

2016-UNAT-657, Faye

UNAT Held or UNDT Pronouncements

UNAT held that UNDT had made no error in finding that as a General Service staff member at the G-5 level, the Applicant was not eligible to apply for the vacancy advertised in the JO, which was a post in the Professional category at the P-5 level and that, therefore, the disputed decision had no legal consequences affecting him and no effect on his rights and terms of employment. UNAT held that UNDT did not err in its finding that the Appellant was not claiming a right to be consulted as an individual staff member, but rather, in his capacity as a staff representative. UNAT held that there was no statutory provision or other law which gives UNDT jurisdiction to entertain an application by a staff representative on behalf of staff members. UNAT held that the Appellant had failed to demonstrate any error of law or fact committed by UNDT in arriving at its judgment that the application was not receivable. UNAT held however that Appellant was under the impression that he could present an effective challenge and had not manifestly abused the proceedings by merely proceeding with his application. UNAT upheld the appeal in part to vacate the order of costs against the staff member and affirmed the UNDT judgment on receivability.

Decision Contested or Judgment/Order Appealed

The Applicant contested what he described as the “implementation” of a job opening for a P-5 post. UNDT dismissed the application as not receivable *ratione personae* since the Applicant challenged the application of a policy that had no direct legal consequences affecting him. UNDT ordered costs against the Applicant for having manifestly abused the proceedings “by his persistence in advancing a legally unsustainable contention, despite guidance offered at the case management discussion (CMD) on the applicable legal principles”.

Legal Principle(s)

A staff representative acting on behalf of staff members does not have standing to bring an application before UNDT. The UNDT Statute is quite clear that the right to challenge an administrative decision before UNDT is an individual right. There is no statutory provision or other law which gives UNDT jurisdiction to entertain an application by a staff representative on behalf of staff members. The only recognition given to a staff association in the UNDT Statute is contained in Article 2.3, which provides that “the Dispute Tribunal shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association”.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Faye

Entity

UNJSPF

Case Number(s)

2015-867

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Jun 2016

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT

Manifest abuse

Jurisdiction / receivability (UNDT or first instance)

Personal (ratione personae)

Applicable Law

UNDT Statute

- Article 10.6
- Article 2.1
- Article 2.3
- Article 3.1

Related Judgments and Orders

UNDT/2015/076

2010-UNAT-001

2010-UNAT-073

2010-UNAT-058

2014-UNAT-481