

UNDT/2019/056, Adnan-Tolon

UNAT Held or UNDT Pronouncements

The Tribunal's Rules of Procedure provide in art. 9 that when there is no dispute as to the material facts and a party is entitled to judgment as a matter of law, "[t]he Tribunal may determine, on its own initiative, that summary judgment is appropriate". The Tribunal found that the application raised a preliminary issue of receivability and determined it by way of summary judgment. First, the Tribunal noted that the Applicant had failed to identify any specific decision taken by the Administration in respect of his alleged overtime work. He did not refer either to any request that he would have made to be compensated for this work or to any evidence that he had in fact been requested to work beyond his normal working hours. Without such an identifiable decision, the Tribunal found that the application was not receivable *ratione materiae*. Second, the Tribunal noted that allegations of harassment and abuse of authority are not separate grounds that may permit it to consider a matter. A complaint of harassment and abuse of authority involves a separate process, as is provided for in ST/SGB/2008/5, with the formal procedures being set out in sec. 5.11, and the Tribunal does not have jurisdiction to conduct an investigation into allegations of prohibited conduct under ST/SGB/2008/5. Therefore, insofar as the application refers to breaches of the provisions of ST/SGB/2008/5 as a separate cause of action, it is not receivable. Third, the Tribunal found that there had been no reviewable decision stemming from the Applicant's performance appraisal identified in the application. Furthermore, the Applicant did not raise any issue related to his performance appraisal in his management evaluation of 7 June 2018. The requirement set forth in art. 8(1)(c) of the Tribunal's Statute to submit a decision to management evaluation prior to seizing the Tribunal was therefore not met. Consequently, the Tribunal found that this part of the claim was also not receivable *ratione materiae*.

Decision Contested or Judgment/Order Appealed

The Applicant filed an application seeking official acknowledgment of the additional hours of work he performed since 17 March 2014 and monetary compensation in respect thereof. He also alleged that he was subjected to harassment and abuse of authority by the current and former Chief of Mission Support of UNIFCYP, in violation of ST/SGB/2008/5, as well as a breach of contract. He further challenged the failure to complete his performance evaluation within the applicable deadline, in violation of ST/AI/2010/5.

Legal Principle(s)

The Tribunal must ensure that there is an administrative decision that is alleged to be in non-compliance with the staff member's terms of appointment or his or her contract of employment, as provided for in art. 2.1(a) of the Tribunal's Statute. Such decision must be unilaterally taken by the Administration, be directed to the staff member and have direct legal consequences for the staff member (Lloret Alcaniz et al. 2018 UNAT-840).

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Adnan-Tolon

Entity

UNFICYP

Case Number(s)

UNDT/GVA/2018/111

Tribunal

UNDT

Registry

Geneva

Date of Judgement

12 Apr 2019

Duty Judge

Judge Downing

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

Administrative Instructions

- ST/AI/2010/5

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT RoP

- Article 9

UNDT Statute

UNAT Statute

- Article 2.1(a)