

2010-UNAT-053, Xu

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that the counsel of the Secretary-General had not been notified of the hearing date due to a technical error in the e-mail communication, which prejudiced seriously the Secretary-General's defence. UNAT held, therefore, that the UNDT judgment should be set aside, and the matter retried afresh. UNAT upheld the appeal and vacated the UNDT judgment. The case was remanded to UNDT to be heard afresh.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the decision not to select him for a post at the P-4 level. The appeal was filed with the Nairobi Joint Appeals Board (JAB) and later transferred to UNDT. The Secretary-General filed a motion for an extension of the time limit to file and serve a reply, which was granted. By letter mistakenly dated 3 November 2009, attached to an e-mail dated 2 December 2009, the hearing date was confirmed by the Registry. The counsel for the Secretary-General, Mr Margetts, did not receive those e-mails and was unable to be contacted during the hearing on 18 December 2009. After hearing the submissions of the Applicant, UNDT contacted another lawyer from the Administrative Law Unit (ALU) in New York, Ms. Maddox. She was given time to retrieve the case file and she made submissions on several issues. The Secretary-General filed an application for a retrial on the ground that he was not notified of the hearing date. UNDT issued judgment No. 2010/2. UNDT rejected the application for a retrial and, on the merits of the case, awarded compensation to the Applicant finding his rights had been injured during the selection process.

Legal Principle(s)

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Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Xu

Entity

UNON

Case Number(s)

2010-056

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Jul 2010

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Procedure (first instance and UNAT)

Oral hearings

Applicable Law

UNDT RoP

- Article 16.3

Related Judgments and Orders

UNDT/2010/002