

2018-UNAT-820, Newland

UNAT Held or UNDT Pronouncements

UNAT held that requesting management evaluation was a mandatory first step. UNAT found that the Personnel Action forms could not be construed as adequately notifying the Appellant of the relevant administrative decision to process his retirement and separation from service. UNAT held that the memorandum that gave instructions pertaining to the Appellant's separation from service and repatriation to his home country triggered the time limit to seek management evaluation. UNAT held that the Appellant failed to seek a management evaluation within that time. UNAT held that UNDT's finding that the application was not receivable was correct. UNAT held, however, that the Administration failed to comply with Order No. 494 and additionally penalized the Appellant for exercising his rights under the UNDT Statute by requiring the Appellant to abandon the interim injunction in his favor before paying out his entitlements. UNAT held that the Appellant was entitled to be paid the amount of remuneration he would have received, had the Secretary-General complied with Order No. 494 (NBI/2016) until the final judgment of UNDT. UNAT held that the Administration's conduct undoubtedly caused the Appellant stress, anxiety, and humiliation since he was left without income and medical insurance for seven months and suffered obvious humiliation in having to rely on the assistance of family members for support while his pension was not paid and his right to receive remuneration in terms of Order No. 494 (NBI/2016) was not honored. UNAT found the Administration's conduct justified an appropriate award of interest on the amounts the Appellant ought to have received. UNAT dismissed the appeal against the decision on the receivability of the application and affirmed the UNDT judgment. UNAT ordered the Administration to pay the Appellant's full salary and all associated entitlements and benefits for the period 1 December 2016 to 27 June 2017 together with interest at the United States prime rate from 27 June 2017 to the date of payment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to retire him at the age of 60 instead of 62 and filed an application for suspension of action in respect to the decision to separate him from service. In Order No. 494 (NBI/2016) UNDT granted the application for suspension of action. The Applicant further filed with the UNDT an "Urgent Request for Respondent to Fully Implement Order [No.] 494 (NBI/2016)". UNDT dismissed the main application as not receivable due to the failure of the Applicant to request management evaluation in due time and merely noted that at the time of filing the application for suspension of action, the Applicant had already commenced check-out procedures to separate from the Organisation on mandatory retirement.

Legal Principle(s)

UNDT may decide, upon request by an applicant, to suspend or waive the deadlines for filing an application in terms of Article 2 of the UNDT Statute for a limited period, but only in exceptional cases. However, under Article 8.3 of the UNDT Statute, UNDT shall not suspend or waive the deadlines for management evaluation. The Personnel Action forms cannot be construed as adequately notifying a staff member of the relevant administrative decision to process their retirement and separation from service.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Newland

Entity
UNSOS
Case Number(s)
2017-1109
Tribunal
UNAT
Registry
New York
Date of Judgement
22 Mar 2018
President Judge
Judge Murphy
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Compensation
Aggravating/mitigating factors
Interlocutory or interim appeal / Appeal of UNDT order to UNAT
Suspension of action
Jurisdiction / receivability (UNDT or first instance)
Management Evaluation
Applicable Law
Administrative Instructions

- ST/AI/2008/3

Staff Rules

- Rule 11.2(a)
- Rule 11.2(c)

UNDT RoP

- Article 14

UNDT Statute

- Article 2.1
- Article 8.1(c)

Related Judgments and Orders

UNDT/2017/046
2012-UNAT-203
2012-UNAT-273
2015-UNAT-563
2013-UNAT-335
2015-UNAT-521