

2010-UNAT-099, Nwuke

UNAT Held or UNDT Pronouncements

UNAT held that the investigation into the management and administrative practices in general or of disciplinary cases is usually a matter within the discretion of the Administration but may still be subject to judicial review. UNAT noted that if a staff member is dissatisfied with the outcome of an administrative decision, they may request judicial review which may result in the affirmation or rescission of the decision. UNAT held that UNDT erred in finding the application not receivable, as the Appellant challenged an administrative decision, claiming non-compliance with the terms of his contract. UNAT held that UNDT, therefore, had jurisdiction to decide whether or not to order an investigation or other courses of action concerning his accusations and complaints. UNAT reversed the UNDT judgment and remanded the case to UNDT for a trial on the merits.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant requested UNDT to (a) compel the Administration to investigate in full the series of complaints about the discrimination he had filed against Senior Management of the UN Economic Commission for Africa (ECA); (b) order the Administration to perform different actions concerning the selection process for the position that he had applied for and appoint him to the position; and (c) order the Administration to treat him in a proper, non-discriminatory way, restrain from retaliation, make him whole in every way, and grant him any other relief as may be deemed proper. UNDT held that it could not compel the Organisation to investigate the staff member's complaints against ECA's Senior Management. UNAT considered that the Applicant did not contest an administrative decision "that is alleged to be in non-compliance with the terms of his appointment or contract of employment" as defined by the UNDT Statute and rejected his application as non-receivable.

Legal Principle(s)

When a staff member files a complaint and makes accusations about administrative violations of law, the Administration can exercise its discretion and decide whether to undertake an (at least preliminary or summary) investigation. The investigation into the management and administrative practices in general or into disciplinary cases is a matter within the discretion of the Administration. But that does not mean that the administrative decision to undertake, or not to undertake, an investigation cannot be subject to judicial review. Whether or not UNDT may review such a decision depends on whether it falls under UNDT's jurisdiction pursuant to Article 2(1) of the UNDT Statute. Whether UNDT may review a decision not to undertake an investigation, or to do so in a way that a staff member considers breaches the applicable Regulations and Rules, will depend on the following question: Does the contested administrative decision affect the staff member's rights directly and does it fall under the jurisdiction of UNDT?

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Nwuke

Entity

ECA

Case Number(s)

2010-068

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Dec 2010

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Definition

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Standard of review (judicial)

Disciplinary cases

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Rules

- Chapter XI

UNDT Statute

- Article 2.1

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

UNDT/2010/017

2010-UNAT-030