

2018-UNAT-867, Fedorchenko

UNAT Held or UNDT Pronouncements

UNAT held that it was not appropriate to adjudicate the ICAO Secretary-General's motion regarding the Appellant's claims impugning the AJAB's functioning as the 'Neutral First Instance Process' at that stage since the issues raised in the motion would be decided when UNAT had considered the whole of the evidence in the appeal. UNAT dismissed the motion. UNAT held that AJAB had given a very thorough, fair, and informed consideration of the Appellant's case in which it examined the irregularities alleged. UNAT rejected the Appellant's submission that AJAB erroneously admitted eight previously undisclosed documents without his "initial trial". UNAT held that no such obligation arose at that time and noted that the Appellant voluntarily absented himself from the hearing, at which he could have voiced any objection he might have had to the admission of the documents. UNAT held, regarding AJAB's status as a neutral first instance process, that it would not admit new evidence at that stage that could have been presented to AJAB at a previous stage. UNAT rejected the Appellant's submission that AJAB was mistaken in considering that the burden of proof was upon him to substantiate his statement that the Ethics Officer was negligent in establishing the veracity and credibility of the complaints of harassment against him. UNAT held that the Appellant failed to demonstrate any error of law or manifestly unreasonable factual findings on the part of AJAB. UNAT dismissed the appeal and affirmed the decision of the ICAO Secretary-General.

Decision Contested or Judgment/Order Appealed

ICAO Decisions: The Applicant contested the decision of the ICAO Secretary-General to reject his request for compensation related to the distress he suffered during the investigation of harassment. The investigation had ended with a recommendation that the allegations of harassment should be dismissed for lack of evidence, which was endorsed by the ICAO Secretary-General. The Applicant appealed to the Advisory Joint Appeals Board (AJAB), which concluded that the appeal was not receivable *ratione materiae*. The Applicant appealed that decision to UNAT. UNAT granted the appeal in part, by annulling the ICAO Secretary-General's decision and remanding the case to AJAB for consideration on the merits. Following the remand, AJAB unanimously recommended that the appeal should be rejected in its entirety. The ICAO Secretary-General accepted the AJAB's findings. The Applicant appealed that decision. The ICAO Secretary-General filed a motion to dismiss the Applicant's claims in the appeal impugning the AJAB's functioning as the neutral first instance process.

Legal Principle(s)

The burden of proof principle provides that the party making an allegation of misconduct or inappropriate conduct carries the burden to prove it.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Fedorchenko

Entity

ICAO

Case Number(s)

2018-1159

Tribunal

UNAT
Registry
New York
Date of Judgement
26 Oct 2018
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Burden of proof
Disciplinary
Disciplinary matters / misconduct
Harassment (non-sexual)
Investigation
Applicable Law
Agreements, conventions, treaties (etc.)

- Agreement concluded between the UN and ICAO (6 January 2010)

ICAO Staff Rules

- Rule 111.1(10)

UNAT Statute

- Article 2.5

Related Judgments and Orders

2014-UNAT-430
2017-UNAT-790
2016-UNAT-639
2015-UNAT-547
2016-UNAT-702
2015-UNAT-537
2016-UNAT-697
2011-UNAT-114