

UNDT/2020/057, Applicant

UNAT Held or UNDT Pronouncements

The alleged failure to protect the Applicant from further retaliation is not a contestable administrative decision as it does not have legal consequences on his terms of employment. Therefore, this part of the Applicant's case is not receivable. The Ethics Office's recommendation only required that "efforts be made", in consultation with the Applicant, to transfer him to either a position in the specialized units in his section or to another position in his department. According to the recommendation, the Applicant had no right to be transferred to a position outside his section.; The Ethics Office recommended that the status of the Applicant's certification be clarified. If the certification had expired under the applicable administrative framework, the Applicant was to be allowed to initiate the required process to obtain its reactivation. The Ethics Office did not recommend that the Applicant's certification issued in 2008 be honoured indefinitely. Accordingly, the Tribunal finds that the Administration implemented the recommendation from the Ethics Office in this matter.; The Ethics Office recommended the referral of the Applicant's supervisor, who played a significant role in the retaliatory transfer of the Applicant, for possible disciplinary procedures or other action that may be warranted in this case. The supervisor received counseling and training. The Tribunal finds that the Administration appropriately implemented the recommendation from the Ethics Office in this regard

Decision Contested or Judgment/Order Appealed

Decisions (a) not to transfer the Applicant to a position outside his section, (b) not to recognize his indefinite training instructor certification, and (c) the alleged failure to protect him from further retaliation against the Ethics Office's recommendation.

Legal Principle(s)

The names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and, indeed, accountability.; The principle of publicity can only be departed from where the applicant shows greater need than any other litigant for confidentiality.; It is for the party making the claim of confidentiality to establish the grounds upon which the claim is based.; The Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by an applicant and to identify the subject(s) of judicial review.; When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the SecretaryGeneral amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

DSS

Case Number(s)

UNDT/NY/2018/85

Tribunal

UNDT

Registry

New York

Date of Judgement

20 Apr 2020

Duty Judge

Judge Honeywell

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Ethics office

Retaliation

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2017/2

UNDT RoP

- Article 26

UNDT Statute

- Article 11.6

Related Judgments and Orders

2014-UNAT-481

2014-UNAT-456

2011-UNAT-121

2014-UNAT-460

2017-UNAT-765

2010-UNAT-084