

UNDT/2020/013, Nadeau

UNAT Held or UNDT Pronouncements

Pursuant to staff rule 9.6(c), the Secretary-General may terminate the appointment of a staff member who, like the Applicant, holds a continuing appointment in accordance with the terms of the appointment on the grounds of “unsatisfactory service”. The Secretary-General has delegated this authority to the Under-Secretary-General for Management (USG/DM) according to annex IV on delegation of human resources authorities to ST/SGB/2019/2 regarding delegation of authority in the administration of the Staff Regulations and Rules (see p. 21). No exception to this delegation of authority is made anywhere in the legal framework governing human resources at the United Nations Secretariat with regard to staff in OIOS, including the resolutions of the General Assembly to which the Applicant refers. The Applicant did not even try to rebut any of these two performance appraisals. The Applicant therefore cannot now initiate a judicial review of any of these performance decisions within the scope of the present case, because, in the present case, the Applicant has only challenged the administrative decision regarding the termination of his continuing appointment, which follows both from the application and request for management evaluation (according to staff rule 11.2, such request would have been mandatory if the Applicant wished to challenge a performance decision). The only decision under review in the present case is the decision to terminate his continuing appointment. The termination of the Applicant’s continuing appointment followed proper procedure. The Tribunal further finds that no information and/or documentation in the case file indicate that the USG/DM was influenced by improper motivation when deciding to terminate the Applicant’s continuing appointment. The Applicant failed to substantiate that the decision to terminate his continuing appointment was tainted by ulterior motives.

Decision Contested or Judgment/Order Appealed

Decision to terminate the Applicant’s continuing appointment.

Legal Principle(s)

Under Article 2(1) of the Dispute Tribunal’s Statute, only final judgments of the Dispute Tribunal are appealable but there may be exceptions to the general rule prohibiting appeals of interlocutory orders where the Dispute Tribunal has clearly exceeded its jurisdiction or competence. The receivability of an appeal against an order, as opposed to a judgment, depends on the subject-matter and the consequences of the impugned decision. Interlocutory orders issued by the Dispute Tribunal may be subject to judicial review if the final judgment is appealed. There is no urgency to review an interlocutory order prior to the handing-down of the judgment by the Dispute Tribunal, as shown in the Appellant’s circumstances. An applicant must identify an administrative decision capable of being reviewed. The Dispute Tribunal can define the administrative decision(s) and issue(s) under review by taking into account the entire application and all the various submissions made therein. An applicant cannot reopen an old separate issue in a new case. It is for the Applicant to prove that improper motivation influenced the decision-maker.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nadeau

Entity

OIOS

Case Number(s)
UNDT/NY/2019/018
Tribunal
UNDT
Registry
New York
Date of Judgement
27 Jan 2020
Duty Judge
Judge Adda
Language of Judgment
English
French
Issuance Type
Judgment
Categories/Subcategories
Separation from service
Termination of appointment (see also, Termination of appointment)
Applicable Law
Administrative Instructions

- ST/AI/2010/5

GA Resolutions

- A/RES/54/244
- A/RES/69/203

Secretary-General's bulletins

- ST/SGB/2015/1
- ST/SGB/2019/2

Staff Regulations

Staff Rules

- Rule 11.2
- Rule 9.6(c)

UNDT Statute

- Article 11.3
- Article 2.1

Related Judgments and Orders

2016-UNAT-671
2010-UNAT-049
2017-UNAT-764
2017-UNAT-768
2015-UNAT-560
2016-UNAT-609
2010-UNAT-084

2014-UNAT-419
2018-UNAT-821
2017-UNAT-759
2018-UNAT-876
2019-UNAT-917
2014-UNAT-415
2014-UNAT-417
2010-UNAT-012
2019-UNAT-900