

2015-UNAT-499, Fedorchenko

UNAT Held or UNDT Pronouncements

On the question of maintaining confidentiality, UNAT held that the Appellant had not provided persuasive reasons for maintaining the confidentiality of his case and did not grant his petition. UNAT held that a decision not to review the closure of an investigation, which had been impugned by a staff member as procedurally or substantively irregular, was a decision that affected a staff member's legal rights and that it, therefore, constituted an administrative decision subject to judicial review. UNAT held that the specific provisions of ICAO's personnel instruction should have led to a different conclusion as it expressly provided for the review of a decision to close an investigation into alleged misconduct and thereafter for the filing of an appeal against that decision. UNAT held that the Appellant's submission was submitted in a timely manner to the AJAB and, as it was receivable, it should have been considered on the merits. UNAT held that the parties' requests not to remand the case to the AJAB were unsubstantiated. UNAT allowed the appeal in part and remanded the case to the AJAB for consideration on the merits.

Decision Contested or Judgment/Order Appealed

Mr Fedorchenko challenged the closure of an investigation. On the basis of a recommendation from the ICAO Advisory Joint Appeals Board (AJAB), the Secretary-General of ICAO decided that his application was not receivable *ratione materiae*.

Legal Principle(s)

The Administration has the duty to conduct investigations into the alleged conduct of staff members with the respective applicable norms. This does not imply, however, that the regularity of the closed proceedings cannot be examined when challenged by a staff member whose rights were allegedly violated during the proceedings.

Outcome

Appeal granted

Outcome Extra Text

No relief ordered; No relief ordered

Full judgment

[Full judgment](#)

Applicants/Appellants

Fedorchenko

Entity

ICAO

Case Number(s)

2014-568

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Feb 2015

President Judge

Judge Simón

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Definition

Investigation

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Applicable Law

ICAO Staff Regulations

- Regulation 1.6

UNAT Statute

- Article 2.3

Related Judgments and Orders

2010-UNAT-099

2014-UNAT-456

2014-UNAT-481