

2013-UNAT-385, Samuel Thambiah

UNAT Held or UNDT Pronouncements

UNAT did not accept the argument that there was no evidence to indicate that the Appellant received the letter communicating the outcome of the management evaluation on 14 July 2011, noting that UNDT relied on the Appellant's statement to ascertain that date. UNAT held that the Appellant failed to show any error on UNDT's part. UNAT held that the Secretary-General rightly submitted that the deadline for the Appellant to file an application with UNDT was 12 October 2011, notwithstanding any ambiguity as to when she actually received the management evaluation response and the appeal failed on that ground. UNAT noted that the Appellant repeated the same arguments that she made before UNDT. UNAT held that all the alleged separate decisions the Appellant raised were either covered under the original request, time-barred themselves or not decisions subject to challenge, and therefore that UNDT properly rejected them. On the issue of the Appellant's claim regarding separation while on service-incurred sick leave, UNAT noted the finding by UNDT that the issue of whether her sickness was service-incurred was pending before the Advisory Board on Compensation Claims (ABCC) and as such, any challenge to this issue before UNDT, or UNAT, was premature. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the decision to terminate her contract due to the abolition of her post. UNDT dismissed her application as not receivable *ratione temporis* since she failed to contest that decision within the time limit.

Legal Principle(s)

It is within the competence of UNDT to consider all the evidence presented by both parties and to determine the weight to attach to such evidence. UNAT defers to the determination of facts by UNDT and only interferes if satisfied that UNDT considered irrelevant matters or ignored relevant matters placed before it by the parties. It is for an appellant to show how UNDT erred in its conclusion, by demonstrating that its findings are not supported by the evidence or that they are unreasonable.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Samuel Thambiah

Entity

UNICEF

Case Number(s)

2013-439

Tribunal

UNAT

Registry

New York

Date of Judgement

17 Oct 2013

President Judge

Judge Adinyira
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Abolition of post
Separation from service
Termination of appointment (see also, Termination of appointment)
Termination (of appointment)
Abolition of position
Applicable Law
Staff Rules

- Rule 11.4
- Rule 11.4(a)

UNDT Statute

- Article 8

UNICEF Administrative Instructions

- CF/AI/2009-009

Related Judgments and Orders

UNDT/2012/185
2011-UNAT-110
2010-UNAT-043
2010-UNAT-051
2010-UNAT-084