

2012-UNAT-239, de Kermel

UNAT Held or UNDT Pronouncements

UNAT held that the Appellant had not shown that the Secretary-General of IMO was required, under the IMO staff regulations and the staff rules, to make available to a federation of international staff associations from different organisations an IMO staff member, who was elected to a high office, for all or part of the term. UNAT held that the reference in the appeal to Staff Rule 108. 1, concerning election, composition, and competencies of the staff committee, did not apply in the case. As to the question of inter-agency cost-sharing, UNAT held that it could only establish that this had to do with organisational policy, and it was not reflected in any contractual stipulations, staff regulations or staff rules or administrative instructions in force at the time of the events under its jurisdiction. UNAT held that the JAB could have submitted its report sooner, but that the delay was not such that it could be regarded as a breach of the right to appeal. UNAT held that the contested decisions were not arbitrary and that they were not based on considerations other than those of good management. UNAT dismissed the appeal and affirmed the contested decision.

Decision Contested or Judgment/Order Appealed

IMO decisions: The Applicant contested the decision not to place her on special leave without pay, as well as related decisions concerning, on the one hand, her annual leave, and her return to IMO Headquarters at the end of her release to serve as General-Secretary of the Federation of International Civil Servants Associations (FICSA) and, on the other hand, the views of IMO regarding an ongoing process of reaching agreement on an inter-agency cost-sharing arrangement. The Secretary-General of IMO rejected the staff member's appeal and claim for compensation, accepting the conclusions of the Joint Appeals Board (JAB), according to which: (1) IMO had acted in good faith; (2) there had been no breach of the relevant provisions of IMO Staff Regulations or Staff Rules; (3) the decision to place the Applicant on special leave without pay had been taken by the competent authority; (4) there had

been no coercion or abuse of power, and (5) there had been no breach of freedom of association on the part of IMO.

Legal Principle(s)

It is not up to the Tribunal to settle disputes on questions of the organisational policy unless those questions have a direct impact on the terms of employment or work contract of the Appellant. The principle of freedom of association is one of the principles of law that must be observed by the organisations of the United Nations Common System and therefore should be included in the terms of employment of a staff member of IMO.

Outcome

Appeal dismissed on merits

Outcome Extra Text

No relief ordered; No relief ordered.

Full judgment

[Full judgment](#)

Applicants/Appellants

de Kermel

Entity

IMO

Case Number(s)

2011-258

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

Benefits and entitlements

Special leave (with or without pay)

Compensation

Applicable Law

Staff Regulations

- Regulation 5.2

Staff Rules

- Rule 105.2
- Rule 108.1

Related Judgments and Orders

2010-UNAT-021