

2015-UNAT-544, Narthey

UNAT Held or UNDT Pronouncements

UNAT considered the appeal of the Secretary-General and the cross-appeal of Mr Narthey. UNAT held that UNDT made an error of law when it found the decision to deny Mr Narthey's request to grant him a lien on his post was an abuse of authority. UNAT held that Mr Narthey did not satisfy his burden to show the impugned decision was based on a retaliatory motive. UNAT held that UNDT made an error of law when it concluded that the impugned decision was retaliatory. UNAT held that UNDT also made factual errors regarding retaliation and these errors resulted in a manifestly unreasonable decision. UNAT held that UNDT erred in law when it inferentially concluded that the decision of the Ethics Office not to receive Mr Narthey's report of retaliation was in violation of the Order of UNDT. UNAT held that UNDT exceeded its competence in considering sua sponte the decision of the Ethics Office. UNAT held that, as the merits of the Ethics Office decision were not properly before UNDT, UNDT erred in fact and law when it found that the Director of the Ethics Office violated the UNDT Order and referred the Director to the Secretary-General for accountability. UNAT held that UNDT exceeded its competence or jurisdiction and erred as a matter of law when it found that D/DAS had created a hostile work environment. UNAT held that there was no basis for the UNDT's award of compensation or moral damages. UNAT held that there was no merit to Mr Narthey's cross-appeal in light of its determinations that the awards of compensatory and moral damages were without legal bases. UNAT held that the UNDT's decision that there was no ground to award costs to Mr Narthey was not erroneous. UNAT granted the appeal, vacated the UNDT judgment and denied the cross-appeal.

Accountability Referrals: UNAT held that UNDT erred by referring the D/DAS to the Secretary-General for accountability on the grounds of retaliation and harassment. UNAT vacated the UNDT referrals of the Director of the Ethics Office and the D/DAS, UNON to the Secretary-General for accountability.

Decision Contested or Judgment/Order Appealed

Mr Nartey contested, inter alia, the decision not to grant him a lien on his post while on a mission to UNAMID. UNDT found the decision was an abuse of authority and awarded compensation, including moral damages. UNDT also referred the Director of the Ethics Office and the Director of the Division of Administrative Services (D/DAS) of the United Nations Office Nairobi (UNON) to the Secretary-General for accountability, pursuant to Article 10(8) of the UNDT Statute.

Legal Principle(s)

UNDT has the inherent power to issue orders to protect witnesses who testify before it from retaliation by a party.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Nartey

Entity

UNON

Case Number(s)

2014-626

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Jul 2015

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Ethics office

Retaliation

Referral for accountability

Applicable Law

Administrative Instructions

- ST/AI/404

Secretary-General's bulletins

- ST/SGB/2005/21
- ST/SGB/2008/5
- ST/SGB/277

Staff Regulations

- Regulation 1.2(c)

UNDT Statute

- Article 10.5(b)

- Article 10.6

Related Judgments and Orders

UNDT/2014/051

2014-UNAT-476

2011-UNAT-114

2015-UNAT-518

2013-UNAT-311

2014-UNAT-457

2014-UNAT-400

UNDT/2012/049

2013-UNAT-305

2014-UNAT-410

2015-UNAT-506

2012-UNAT-225