

UNDT/2021/072, Popkins

UNAT Held or UNDT Pronouncements

The Tribunal cannot review the merits of the Applicant's allegations of harassment or abuse of authority. Its jurisdiction is limited to the review of whether her resignation was caused by an action or inaction of Administration which was in violation of the applicable legal framework. The Applicant's resignation was not caused by an action or inaction of the Administration but was her unilateral decision. Accordingly, this aspect of the application does not concern an administrative decision capable of judicial review and is not receivable. ; Given that the Tribunal found that the Applicant's separation was not the result of an unlawful administrative decision, there can be no breach of the principle of legitimate expectation. Th Applicant restates her claims of harassment which, as already stated, the Tribunal is incapable of reviewing. Absent the identification of any challengeable administrative decision, this aspect of the application is also not receivable.; The Tribunal may only review an administrative decision which has an adverse impact on the Applicant's contractual rights. However, as the Applicant decided to separate from the Organization shortly after she filed her complaint of misconduct, she did not allow a reasonable time for UNICEF to handle her complaint. Once separated for reasons not imputable to the Organization, any actions or inactions taken on her complaint cannot be considered to have negatively impacted her contractual rights.

Decision Contested or Judgment/Order Appealed

The Applicant's constructive dismissal and the violation of her employment rights.

Legal Principle(s)

An administrative decision capable of judicial review is a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences. A staff member has a contractual entitlement to request that his or her allegations of harassment be addressed. To avail himself or herself of such entitlement, the staff member must follow the applicable mechanism for addressing harassment or abuse of authority complaints. It is not the preserve of the Dispute Tribunal given the specific nature of the judicial review reserved to it under its Statute, to investigate such allegations. Its jurisdiction is limited to reviewing how management responded, or not, to a complaint of harassment.. The mechanism applicable to the review of complaints of harassment or abuse of authority, together with the jurisdiction vested in both the Dispute and Appeals Tribunal provide a continuum of substantial and procedural protection for both complainants and alleged offenders which must be respected. A legitimate expectation giving rise to contractual or legal obligations occurs where a party acts in such a way by representation by deeds or words, that is intended or is reasonably likely to induce the other party to act in some way in reliance upon that representation and that the other party does so. The Applicant must identify a challengeable administrative decision.

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Popkins

Entity

UNICEF

Case Number(s)

UNDT/NY/2021/015

Tribunal

UNDT

Registry

New York

Date of Judgement

22 Jun 2021

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Separation from service

Constructive dismissal

Applicable Law

UNICEF Administrative Instructions

UNICEF Executive Directives

- CF/EXD/2012-007