

2016-UNAT-679, Lemmonier

UNAT Held or UNDT Pronouncements

UNAT considered the appeal on several issues, being the first one whether UNDT erred in law in determining that the Appellant's challenge to the separation decision was time-barred. UNAT found that the Appellant did not file an application within the 90-day calendar period established in Article 8. 1(d)(i)(b) of the UNDT Statute. With respect to the issue of whether there is a contradiction between Neault (judgment No. 2013-UNAT-345) and Gallo (judgment No. 2015-UNAT-552), UNAT held that there is no discrepancy between Neault and Gallo. UNAT noted that the ratio of both judgments is that where a response to a management request is not received, a staff member has 90 days from when the response was due to file an application to the UNDT. UNAT further noted that when a response is received but after the expiration of that 90-day period, as in this case, the receipt of the response does not reset the clock for filing an application with the UNDT. With respect to the issue on UNDT's discretion in refusing the Appellant's request to extend the time for the filing of the application to challenge the separation decision, UNAT found no merit in the submission that UNDT erred in its interpretation of Eng (judgment No. 2015-UNAT-520) or in finding that no exceptional circumstances existed. UNAT found that UNDT correctly noted that the case was applied in a number of judgments of which the Appellant's OSLA representative would have been aware, and that it is well settled that ongoing exchanges with the MEU do not re-set the applicable time limits. With respect to the issue of receivability on the challenge of the Appellant's non-selection for CISS post, UNAT found that it is trite law at this juncture that in the context of a case such as the present the request for management evaluation is a prerequisite for UNDT to entertain the challenge to the Appellant's non-selection. With respect to the issue related to the existence of request for management evaluation in respect of the non-selection decision, UNAT found that the Appellant had timely sought management evaluation of his non-selection by virtue of the communication sent on his behalf on 14 November 2014, requests which were repeated in his e-mail of 2 December 2014. To that end, UNAT held that UNDT had jurisdiction to entertain the application filed on 6 March 2015 and, thus, erred in holding to the contrary. With

respect to the issue of award cost against the Appellant, UNAT found that the circumstances did not merit an award of costs against the Appellant as the number of filings did not reach the threshold of “manifestly abusing” the proceedings. UNAT held that the appeal succeeded in part; UNDT’s finding on the non-receivability of the challenge to the non-selection decision was vacated and the matter was remanded to UNDT for consideration on the merits. The costs order against the Appellant was also vacated. The rest of UNDT’s judgment was affirmed.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decisions not to select him for the post of Chief, Integrated Support Services of the United Nations Stabilization Mission in Haiti, not to renew his contract and to separate him from service, and the Secretary-General's contention that previously submitted motions for an extension of time were not receivable. UNDT dismissed the applications as not receivable due to the Applicant’s failure to comply with the relevant statutory requirements, including the filing of his management evaluation requests and the deadlines for the filing of an application with the Tribunal. UNDT also awarded costs against the Applicant in the amount of USD 1,000, after finding that the Applicant abused the proceedings.

Legal Principle(s)

When a response to a management request is not received, a staff member has 90 days from when the response was due to file an application to the UNDT. When a response is received but after the expiration of that 90-day period, the receipt of the response does not reset the clock for filing an application with the UNDT. Ongoing exchanges with the MEU do not re-set the applicable time limits. UNDT may award costs against a party where a determination is made that that party has manifestly abused the proceedings before it.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Lemmonier

Entity

MINUSTAH

Case Number(s)

2016-905

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Jun 2016

President Judge

Judge Faherty

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT
Costs

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Temporal (ratione temporis)

Applicable Law

Staff Rules

- Rule 11.2(d)
- Rule 11.4(a)

UNDT Statute

- Article 10.6
- Article 8.1(d)(i)(b)

Related Judgments and Orders

UNDT/2015/124

2011-UNAT-118

2015-UNAT-520

2015-UNAT-552

2013-UNAT-345