

UNDT/2014/113, Birya

UNAT Held or UNDT Pronouncements

The ST/SGB/2008/5 requirement for the administration to act promptly on complaints of prohibited activity was not observed in the case of the Applicant's complaint. UNDT required more information on the present state of the process and held that this case was suitable to remand for institution or correction of the required procedure. UNDT suspended the proceedings and ordered the Secretary-General to advise UNDT of the present position of the investigation into the Applicant's complaint and whether he concurs with the remand of the case for institution and correction of the procedure under ST/SGB/2008/5.

Decision Contested or Judgment/Order Appealed

The Applicant contested a decision by a fact finding panel formed by the Director-General of the United Nations Office at Nairobi (UNON) on 11 September 2013 pursuant to ST/SGB/2008/5 "to delay its commencement of business for over 2 months from its formation consequently failing to make a determination and publication of its report within regulation of section 5.17 of the ST/SGB/2008/5."

Legal Principle(s)

UNDT has jurisdiction to examine an Administration's actions and omissions following a request for investigation submitted pursuant to ST/SGB/2008/5. UNDT has the jurisdiction to review an act or omission which modifies the rights of a staff member conferred by his or her terms of employment including applicable regulations and rules. The omission of the Administration to act promptly on a complaint as required by ST/SGB/2008/5 is an administrative decision which may be reviewed by UNDT before the outcome of the process has been determined by the administration. An organisation has the duty to take all appropriate measures to protect its staff from exposure to any form of prohibited conduct and to provide

effective remedies when prevention has failed.

Outcome

Dismissed on merits

Outcome Extra Text

The Tribunal sought to remand the matter for institution and correction of the procedure under ST/SGB/2008/5. Normal 0 false false false EN-US ZH-CN AR-SA /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:8.0pt; mso-para-margin-left:0cm; line-height:107%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri",sans-serif; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:Arial; mso-bidi-theme-font:minor-bidi; mso-ansi-language:EN-US; mso-fareast-language:ZH-CN;}

Full judgment

[Full judgment](#)

Applicants/Appellants

Birya

Entity

UNON

Case Number(s)

UNDT/NBI/2014/30

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

26 Aug 2014

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Investigation

Fact-finding investigation

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute

- Article 10.4
- Article 2.1

Related Judgments and Orders

