

# 2012-UNAT-273, Rosana

## UNAT Held or UNDT Pronouncements

UNAT held that that UNDT had correctly established that the silence of the UNEP management constituted an implied administrative decision and that this decision was taken on 31 August 2009. UNAT held the Appellant's request for management evaluation was time-barred and that the application was, therefore, not receivable. UNAT dismissed the appeal and affirmed the UNDT judgment.

## Decision Contested or Judgment/Order Appealed

UNDT Judgment: The Applicant challenged the UNEP's failure to upgrade her post in a timely manner, alleging that it prevented her from being able to apply and compete for the reclassified post. UNDT determined that the application was not receivable. However, UNDT was critical of the Respondent on several procedural accounts. UNDT found that the failure of the Administration to respond to Applicant's queries constituted an implied and, therefore, appealable decision. Nonetheless, UNDT ruled that the Applicant was not entitled to set a date (20 October 2009) arbitrarily on which the Respondent's lack of a response would be presumed to be an implied administrative decision and then use that date as the start of the time limit for her management evaluation request. UNDT found that the Applicant's retirement date of 31 August 2009, rather than 20 October 2009, ought to have served as the implied date on which an administrative decision was taken. Calculating the 60-day time limit as of 31 August 2009, UNDT concluded that the request for management evaluation filed on 3 December 2009 was well outside the time limit, and that it was not empowered to suspend or waive the deadline for management evaluation.

## Legal Principle(s)

An appellant may not unilaterally determine the date of the administrative decision by sending an e-mail to the Administration expressing an ultimatum to adopt a decision by a certain date.

## Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Rosana

Entity

UNEP

Case Number(s)

2012-300

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Nov 2012

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Implied administrative decision

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Applicable Law

Staff Rules

- Rule 11.2(c)

UNAT Statute

- Article 2(c)

Related Judgments and Orders

UNDT/2011/217