

# UNDT/2016/010, Nielsen

## UNAT Held or UNDT Pronouncements

Administrative decision: Advice from OAS about where to submit a complaint that does not fall within the scope of its authority does not produce any direct legal consequences to the legal order and, therefore, does not constitute an administrative decision. In the absence of a specific time limit in the applicable rules and regulations for finalizing PAD rebuttals, a former staff member has no right to compel the Administration to investigate misconduct for a delay in the completion of a PAD rebuttal process; therefore, the absence of a response to such request does not constitute an implied administrative decision. Implied decision: Whereas “not taking a decision is also a decision” (see, e.g. Nwuke 2010-UNAT-099), a failure to act would only amount to an implied decision if the Administration fails to issue a decision within the set legal deadline, if any, or within a reasonable deadline taking into account the circumstances of the case.

## Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of the United Nations Population Fund (“UNFPA”), challenged a) the decision of the Office of Audit and Investigation Services (“OAS”), UNFPA, not to forward her complaints against OAS and its Director to another, unspecified, entity, and b) the implied decision of the Director, OAS, not to open an investigation into misconduct by the Division of Human Resources (“DHR”), UNFPA, for failure to complete the rebuttal process of her Performance Appraisal and Development (“PAD”). The UNDT found the application irreceivable *rationae materiae* as none of the two contested decisions were “administrative decisions” within the meaning of art. 2(a) of the Dispute Tribunal’s Statute.

## Legal Principle(s)

N/A

## Outcome

Dismissed as not receivable

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Nielsen

## Entity

UNFPA

## Case Number(s)

UNDT/GVA/2015/180

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

3 Feb 2016

## Duty Judge

Judge Laker

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Administrative decision

Implied administrative decision

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

## Applicable Law

Laws of other entities (rules, regulations etc.)

- UNFPA Charter of Office of Audit and Investigation Services

UNDT RoP

- Article 27
- Article 9

UNDT Statute

- Article 2(a)

## Related Judgments and Orders

2013-UNAT-304

2014-UNAT-457

2010-UNAT-099

2014-UNAT-401

2013-UNAT-313

2013-UNAT-335