

2017-UNAT-761, Michaud

UNAT Held or UNDT Pronouncements

As a preliminary matter, UNAT denied the Appellant's motion to adduce additional evidence in the form of an affidavit by him for the absence of exceptional circumstances. UNAT held that the Office of Audit and Investigation Services (OAIS) took no decision that materially, adversely, or directly impacted the rights of the Appellant and that it merely made a non-binding recommendation to UNDP. UNAT held that the recommendation by OAIS was not an administrative decision. UNAT held that UNDT was correct to hold that the appeal in relation to the investigation was not receivable *ratione materiae*. UNAT held that the Appellant was fully apprised of the allegations and had an opportunity to make representations putting forward his defence, and that UNDT was correct in finding that there had been no due process violation. UNAT held that the no difference principle may have applied in this case as the emails sent by the Appellant spoke for themselves. Taking into account the content of the emails and role of the Appellant as a senior investigator, UNAT held that the decision to impose a written reprimand fell within the range of reasonable responses and the measure was therefore proportional in the circumstances. Noting that the written reprimand did not constitute a disciplinary measure, UNAT held that the Appellant's criticism of the UNDT's failure to hold an oral hearing was without merit. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested a number of decisions pertaining to an investigation against him, the issuance of a reprimand, and alleged denial of due process. UNDT held that the application was not receivable *ratione materiae*. UNDT held further that the decision to issue the written reprimand was a lawful exercise of management discretion, the Applicant's due process rights had been fully observed, and that the reprimand was reasonable and proportional in the circumstances.

Legal Principle(s)

A decision to initiate an investigation, in itself, ordinarily, will not immediately affect the rights of a staff member nor be of direct legal effect. Tribunals should not interfere with purely internal matters of departmental administration or organization, or processes that have not reached finality. A lack or a deficiency in due process will be no bar to a fair or reasonable administrative decision or disciplinary action should it appear at a later stage that fuller or better due process would have made no difference (the “no difference” principle). The so-called no difference principle applies exceptionally where the ultimate outcome is an irrefutable foregone conclusion, for instance where a gross assault is widely witnessed, a theft is admitted or an employee spurns an opportunity to explain proven misconduct.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Michaud

Entity

UNDP

Case Number(s)

2016-1038

Tribunal

UNAT

Registry

New York

Date of Judgement

14 Jul 2017

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Non-disciplinary/administrative measures

Investigation

Due process

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

Staff Rules

- Rule 10.2(b)(i)

UNAT RoP

- Article 18.1

UNAT Statute

- Article 2
- Article 2.1
- Article 8.1(c)

UNDT RoP

- Article 16.2

Related Judgments and Orders

UNDT/2016/184