: The staff member contested her non-selection, in particular the Administration's failure to notify her of the composition of the interview panel, and the non-selection decision. UNDT held that, in failing to notify the staff member of the composition of the interview panel, the Administration was in violation of article 5.9 (i) of the Staff Regulations and Rules.

UNDT judgment: The staff member contested the decision to separate her from service. UNDT rejected the staff member's contention that the Administration was under an obligation to prove her guilt beyond a reasonable doubt. UNDT concluded that the staff member's behaviour amounted to professional misconduct, and that the penalty of termination was not disproportionate to the gravity of the offence.

UNAT held: UNAT recalled that when a disciplinary sanction is imposed by the Administration, the role of the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence. It ruled that, when termination is

Judgment 2010-UNAT-022 (Abu Hamda)

Standard of review – disciplinary cases – misconduct – disciplinary sanction – demotion – demotion with loss of salary – proportionality of sanction – mitigating factors

Applicable law:

- UNRWA Area Staff Regulation 10.2
- UNRWA Area Staff Rule 110.1

Legal principle: When reviewing a sanction imposed by the Administration, UNDT and UNAT need to examine

staff member's possible misconduct, it must be reviewed as a disciplinary measure. The imposed sanction of separation was not disproportionate to the offense.

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2010-unat-024.pdf

Judgment 2014-UNAT-436 (Walden)

Standard of review – disciplinary cases – misconduct – misrepresentation of academic credentials – disciplinary sanction – termination of appointment – proportionality of sanction

Applicable law:

- A Ar7 (gr)-9.ucllo-6.9 4.2928 (9 (w)7UNR)63 (9 (6.9A5IT jTJ /21)1 (a) -0/e)in(l)-41 1(c)12 (l)3 (o-6.9 (7 (le

necessary. Much will depend on the available evidence and the circumstances of the case.

UNDT judgment: The staff member contested the decision to separate him from service. The decision was based on the finding that he had engaged in sexual harassment, specifically, by making unwelcome sexual advances towards a colleague. UNDT held that the Administration had failed to discharge its onus to prove by clear and convincing evidence that the staff member had committed misconduct in the form of sexual harassment. By way of remedy, UNDT ordered rescission of the disciplinary measure and remanded the matter to the Administration to resume the disciplinary procedure and obtain additional evidence. As an alternative, UNDT ordered in-lieu compensation in the amount of six months' emoluments.

UNAT held: The undisputed facts, the evidence of a credible report, coherent hearsay evidence pointing to a pattern of behavior, the consistency of the witness statements, the unsatisfactory statement of the staff member and the inherent probabilities of the situation, taken cumulatively, constituted a clear and convincing concatenation of evidence establishing, with a high degree of probability, that the alleged misconduct in fact occurred. UNAT noted that the Organization is entitled to and obliged to pursue a severe approach to sexual harassment and that the message therefore needs to be sent out clearly that staff members who sexually harass their colleagues should expect to lose their employment. Accordingly, it concluded that the staff member should be reinstated to his position with back pay.

with compensation in lieu of notice and with termination indemnity. The decision was based on the finding that he had engaged in sexual harassment. UNDT dismissed his application in its entirety, finding that the material

axiomatically in any subsequent decision to terminate an appointment being unlawful. Likewise, there is no such consequence for not holding a midpoint review in a timely manner. UNAT found that the use of the non-peremptory words “should” and “usually” confirmed that the provisions of ST/AI/2010/5 in this respect were directory not mandatory. Additionally, ST/AI/2010/5 did not provide for any minimum duration for a performance improvement plan. UNAT found that the question of procedural fairness was whether the staff member had been aware of the required standard and had been given a fair opportunity to meet it. In the present case, UNAT found that the staff member had been acquainted with what was expected of him, was properly assessed in numerous assignments, was afforded an opportunity to improve and failed to do so in key performance areas, thus demonstrating his unsuitability for the position. UNAT concluded that in the premises, there was no basis for finding the separation decision unlawful and vacated the UNDT judgment.

Link to UNDT judgment:

www.un.org/en/internaljustice/files/undt/judgments/undt-2013-024.pdf

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-410.pdf

Taxation

Judgment 2012-UNAT-240 (Johnson)

Taxation

- Staff Rules 9.6 and 13.1

Legal principle: The Organization has the obligation to give priority consideration to permanent staff members facing termination due to abolition of post. Staff members, on the other hand, have the obligation to timely submit completed applications for positions for which they are suitable and qualified.

UNDT judgment: Several former staff members in the Publishing Division of the DGACM filed applications before UNDT challenging the decision to terminate their permanent appointments following the abolition of posts in DGACM. UNDT found that the Administration had failed to act fully in compliance with Staff Rules 13.1 and 9.6 by subjecting permanent staff members to the requirement of competing for available posts against other non-permanent staff members and by failing to reassign permanent staff members as a matter of priority to another post matching their abilities and grade. UNDT ordered, in all cases in which staff members had not secured another position with the Organization at the time of their application with UNDT, rescission of the termination decision or, in lieu of rescission, two years' net base salary minus any termination indemnity paid to him or her. In addition, UNDT awarded compensation for emotional distress.

UNAT held: UNAT vacated UNDT's compensation orders in the cases in which staff members had secured alternative employment, finding that the applications had become moot. In the remaining cases, UNAT considered that any permanent staff member facing termination due to abolition of post must show an interest in a

Unified salary scale

Judgment 2018-UNAT-840 (Lloret-Alcañiz et al.)

Unified Salary Scale transitional allowance General Assembly resolution —administrative decision – acquired rights

Applicable law:

- General Assembly resolution 13(I)
- General Assembly resolution 70/244
- General Assembly resolution 71/263
- Article 2(1) of the UNDT Statute
- Staff Regulation 12.1

Legal principle: The Secretary-General's decisions implementing the binding decisions of the General Assembly are administrative decisions that may adversely affect the terms of employment. The power the Secretary-General exercises is a purely mechanical power, more in the nature of a duty. However, such exercises of power are administrative in nature

choice in the implementation of the General Assembly resolutions; the power he exercised was a purely mechanical power, more in the nature of a duty. However, they found that such exercises of power were administrative in nature

Legal principle: The Pension Fund has the statutory jurisdiction, pursuant to paragraph 26 of the PAS, to discontinue or suspend the “local track” currency for a particular country when it would lead to aberrant results.

UNAT held: UNAT vacated the decision of the Standing Committee of the UNJSPB to reject the staff member’s request that the UNJSPF discontinue the local track in application of paragraph 26 of the PAS and remanded the case to the Standing Committee. UNAT determined that by refusing to review the staff member’s request, the UNJSPB had failed to properly exercise its jurisdiction pursuant to paragraph 26 of the PAS, whose very purpose “is to address the issue of whether the application of official CPI data results in ‘aberrant results’ or the situation where no up-to-date CPI data is available”.

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-343.pdf

Judgment 2010-UNAT-023 (Nock)

UNJSPF – participant – re-entering – prior contributory service – prior participation period – restoration

Applicable law:

- Article 24 of the UNJSPF Regulations (as amended, 1 April 2007)

Legal principle: Amended Article 24 of the UNJSPF Regulations provides for a participant’s option to restore his/her prior contributory

been ineligible to restore previous contributory service. Therefore, amended Article 24 did not apply to the staff member as he had been eligible to restore previous contributory service but had failed to do so in a timely manner.

Link to UNAT judgment:

www.un.org/en/internaljustice/files/unat/judgments/2010-unat-019.pdf

Judgment 2015-UNAT-575 (Gomez)

UNJSPF – pension benefits – statutory deduction – taxation – ASHI premium – net base pension

Applicable law: 6 (r) 12.6 EFF20054rg/en<</5ctualText<FEFF2009>>> BDC 0

decision was defective.

UNAT held that the UNJSPF correctly applied Article 45 of its Regulations and relied on an internationally binding judgment about spousal and child support, issued by an Austrian court, which was not contradicted by

1995 and remained married to him for 20 years until his death. Her late husband participated in the Fund from October 1999 to November 2015 as a staff member of WIPO, and he had listed her as his spouse throughout his participation in the Fund. Both WIPO and the UN reported their marital status to the Fund, and Switzerland issued them residential status as spouses. However, his previous marriage was not annulled until August 1996, about a year after his marriage to the staff member. Divorce is not legal in the Philippines. The only manner in which a marriage can end, other than through death of a spouse, is by annulment. The Fund informed the staff member that based on its review of Philippine law, her marriage to her late husband appeared to be void as bigamous and her marriage was not legal because it pre-dated the annulment of her late husband's first marriage. Accordingly, the Fund rejected the staff member's request for a widow's benefit under Article 34 of its Regulations. The staff member appealed, claiming that her marital relationship with her late husband constituted a common law marriage and that under Philippine law a void or voidable marriage is deemed to be valid until declared otherwise in judicial proceedings and her marriage has not been the subject of any legal proceedings for a declaration of nullity.

UNJSPB Decision: A former staff member married his same-sex partner of 36 years in New York in April 2018,

Legal principle:

Glossary

Execution

Implementation of a judgment, usually within a specific time limit.

Extension of time limits

Before a time limit for a filing fixed by the Statute or Rules of Procedure has lapsed, UNAT may, in exceptional circumstances or when the interests of justice so require, order an extension of the time limit, either on motion

Jurisdictionratione materiae

Subject-matter jurisdiction: Jurisdiction over the nature of the case and the type of relief sought. UNAT's subject-matter jurisdiction is set out in Article 2 of the UNAT Statute. UNDT's subject-matter jurisdiction is set out in Article 2 of its Statute.

Jurisdictionratione personae

Personal jurisdiction: Jurisdiction over a person. UNAT's personal jurisdiction is set out in Article 2 of the UNAT Statute. UNDT's personal jurisdiction is set out in Article 3 of its Statute.

Jurisdictionratione temporis

Temporal jurisdiction: Jurisdiction based on the court's having authority to adjudicate a matter when the event occurred. UNAT's temporal jurisdiction is set out in Article 7 of the UNAT Statute. UNDT's jurisdiction is set out in Article 8 of its Statute.

Jurisprudence

Jurisprudence refers to the entire body of law resulting from a tribunal's judgments and orders.

Legal representation before UNDT and UNAT

Representation of an individual by the Office of Staff Legal Assistance or an outside private counsel who is authorized to practice law in a national jurisdiction.

Legal Office of Staff Assistance (LOSA)

The Legal Office of Staff Assistance (LOSA) provides independent and professional legal advice to UNRWA staff members who may wish to appeal an administrative decision. LOSA is staffed by full-time legal officers in Amman, Jordan. At any stage of a dispute, or even in anticipation of a dispute, a staff member may seek advice and assistance from LOSA legal officers. They can advise on the legal merits of a case and what options the staff member might have. If a staff member chooses to proceed with a case in the formal system, LOSA may assist with representation throughout the formal process.

Management evaluation

The Administration's evaluation of whether an administrative decision has been taken in conformity with the Staff Regulations and Rules of the United Nations, administrative issuances, and relevant jurisprudence. The purpose of this step is to give the Administration a chance to correct itself and/or provide acceptable remedies, where appropriate, and to reduce the number of cases that proceed to formal litigation.

Moot

An issue, case, or action that has been resolved leaving no live dispute for a tribunal to consider is said to be "moot" and cannot be brought or continued thereafter.

Motion

A written or oral request asking a tribunal to make a specified ruling.

Non-legal representation before UNAT

Representation of an individual before UNAT by a current or former staff member, including by a member of a staff union. This representative is not required to be authorized to practice law in a national jurisdiction, as is required for outside private counsel, nor required to have legal training or background.

Office of Administration of Justice (OAJ)

The Office of Administration of Justice (OAJ) is responsible for coordinating the functioning of the formal parts of the internal justice system. It is headed by an Executive Director appointed by the Secretary-General. OAJ was established at the outset of the system with the rationale that "a separate Office of Administration of Justice, with operational and budgetary autonomy, would ensure the institutional independence of the system of internal justice". The Office of Staff Legal Assistance (OSLA) and the registries for the Dispute Tribunal and

the Appeals Tribunal are part of OAJ. Without prejudice to the authority of the judges in judicial matters, the registries report to a Principal Registrar. With its headquarters in New York, OAJ also has a presence—through UNDT registries and the branch offices of OSLA—in Geneva, Nairobi, Addis Ababa and Beirut.

Office of State Legal Assistance (OSLA)

The Office of State Legal Assistance (OSLA) provides independent and professional legal advice to staff members who may wish to appeal an administrative decision, or who are subject to disciplinary action. OSLA is staffed by full-

Remand

Sending back a case for further consideration on the merits or for the purpose of initiating or correcting a required procedure, often within a specific time limit.

Remedy (relief)

The way a right is enforced by a Tribunal when injury, harm, or a wrongful act has been imposed upon an individual. Remedies are ordered by the Tribunal to correct an injury, enforce a legal right or entitlement, provide monetary compensation, or order a specific performance to take place as means to provide relief to an injured party.

Respondent

The party in a matter before a Tribunal who responds to an application or appeal initiated by the opposing party. Before UNDT, the Respondent is the Secretary-General of the United Nations. Before UNAT, the Respondent is either the Administration or the staff member, depending on which party initiates the appeal.

Revision

Review by the relevant Tribunal of a judgment, to take into account a decisive new fact that was discovered after the judgment was rendered and that was not known to the Tribunal or to the party requesting revision.

Session

A meeting of UNAT judges to consider and decide cases. UNAT judges usually hold three two-week sessions a year, in spring, summer and fall.

Self-representation before UNAT

Individuals may represent themselves before UNAT, regardless of whether they were self-represented or had legal or non-legal representation prior to UNAT proceedings.

Sua sponte

Of its own accord. UNAT may make certain rulings of its own accord, without prior motion by the parties.

Summary judgment

A party may file a motion requesting a summary judgment. In accordance with Article 19(2) of UNAT's Rules of Procedure, a summary judgment may be issued at any time, even when UNAT is not in session. It shall be adopted by panels of three judges designated by the President.

Motions for summary judgment before UNDT are governed by Article 9 of the UNDT Rules of Procedure.

Suspension of action

A UNDT or UNRWA DT proceeding initiated by a staff member who is contesting an administrative decision, and who, by filing a suspension of action request, seeks a temporary suspension of the contested administrative decision while the case is awaiting the outcome of a management evaluation or a judgment of UNDT or UNRWA

Time limit

The date set as the deadline by which a filing must be submitted before UNDT or UNAT. Time limits differ depending on the type of filing. Time limits are set by the Tribunals' Statutes and/or Rules of Procedure or are ordered by the Tribunals.

United Nations Appeals Tribunal (UNAT)

The United Nations Appeals Tribunal (UNAT) is the appellate court of the internal justice system at the United Nations and is composed of seven judges, with a registry in New York. Decisions of UNDT or UNRWA DT may be appealed to UNAT either by the staff member concerned or by the Administration. The UNAT Statute allows for appeals of decisions of those bodies only in cases where it is alleged that UNDT or UNRWA DT has exceeded its jurisdiction or failed to exercise it; or that it has erred on a question of fact or law or procedure. UNAT can also hear appeals of decisions taken by the Standing Committee acting on behalf of the United Nations Joint Staff Pension Fund (UNJSPF), (if the appeal alleges non-observance of the regulations of the Pension Fund), and administrative decisions taken by the heads of some other agencies and entities.

United Nations Dispute Tribunal (UNDT)

The United Nations Dispute Tribunal (UNDT) is the first instance Tribunal in the formal two-tier system in which a United Nations system staff member can formally dispute an administrative decision taken against him or her. UNDT examines the facts of the case, and conducts, where necessary, oral proceedings, which are normally held in public. judgments of UNDT are binding. However, both the staff member and the Administration have the right to appeal a judgment rendered by UNDT to UNAT.

United Nations Relief and Works Agency for Palestine Refugees in the Near East Dispute Tribunal (UNPd1 (o)11.c

Legal references and reports

Administrative Instructions

-

International Civil Aviation Organization (ICAO) Service Code

- Article XI

Report of the Advisory Committee on Administrative and Budgetary Questions (A/65/537) of 22 October 2010

Report of the Fifth Committee (A/2615) of 7 December 1953

Secretary-General's Bulletins

-

- Article 9(1)
- Article 9(2)
- Article 9(3)
- Article 9(5)
- Article 10(2)
- Article 11(4)
- Article 22
- Article 23

United Nations Dispute Tribunal (UNDT) Rules of Procedure

- Article 7
- Article 8(6)
- Article 12
- Article 13
- Article 14
- Article 16(2)
- Article 18(2)
- Article 19
- Article 27
- Article 28
- Article 29
- Article 30
- Article 32

United Nations Dispute Tribunal (UNDT) Statute

- Article 2(1)
- Article 2(2)
- Article 2(7)
- Article 2(9)
- Article 3(1)
- Article 4(2)
- Article 8(1)
- Article 8(3)
- Article 9(1)
- Article 10(2)
- Article 10(4)
- Article 10(5)
- Article 10(6)
- Article 10(7)
- Article 10(8)
- Article 11(3)
- Article 12(1)

United Nations Joint Staff Pension Fund (UNJSPF) Regulations, Rules and Pension Adjustment System

- Article 6(a)
- Article 24 (as amended, 1 April 2007)
- Article 45
- Article 48
- Annex I, Section K
- Annex IV, paragraph 26

United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Area Personnel Directive A/9/Rev.10

United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Area Staff Regulations

- Regulation 9.1
- Regulation 10.2

United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Area Staff Rules

- Rule 109.4
- Rule 110.1

United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) International Staff Regulations

- Regulation 10.2

Universal Declaration of Human Rights

