

UNDT/2009/024, Koda

UNAT Held or UNDT Pronouncements

This judgment is confined to whether the applicant should have access to the report. The applicant was ordered be given access to the panel's report, subject to an undertaking of confidentiality.

Decision Contested or Judgment/Order Appealed

Upon receiving staff complaints of misconduct, a panel submitted a confidential report on the applicant which cleared him of the misconduct allegations but found "management deficiencies". The undisclosed report made recommendations including that conditions be attached to the extension of the applicant's contract. The USG appeared to have accepted the criticisms at face value and taken them into account in dealing with the prospects for a future contract without giving any opportunity for the applicant to respond. The panel's criticisms of her competence were later publicized in an audit report in a way the applicant alleged denied her the opportunity to comment on the initial adverse panel findings. The applicant resigned shortly before her contract expired, claiming, in effect, that she had been constructively dismissed.

Legal Principle(s)

A document that is relevant to any fact in issue must be produced. A legitimate forensic purpose will be demonstrated where there is a reasonable possibility that the document will contain, directly or indirectly, material relevant to the issues in the case. Admissibility or direct relevance are not criteria specified by the Rules of Procedure: the question is fairness and expedition. As a general rule the Tribunal should lean in favour of the discovery rather than the concealment of truth. It is not relevant whether the staff member is entitled to production of a document by virtue of some independent legal right, e.g. under a Staff Rule or Administrative Instruction.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Koda

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2009/047/JAB/2008/091

Tribunal

UNDT

Registry

New York

Date of Judgement

30 Sep 2009

Duty Judge

Judge Adams

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Procedure (first instance and UNAT)

Production of documents

Applicable Law

Administrative Instructions

- ST/AI/371

Former Staff Rules

- Rule 111.2(a)(i)
- Rule 111.2(f)

UNDT RoP

- Article 15.3
- Article 18
- Article 8.2
- Article 8.4