

2016-UNAT-695, Faust

UNAT Held or UNDT Pronouncements

UNAT preliminarily rejected the Appellant's motion for leave to file additional pleadings after finding no exceptional circumstances justifying the filing of an additional submission. With respect to the alleged error of procedure in UNDT's proceedings by way of summary judgment, UNAT held that UNDT's issuance of summary judgment was appropriate since there was no dispute about the material facts and that the question of receivability is a matter of law. UNAT also held that the Appellant did not meet her burden of proving that UNDT made an error of procedure when it decided to issue a summary judgment. UNAT further held that the Appellant erroneously relied on the interpretation of what is considered to be a "technical body" for the purposes of Staff Rule 11.2(b). UNAT noted that an investigation panel did not fulfill all the requirements of a technical body; it is more like a rebuttal panel, which, in accordance with the Appeals Tribunal's jurisprudence in Gehr, does not qualify as a "technical body." UNAT accordingly held that the Appellant was not exempt from the management evaluation requirement set forth in Staff Rule 11.2(b). UNAT also held that the Appellant was not exempt from the management evaluation requirement on any of the other grounds she argued. In referring to the Staff Rules, UNAT noted that when an aggrieved individual or alleged offender is not satisfied with the outcome of the procedure, he or she should proceed according to the general rules, which involves requesting management evaluation. UNAT dismissed the appeal and affirmed UNDT's judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision of the Executive Secretary of the United Nations Framework Convention on Climate Change (UNFCCC) to take no further action, after investigation, on her complaint about prohibited conduct under ST/SGB/2008/5 and, as a result, to close the case. UNDT found the application non-receivable and noted that the requirement to request management evaluation was a mandatory first step in the appeals process.

Legal Principle(s)

A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision. Notwithstanding the important role of investigation panels, in the absence of a determination by the Secretary-General that investigation panels established under ST/SGB/2008/5 are technical bodies, the exemption to the requirement of management evaluation under Staff Rule 11.2(b) does not apply. Leave may be granted to file additional pleadings after the filing of the answer if there are exceptional circumstances for doing so. Such exceptional circumstances could include where a party seeks to respond to new facts and evidence that were not part of the UNDT record.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Faust

Entity

UNFCCC

Case Number(s)

2016-925

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Oct 2016

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Subject matter (ratione materiae)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Rules

- Rule 11.1(a)
- Rule 11.2
- Rule 11.4

Related Judgments and Orders

UNDT/2016/018

2015-UNAT-498

2013-UNAT-381

2014-UNAT-402

2014-UNAT-479

2014-UNAT-412

2011-UNAT-136

2011-UNAT-118

2016-UNAT-696

2015-UNAT-557

2014-UNAT-481

2016-UNAT-694