

2018-UNAT-815, Nchimbi

UNAT Held or UNDT Pronouncements

Both parties appealed. UNAT held that UNDT was correct regarding the non-receivability *ratione materiae* with respect to the first three decisions. UNAT, however, disagreed with UNDT's finding that the Administration had unlawfully delayed check-out, including his final payments and the submission of the required forms for his pension, since the period of three and a half months which was taken by the Administration to investigate and proceed with Mr Nchimbi's "check-out" was not unreasonable in the given circumstances. UNAT upheld the Secretary-General's appeal and dismissed Mr Nchimbi's appeal. UNAT vacated the decision regarding the award of compensation and affirmed the UNDT judgment on the non-receivability *ratione materiae*.

Decision Contested or Judgment/Order Appealed

Mr Nchimbi contested the decision to (a) withhold his final payments and the delay in submitting forms for his pension for over six months after checking out from ICTR; (b) to unlawfully deduct his final leave days; (c) not to provide him with a copy of the report of an investigation conducted against him; and (d) the failure of the Secretary-General and the Office of Internal Oversight Services to intervene in the matter. UNDT found that Mr Nchimbi had not requested a management evaluation of the first three decisions and concluded that the application was not receivable *ratione materiae* with respect to those decisions. UNDT, thus, granted the application with respect to the decisions to withhold his final payment and to delay submitting the required forms for his pension. UNDT ordered payment of compensation "for the three months' unlawful procedural delay".

Legal Principle(s)

In some cases, a delay on the part of the Administration might be a necessary step to ensure that there is proper governance within the Organisation and accountability for its property and, therefore, not unlawful.

Outcome

Appeal dismissed on merits; Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Nchimbi

Entity

ICTR

Case Number(s)

2017-1103

2017-1104

Tribunal

UNAT

Registry

New York

Date of Judgement

22 Mar 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Jurisdiction / receivability (UNAT)

Subject matter (ratione materiae)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

UN Financial Regulations and Rules

- Regulation 6.5
- Rule 106.7

UNDT Statute

- Article 10.4
- Article 10.5(b)

Related Judgments and Orders

UNDT/2017/042