

2012-UNAT-231, Ortiz

UNAT Held or UNDT Pronouncements

UNAT noted that, in considering an appeal filed by a former ICAO staff member, it was reviewing a decision taken by an executive authority (i. e. ICAO Secretary-General) on the basis of the conclusions and recommendations of the AJAB, and not a judgment delivered by a professional, independent court of first instance determining the issue itself through its decision, i. e., UNDT. UNAT held that to that extent, the UNAT Statute is only applicable to such an appeal insofar as, and on condition that its provisions are compatible with the judgment of an appeal directed against a decision taken by an executive authority. UNAT, having carefully examined the background documents upon which AJAB based its appraisal of the case, was not convinced by the motives given in the disputed decision not to follow its conclusions and recommendations and by the line of argument in defence. UNAT held that the Appellant had grounds for relying on the support of AJAB's conclusions and was therefore entitled to request that those conclusions be confirmed. UNAT upheld the appeal and vacated the ICAO Secretary-General's decision. As an alternative to rescission, UNAT ordered payment of compensation in-lieu.

Decision Contested or Judgment/Order Appealed

Mr Ortiz contested the decision to terminate his appointment. The ICAO Secretary-General upheld the termination of his appointment, not following the AJAB's Opinion No. 125, which had unanimously concluded that the Administration had failed to apply various norms and had breached Mr Ortiz's rights by deciding to terminate his employment.

Legal Principle(s)

When UNAT examines an appeal against the final decision taken by the ICAO Secretary-General, it takes into account the conclusions and recommendations of the ICAO Advisory Joint Appeals Board (AJAB) and the reasons for which the ICAO Secretary-General departed from/accepted them.

Outcome

Appeal granted

Outcome Extra Text

Both financial and specific performance

Full judgment

[Full judgment](#)

Applicants/Appellants

Ortiz

Entity

ICAO

Case Number(s)

2011-247

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2012

President Judge

Judge Courtial

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNAT)

Subject matter (ratione materiae)

Applicable Law

Laws of other entities (rules, regulations etc.)

- ICAO Service Code

UNAT Statute

- Article 2.10

Related Judgments and Orders

2010-UNAT-021