

2015-UNAT-509, Nguyen-Kropp & Postica

UNAT Held or UNDT Pronouncements

UNAT considered two appeals by the Secretary-General against three judgments (judgment Nos. UNDT/2013/028, UNDT/2013/029 and UNDT/2013/076). UNAT held that, generally speaking, appeals against a decision to initiate an investigation are not receivable as such a decision is preliminary in nature and does not, at that stage, affect the legal rights of the staff member. UNAT held that initiating an investigation is merely a step in the investigative process and it is not an administrative decision that UNDT is competent to review. UNAT held that UNDT erred on a question of law and exceeded its competence in accepting the applications as receivable. UNAT allowed the appeals and vacated judgment Nos. UNDT/2013/028, UNDT/2013/029 and UNDT/2013/176.

Decision Contested or Judgment/Order Appealed

The Applicants contested the decisions to conduct an investigation into their alleged misconduct. In three judgments, UNDT found the applications were receivable and found for the Applicants, awarding compensation for economic loss in the form of legal costs and for moral damages.

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. Appeals against a decision to initiate an investigation are not receivable as such a decision is preliminary in nature and does not, at that stage, affect the legal rights of a staff member. Tribunals should not interfere with matters that fall within the Administration's prerogatives, including its

lawful internal processes, and the Administration must be left to conduct these processes in full and to finality.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Nguyen-Kropp & Postica

Entity

OIOS

Case Number(s)

2014-581

2014-585

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Feb 2015

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Investigation

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

UNDT Statute

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

UNDT/2013/029

UNDT/2013/176

UNDT/2013/028

2014-UNAT-460

2014-UNAT-404

2014-UNAT-457

2011-UNAT-152

2013-UNAT-313