

UNDT/2016/038, Gallo

UNAT Held or UNDT Pronouncements

The non-disciplinary or administrative measure imposed against the Applicant is unlawful because, at the date of issuance of the contested decision, there was no longer an existing employment contract with the Applicant who was no longer a staff member. Accordingly, the Secretary-General had no longer the authority to impose such a measure. The entire complex process of launching an investigation into allegations of misconduct, instituting a disciplinary process and completing it by issuing the final decision, if any, to impose a disciplinary or non-disciplinary measure against a staff member must be finalized before the expiration of the contract. If the decision to impose a disciplinary or non-disciplinary measure is not finalized before the expiration of the contract, no course of action can be taken after this date, except if both parties (the staff member and the Organization) agree for the contract to be extended. The Tribunal found the application receivable *ratione personae*, *temporis* and *materiae*. On the merits, the application was granted in part: (a) the decision to impose a written reprimand against the Applicant was rescinded and the Respondent was ordered to remove the letter constituting the written reprimand from the Applicant's Official Status File; and (b) the request to rescind the decision finding the Applicant guilty of misconduct and the request to grant him financial compensation were rejected.

Decision Contested or Judgment/Order Appealed

The Applicant, a former Investigator at the P-4 level in OIOS, contested the 1 April 2015 letter signed by the Deputy Secretary-General, on behalf of the Secretary-General, and based on the recommendation of the then Director of the Division for Human Resources of UNICEF, to place a written letter of reprimand in the Applicant's Official Status File.

Legal Principle(s)

Requirement of management evaluation re. non-disciplinary measure: In accordance with the mandatory provisions of staff rule 10.2(b)(i), the written reprimand is not a disciplinary measure but an administrative (non-disciplinary) measure. In accordance with staff rule 10.3(c), a staff member against whom disciplinary or non-disciplinary measures, pursuant to staff rule 10.2, have been imposed, following the completion of a disciplinary process, may submit an application challenging the imposition of such measures directly to the Dispute Tribunal. Furthermore, according to staff rule 11.2(b), a staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at the Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation. Staff rule 11.2(b) constitutes the exception from the general rule established in staff rule 11.2(a). Moreover, sec. 10 of ST/AI/371, as revised by ST/AI/371/Amend.1, further clarifies that a staff member has the right to file an appeal directly to the Dispute Tribunal against a non-disciplinary measure.

Imposition of a written reprimand against a former staff member: As results from staff rules 10.1, 10.2(b)(i) and 10.3, all the legal provisions have a common mandatory element, notably that they apply only to an existing, valid contract based on which the Secretary-General, as the employer, can exercise his discretionary authority to impose a disciplinary or administrative (non-disciplinary) measure against the staff member (the employee) for his/her failure to comply with the obligations established by the Charter, Staff Regulations and Rules and other administrative issuances, or for his/her failure to observe the standards of conduct required of an international civil servant. Furthermore, a disciplinary or a non-disciplinary measure can be imposed only on an actual staff member as confirmed by the relevant quotations from following staff rules. As established by the United Nations Appeals Tribunal, the Dispute Tribunal is competent to review *ex officio* its own competence or jurisdiction *ratione personae*, *ratione materiae*, and *ratione temporis* (Pellet 2010-UNAT-073; O'Neill 2011-UNAT-182; Gehr 2013-UNAT-313; Christensen 2013-UNAT-335). This competence can be exercised even if the parties do not raise the issue, because it constitutes a matter of law and the Statute prevents the Dispute Tribunal from considering cases that are not receivable.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Only spec. perform. (incl. rescission with \$ alt.)

Full judgment

[Full judgment](#)

Applicants/Appellants

Gallo

Entity

OIOS

Case Number(s)

UNDT/NY/2015/41

Tribunal

UNDT

Registry

New York

Date of Judgement

22 Apr 2016

Duty Judge

Judge Greceanu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Subject matter (*ratione materiae*)

Applicable Law

Administrative Instructions

- ST/AI/371

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Rules

- Rule 10.1
- Rule 10.2
- Rule 10.3
- Rule 10.5
- Rule 11.2
- Rule 11.4

UNDT RoP

- Article 35
- Article 7

UNDT Statute

- Article 2
- Article 3.1
- Article 8