

UNDT/2010/203, O'Neill

UNAT Held or UNDT Pronouncements

Inexplicably, the JAB in its report sua sponte addressed, as a formal issue before it, the handling of a privileged and confidential letter (“Confidential Letter”) that the Applicant’s Counsel had sent to the Under-Secretary-General for OIOS (“USG”) regarding the pending JAB litigation. The JAB refused the Applicant’s non-selection claim, but found that the Respondent owed the Applicant an apology for forwarding the Confidential Letter to some staff members. The Respondent subsequently affirmed the non-selection decision, but rejected the issuance of an apology regarding the distribution of the Confidential Letter, instead referring the Applicant for “any recourse” to the former UN Administrative Tribunal. In his appeal to the Administrative Tribunal, the Applicant articulated the only issue on appeal as being “whether the Respondent disclosed alleged confidential information and whether the Applicant suffered any consequential harm for which he is entitled to compensation”—an issue that had never been the subject of administrative review and that had not been formally preserved for appeal. Outcome: The appeal is dismissed as not receivable.

Decision Contested or Judgment/Order Appealed

The Applicant was not selected for a P-5 position and a) sought administrative review of the decision and b) submitted an appeal to the JAB.

Legal Principle(s)

A mandatory first step in any appeal process before the Dispute Tribunal is that the Applicant has requested either an administrative review or a management evaluation of the contested administrative decision, depending on when the decision was taken. The Applicant is to clearly identify the administrative decision which she/he appeals, otherwise her/his application is not receivable. Although the Tribunal

may order specific performance to a contested decision under art. 10.5 of the Statute, this provision does not include specific performance of a JAB recommendation, which is advisory only and does not constitute a contestable administrative decision under the Statute.

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

O'Neill

Entity

OIOS

Case Number(s)

UNDT/NY/2010/010/AT/1595

Tribunal

UNDT

Registry

New York

Date of Judgement

11 Nov 2010

Duty Judge

Judge Kaman

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Staff selection (non-selection/non-promotion)

Applicable Law

Former Staff Rules

- Rule 111.1
- Rule 111.2(a)

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2010/159

UNDT/2009/028

UNDT/2010/006

UNDT/2009/035

UNDT/2009/054

UNDT/2009/070

2010-UNAT-061

2010-UNAT-094