

2016-UNAT-655, Elhabil

UNAT Held or UNDT Pronouncements

UNAT addressed all the appeals in a unique judgment. Regarding judgment No. UNDT/2015/100, UNAT held that UNDT had correctly found that a UNRWA staff member cannot bring an application against the UN Secretary-General challenging a decision by the Organisation denying him or her employment with the Organisation. UNAT held that UNDT had correctly concluded that the application was not receivable. Regarding Orders Nos. 319, 320, and 400, UNAT reiterated that UNAT is only under exceptional circumstances competent to judge appeals of interlocutory orders, namely when UNDT exceeded its jurisdiction or competence. UNAT held that the Appellant had not claimed on appeal that UNDT had exceeded its jurisdiction or competence in issuing the orders. UNAT held, therefore, that the appeals of Orders Nos. 319, 320 and 400 were not receivable *ratione materiae*. UNAT dismissed the appeal against judgment No. UNDT/2015/100 and affirmed the UNDT judgment on receivability. UNAT dismissed the appeals against Orders Nos. 319 (NBI/2015), 320 (NBI/2015), and 400 (NBI/2015) as not receivable.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision that disqualified his candidacy to posts in the UN. UNDT issued judgment No. UNDT/2015/100 dismissing the application as non-receivable since the Applicant was a UNRWA staff member and was not challenging an administrative decision within the meaning of Article 2. 1(a) of the UNDT Statute. The Applicant appealed this judgment on receivability. The Applicant further filed two applications for suspension of action pending management evaluation. Each application challenged a decision by the Office of Human Resources Management (OHRM) to disqualify the Applicant as a candidate for a job opening in the UN. UNDT issued Order Nos. 319 and 320 (NVBI/215) dismissing the applications as non-receivable *ratione personae*. The Applicant appealed both orders. The Applicant filed another application before UNDT for suspension of action pending management evaluation of a decision by OHRM to disqualify his application for the position of

Director, Documentation Division, D-2, Department for General Assembly and Conference Management. In Order No. 400 (NBI/2015), UNDT dismissed this application on the same grounds as the previous applications for suspension of action. UNDT put “on notice” that the costs under Article 10. 6 of the UNDT Statute could be awarded against the Applicant if he were to bring another, similar, application in the future. The Applicant appealed this last decision as well.

Legal Principle(s)

A UNRWA staff member does not fulfill the requirements of Article 3 of the UNDT Statute. The general principle underlying the right to appeal under Article 2. 1 of the UNAT Statute is that only appeals against final judgments will be receivable.

Outcome

Appeal dismissed on merits; Appeal dismissed on receivability

Full judgment

[Full judgment](#)

Applicants/Appellants

Elhabil

Entity

UNRWA

Case Number(s)

2015-862

2015-863

2015-865

2016-889

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Jun 2016

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Personal (ratione personae)

Subject matter (ratione materiae)

Staff selection (non-selection/non-promotion)

Full and fair consideration

Applicable Law

UNDT Statute

- Article 10.6
- Article 3.1

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

UNDT/2015/100

2013-UNAT-327

2013-UNAT-314

2013-UNAT-300

2012-UNAT-256

2011-UNAT-160

2010-UNAT-005

2015-UNAT-507

2016-UNAT-661

2013-UNAT-335

2010-UNAT-075