

UNDT/2021/047, Belkhabbaz

UNAT Held or UNDT Pronouncements

The Applicant, as the aggrieved individual, was entitled to be informed of the outcome of the investigation and the action taken pursuant to sec. 5.18(c) of ST/SGB/2008/5. Section 5.18(c) of ST/SGB/2008/5 cannot be read as providing a mere right to be informed of the outcome of the investigation and of the action taken, but must be interpreted as providing a right to the aggrieved staff member that a disciplinary process be started unless exceptional circumstances arise. In the present case, the person to be disciplined was no longer a staff member, and the parties disagreed on whether the Organization properly exerted its discretion to discipline or not a former staff member. In any case, the choice by the Administration to take (or not) managerial action can adversely impact the rights of the aggrieved individual and as such, there is an administrative decision that the Applicant can challenge before the Tribunal. Almost a month after filing the present application, the Applicant also requested the execution of Judgment Belkhabbaz 2018-UNAT-873 before the Appeals Tribunal. The Applicant cannot duplicate her claims by lodging applications before this Tribunal and the Appeals Tribunal on the same subject matter, nor maintain parallel proceedings before them. Moreover, under the circumstances, only the Appeals Tribunal was competent to rule on the matter. In Belkhabbaz 2020-UNAT-1027, the Appeals Tribunal found that “[i]n taking managerial action in accordance with [sec.] 9.7 of ST/AI/2017/1, the ASG/OHRM proceeded in terms of [sec.] 5.18(c) of ST/SGB/2008/5 and in accordance with the applicable disciplinary procedures”. The Appeals Tribunal thus held that the Organization had “fully and properly executed” Belkhabbaz 2018-UNAT-873. The Appeals Tribunal in Belkhabbaz 2020-UNAT-1027 ruled on the issue at stake, implicitly confirming its (exclusive) jurisdiction. It followed that the application before this Tribunal was not receivable.

Decision Contested or Judgment/Order Appealed

The Applicant contested the 25 February 2019 letter from the Assistant Secretary-General, Office of Human Resources Management (“ASG/OHRM”) informing her that she had implemented the Appeals Tribunal Judgment Belkhabbaz 2018-UNAT-873 in relation to her complaint of prohibited conduct against the former Chief of OSLA.

Legal Principle(s)

The Tribunal is competent to review an application filed against the Secretary-General appealing “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”. The choice by the Administration to take (or not) managerial action can adversely impact the rights of aggrieved individual (sec 5.18(c) of ST/SGB/2008/5).

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Belkhabbaz

Entity

OAJ

Case Number(s)

UNDT/GVA/2019/055

Tribunal

UNDT
Registry
Geneva
Date of Judgement
30 Apr 2021
Duty Judge
Judge Buffa
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Disciplinary matters / misconduct
Judgment-related matters
Execution of Judgment
Jurisdiction / receivability (UNDT or first instance)
Subject matter (ratione materiae)
Applicable Law
Administrative Instructions

- ST/AI/2017/1

Secretary-General's bulletins

- ST/SGB/2008/5

UNDT Statute
UNAT Statute

- Article 2.1(a)

Related Judgments and Orders
2018-UNAT-873
2020-UNAT-1027