

2014-UNAT-457, Wasserstorm

UNAT Held or UNDT Pronouncements

The Secretary-General appealed, regarding the judgments on liability and relief. Mr. Wasserstorm also appealed regarding the judgment of relief. UNAT agreed with the Secretary-General that the Ethics Office is limited to making recommendations to the Administration and found that the recommendations are not administrative decisions subject to judicial review. UNAT accordingly upheld the Secretary-General's appeal on receivability. UNAT reversed the judgment on Liability and vacated the judgment on Relief. With respect to the award of costs, UNAT found that the Secretary-General's refusal to comply with the production or discovery orders issued by UNDT was frivolous and vexatious. UNAT accordingly held that UNDT exercised its discretion correctly in awarding costs against the Secretary-General for abuse of the judicial process and affirmed the award of costs in the amount of USD 15,000 against the Secretary-General. Judge Faherty's Dissent: Judge Faherty found Mr. Wasserstorm's application to UNDT receivable and upheld UNDT's determination in that regard.

Decision Contested or Judgment/Order Appealed

Mr. Wasserstorm requested administrative review of the decision to dismiss his complaint that he had been retaliated against for whistleblowing. UNDT held that the decision in question was an administrative decision and, accordingly, was receivable. UNDT upheld Mr. Wasserstorm's complaint of retaliation but dismissed his claims regarding compensation for lost earnings and associated benefits. However, UNDT found that Mr. Wasserstorm was entitled to non-pecuniary damages and awarded him USD 50,000. UNDT also ordered the Secretary-General to pay Mr. Wasserstorm USD \$15,000 as a contribution towards the latter's costs for having to challenge the Secretary-General's position on disclosure, as it found that the Secretary-General had "deliberately and persistently refus[ed], without good cause, to abide by the Orders of the [Dispute] Tribunal," and engaged in "a manifest abuse of proceedings".

Legal Principle(s)

The key characteristic of an administrative decision subject to judicial review is that the decision must “produce direct legal consequences” affecting a staff member’s terms or conditions of appointment. What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.

Outcome

Appeal granted; Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Wasserstorm

Entity

UNMIK

Case Number(s)

2013-481

2013-482

2013-483

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Jun 2014

President Judge

Judge Faherty

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Definition

Compensation

Non-pecuniary (moral) damages

Ethics office

Retaliation

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2005/22

Related Judgments and Orders

UNDT/2012/092

2011-UNAT-135

2011-UNAT-130