

UNDT/2010/069 Corr.2, Applicant

UNAT Held or UNDT Pronouncements

Outcome: The applicant is not entitled to have the note removed simply because no disciplinary proceedings were undertaken in respect of the investigation report. However, the note in its present form is inaccurate and must be removed. Its replacement, if any, must be accurate and first shown to the applicant, who must be given a copy of the investigation report to enable him to place such comment on the file as he wishes, providing it is reasonably connected to the investigation.

Decision Contested or Judgment/Order Appealed

After the applicant retired but while he was working as a consultant, he was subject of an investigation, which made adverse findings against him although disciplinary proceedings were not commenced. A note was therefore placed on his file stating that, "... A matter was pending which had not been resolved due to his separation. In the event that [the applicant] should seek further employment within the United Nations Common System, this matter should be further reviewed by the Office of Human Resources Management ..."

Legal Principle(s)

The content of the note:.. What a note contains is a management matter although it has to be accurate. In this case, no matter was actually pending and it would have been correct to describe the matter as incomplete or unresolved. Although the preliminary investigation had in fact been completed, the course of action prescribed by ST/AI/371 to initiate disciplinary proceedings had not been completed and could not be accurately described as "pending". Placing a note including adverse materials on the personnel file:.. The Administration must be able to deal with its files in any reasonable way thought to be necessary or desirable. Rights concerning investigations:.. The Secretary-General can only institute disciplinary

proceedings against persons who are at the time of institution staff members even though they were staff members at the time of the alleged misconduct. If the objective is merely to obtain recompense, it is not necessary to prove more than a breach of the contractual obligation to comply with the applicable legal instruments and act with due care and attention (but see sec 1, ST/AI/2004/3). A staff member has no right to require the Secretary-General to institute disciplinary proceedings against her/him, whether to clear her/his name or for any other reason. If such proceedings have already been commenced, any decision to terminate them must, like all administrative decisions affecting the staff, comply with the requirements of propriety, in short, be made in good faith and by way of fair dealing must take into account the legitimate interests of the staff member. By virtue of his or her position as Chief Administrative Officer of the Organization, the Secretary-General has a right to conduct any other investigation. : The mere fact that a staff member has separated cannot hinder, let alone prevent, any such investigation even if that former staff member's conduct is in question. The right to comment on adverse material on ones' file.: This right survives the termination of the staff member's contract. The former staff member must be entitled to comment on material to which a note explicitly or implicitly refers, even if that material is not on the file and therefore is not physically contained in the note. To do so, the staff member must be able to examine this material.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2009/070/ JAB/2009/020

Tribunal

UNDT

Registry

New York

Date of Judgement

26 Apr 2010

Duty Judge

Judge Adams

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Facts (establishment of) / evidence

Due process

Right to comment/respond

Applicable Law

Administrative Instructions

- ST/AI/2004/3
- ST/AI/292

- ST/AI/371

Secretary-General's bulletins

- ST/SGB/2009/7

Staff Rules

- Rule 111.2(a)