

2014-UNAT-488, Chocobar

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal of UNDT Order No. 233, which contended that UNDT exceeded its competence in issuing an order as there was no matter for adjudication after Ms Chocobar withdrew her application. UNAT found that UNDT, in making its Order in the absence of a case to adjudicate, lacked jurisdiction and exceeded its competence to a significant degree. UNAT noted that Article 36 of the UNDT RoP did not provide a legal basis for the UNDT Order, as there was no case before UNDT to which Article 36 could apply. UNAT further noted that Article 36 does not allow UNDT to augment its jurisdiction in violation of Article 2 of the UNDT Statute. UNAT allowed the appeal and vacated the UNDT Order in its entirety, with the exception of UNDT's closure of the case in which the application was withdrawn.

Decision Contested or Judgment/Order Appealed

Ms Chocobar contested the selection of another candidate for a P-4 position and then filed a motion seeking leave to withdraw the application following a confidential settlement agreement. In Order No. 233 (NY/2014), UNDT noted that, in light of the withdrawal, there was no matter for adjudication by UNDT and therefore declared the case was closed. However, UNDT proceeded to make findings regarding a substantive issue raised in Ms Chocobar's application and found that the Organisation's continued use of pre-approved rosters for both generic job openings and position-specific openings was incorrect. Pursuant to Article 7 of the UNDT Statute and Article 36 of its Rules of Procedure, UNDT ordered that the matter be referred to the Secretary-General for urgent consideration, including a referral to the President of the General Assembly, if the Secretary-General deemed it necessary to do so.

Legal Principle(s)

At the heart of UNDT's jurisdiction is its statutory remit to judicially review decisions which affect the contractual entitlements of employees. UNAT and UNDT shall not have any powers beyond those conferred under their respective statutes.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Chocobar

Entity

DFS

Case Number(s)

2014-641

Tribunal

UNAT

Registry

New York

Date of Judgement

17 Oct 2014

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Manifest excess of jurisdiction

Applicable Law

UNDT RoP

- Article 36

UNDT Statute

- Article 2

Related Judgments and Orders

2010-UNAT-011

2014-UNAT-404

2014-UNAT-416