

UNDT/2020/001, Kennes

UNAT Held or UNDT Pronouncements

The Tribunal rejects the application as not receivable. The contested decision to place a note on the Applicant's Official Status File is not an appealable administrative decision as it has no direct legal consequences affecting the terms and conditions of his appointment. The Applicant should have requested a management evaluation within 60 days from the notification of the contested decisions on 5 August 2017, but instead he requested a management evaluation on 3 November 2017, more than 60 days later. Therefore, the application is not receivable as time-barred. The contested decision not to complete the disciplinary process against the Applicant is not an appealable administrative decision as it has no direct legal consequences affecting the terms and conditions of his appointment. The Tribunal finds that the note placed in the Applicant's personnel file is not a separate decision that produces any direct legal consequences but merely a recording of the Administration's decision not to complete a disciplinary process following his resignation. The contested decision to place a note on the Applicant's Official Status File is not an appealable administrative decision as it has no direct legal consequences affecting the terms and conditions of his appointment.

Decision Contested or Judgment/Order Appealed

The decisions to (a) "refrain from making a finding in respect of the disciplinary charges alleged against [him]" (b) "refuse to complete the disciplinary process" and (c) "place a note in [his] Official Status File" following his resignation from the Organization.

Legal Principle(s)

All the disciplinary measures ... assume subsisting employment because disciplinary proceedings depend entirely upon the subsistence of the contractual

entitlement to subject a staff member to disciplinary proceedings, on the one hand, and the contractual obligation of the staff member to suffer them in accordance with the relevant instruments, on the other. The Tribunal is competent to raise a receivability issue on its own initiative, whether or not it has been raised by the parties. To determine the date by which a staff member must seek review of an implied decision, the Dispute Tribunal must establish the date on which the staff member knew or reasonably should have known of the implied decision. The key characteristics of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms or conditions of appointment, not a future injury. A former staff member has standing to contest an administrative decision under art. 3.1 of the Dispute Tribunal's Statute relating to his former employment with the Organization. The Applicant has no right to the completion of a disciplinary process since the Administration cannot impose a disciplinary measure on him as a former staff member. The Administration's obligation to complete a disciplinary process is predicated on the fact that a staff member has an ongoing employment relationship with the Organization and such obligation no longer exists toward a former staff member.

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Kennes

Entity

MONUSCO

Case Number(s)

UNDT/NY/2019/067

Tribunal

UNDT

Registry

New York

Date of Judgement

7 Jan 2020

Duty Judge

Judge Adda

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

Administrative Instructions

- ST/AI/2016/1
- ST/AI/292
- ST/AI/371

Staff Rules

- Rule 11.2 (c)

UNDT Statute

- Article 3.1
- Article 8.1

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

2011-UNAT-182

2014-UNAT-406

2015-UNAT-518