

UNDT/2013/028, Nguyen Kropp

UNAT Held or UNDT Pronouncements

The Respondent submitted that the application was not receivable because, in regard to the initiation of an investigation against the Applicant, the Applicant's appeal was time-barred and did not concern a contestable administrative decision. Furthermore, the Applicant had been granted appropriate interim relief in relation to the alleged denial of her request to be granted an appropriate transfer or paid administrative leave. The Tribunal found that the Applicant's appeal against the decision to conduct an alleged "secret and retaliatory" investigation was receivable, but dismissed the question of the Applicant not being granted an appropriate transfer or paid administrative leave for want of prosecution. Want of prosecution: The Tribunal dismissed a claim of the Applicant for want of prosecution as she failed to indicate, upon an order of the Tribunal, whether the issue was still live.

Decision Contested or Judgment/Order Appealed

The Applicant filed an application in which she identified the contested administrative decisions as: (a) the "conduct [of] a secret and retaliatory investigation" against her and (b) the denial of her request to be granted "an appropriate transfer or paid administrative leave".

Legal Principle(s)

The process of an investigation: The entire process regarding a staff member being investigated for perceived misconduct constitutes one and the same investigation. This follows from ST/AI/371/Amend.1 and the OIOS Investigations Manual, which both, as opposed to ST/AI/371, clearly only refers to a single investigation when a staff member is being investigated for a possible disciplinary matter and not several independent investigations, such as, for instance, a "preliminary" investigation followed by an independent "actual" investigation. The timeliness of a request for management evaluation: An applicant is not required to request a management evaluation as soon as s/he becomes aware of an administrative decision through rumours. If that were the case, the Tribunal would in effect be condoning any practice whereby the Administration conducts investigations in secret and denies the staff member the right of challenging such due process violations by sheltering behind the argument that, in the absence of receipt of notification and a request for management evaluation and irrespective of the harm inflicted on the staff member, the claim was not receivable. Is a launch of an investigation an appealable administrative decision? Nothing in the definition of an administrative decision in art. 2.1(a) appears to limit the Tribunal's authority in terms of considering an application from a staff member who wishes to appeal an administrative decision to launch a disciplinary investigation into her affairs, which, in addition to being procedurally flawed, may also be tainted by bad faith and/or ulterior motives. That the Tribunal may review such an application was also confirmed by the Appeals Tribunal in Nwuke 2010-UNAT-099 in which it stated that "a possible disciplinary procedure" would concern the rights of "the accused staff member" (para. 29).

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Nguyen Kropp

Entity

OIOS

Case Number(s)

UNDT/NY/2010/107

Tribunal

UNDT

Registry

New York

Date of Judgement

22 Feb 2013

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Temporal (ratione temporis)

Applicable Law

Administrative Instructions

- ST/AI/371/Amend.1

UNDT RoP

- Article 11.2(a)
- Article 11.2(c)

UNDT Statute

- Article 8.1

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

2010-UNAT-099