

2015-UNAT-542, Nielsen

UNAT Held or UNDT Pronouncements

UNAT had before it an appeal against both Order No. 63 (GVA/2014) and Summary judgment No. UNDT/2014/061. On the Appellant's additional filings and motions to submit additional pleadings, UNAT held that there were no exceptional circumstances that warranted the inclusion of any of the additional material in the appeal and denied the motions. On the Appellant's motion requesting UNAT to intervene in matters which fell outside the scope of the appeal, UNAT denied the motion. On the Appellant's appeal of Order No. 63 (GVA/2014), UNAT rejected the appeal on the basis that her appeal grounds did not approach the requisite threshold for UNAT to interfere with the case management of UNDT and she did not advance any persuasive argument that UNDT exceeded its jurisdiction or erred in matters of law or procedure or manifestly in fact in relation to the Order. UNAT held that UNDT properly found that the non-selection decisions for two posts were receivable. On the Appellant's challenge to the performance rebuttal process, UNAT agreed with UNDT's rejection of this complaint as premature, noting that processes must be allowed to run their proper course before being challenged before the UNDT or UNAT. Noting the numerous motions the Appellant had brought regarding matters were outside the scope of the appeal, UNAT opined that the Appellant's actions verged on an abuse of the appeal process. UNAT noted that the Appellant had not challenged the UNDT's finding that the Rebuttal Policy was not an administrative decision. On the issue of blocking emails and access to UN City, UNAT held that, having regard to the overall context of the present case, such issues could not be summarily determined solely as a question of law without UNDT embarking upon an assessment of the factual matrix which gave rise to the impugned decision and accordingly, UNAT held that UNDT erred procedurally, such as to affect the decision in the cases. UNAT held that none of the other arguments put forward by the Appellant satisfied the requirements of Article 2(1) of the UNAT Statute. UNAT held that the appeal succeeded in part. UNAT vacated the UNDT's rejection of the Appellant's complaints regarding the two blocking decisions and remanded those issues to UNDT for *de novo* consideration.

Decision Contested or Judgment/Order Appealed

The Applicant contested: the blocking of her emails; the blocking of her access to the complex of UN City; her non-selection for two posts; the UNFPA's failure to conduct or follow-up on her performance rebuttal process; and the performance rebuttal policy itself. By Order No. 63 (GVA/2014) UNDT invited the Secretary-General to respond to a motion filed by the Applicant requesting leave to provide additional evidence and comment on the Secretary-General's reply to the UNDT application. In judgment No. UNDT/2014/061, UNDT, limiting itself to receivability issues, found in favour of the Applicant in part, i. e. that her challenges to her non-selection for the two posts in Procurement Services Branch were receivable and dismissed the remainder of her application.

Legal Principle(s)

Processes must be allowed to run their proper course before being challenged before UNDT or UNAT.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Nielsen

Entity

UNFPA

Case Number(s)

2014-623

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Jul 2015

President Judge

Judge Faherty

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Temporal (ratione temporis)

Applicable Law

UNRWA Area Staff Rules

- Former Rule 111.3
- Rule 106.1(16)(D)(ii)
- Rule 111.3

Related Judgments and Orders

UNDT/2014/061

2011-UNAT-154

2015-UNAT-560

2013-UNAT-313

2012-UNAT-252

2014-UNAT-404