

2014-UNAT-460, Ngokeng

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal of judgment on Receivability No. UNDT/2013/061 and of judgment on the Merits No. UNDT/2013/101. UNAT held that the appeal of the judgment on Receivability was timely. UNAT found that UNDT erred in finding that Mr Ngokeng's satisfactory appraisal constituted an appealable administrative decision, as there was no evidence of any adverse administrative decision stemming from Mr Ngokeng's performance appraisal. UNAT specifically noted that the First Reporting Officer's comment on Mr Ngokeng's output did not detract from the overall satisfactory performance appraisal and had no direct legal consequences for Mr. Ngokeng's terms of appointment. UNAT held that UNDT erred in deciding that there had been two separate selection processes. UNAT held that the only logical inference that could be drawn from the facts was that the second job opening had replaced the first one and that there was only one recruitment process, which was still ongoing. UNAT held that the Administration's decision to suspend the recruitment process was not a final administrative decision and therefore had no direct legal consequences for Mr Ngokeng's contract of employment. Since Mr Ngokeng's performance appraisal and the decision to suspend the recruitment process for the job opening did not have any direct legal consequences on the terms or conditions of his appointment, UNAT held they were not administrative decisions subject to judicial review and, thus, were not receivable *ratione materiae*. UNAT allowed the appeals and vacated the UNDT judgments.

Accountability referral: The UNDT referred the Chief/LSS and the Officer-in-Charge, Judicial and Legal Services Division (OIC/JLSD) to the Secretary-General for accountability. Since the application should not have been received *ratione materiae*, the UNAT vacated the referral for accountability.

Decision Contested or Judgment/Order Appealed

Mr Ngokeng contested the decision to suspend the selection process and to reject his application for a position in order to retain the incumbent beyond retirement age, and the improper evaluation of his performance for the 2011/2012 performance cycle. UNAT found for Mr Ngokeng and ordered compensation, inter alia., UNDT also referred two managers to the Secretary-General for accountability.

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. The rating resulting from an evaluation that has not been rebutted is final and may not be appealed; however, administrative decisions that stem from any final performance appraisal and that affect the conditions of service of a staff member may be resolved by way of informal or formal justice mechanisms.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Ngokeng

Entity

ICTR

Case Number(s)

2013-529

2013-530

Tribunal

UNAT

Registry

New York

Date of Judgement

17 Oct 2014

President Judge

Judge Lussick

Judge Weinberg de Roca

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Definition

Jurisdiction / receivability (UNAT)

Subject matter (ratione materiae)

Referral for accountability

Applicable Law

Administrative Instructions

- ST/AI/2010/5/Section 15.1

- ST/AI/2010/5/Section 15.7

UNDT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2013/061

2014-UNAT-433-Corr.1

2012-UNAT-265

2013-UNAT-281

UNDT/2011/155