

# **2019-UNAT-931, El-Awar**

## **UNAT Held or UNDT Pronouncements**

The Appellant's appeal primarily challenged the decision of UNDT not to hold an oral hearing, purportedly denying him a fair trial and due process. UNAT noted that the reason for the decisions to temporarily limit the authority of the Applicant pending a management review was not in contention. UNAT held that the withdrawal of the delegations did not unduly detract from the Appellant's core functions, though his discretion to interact with various stakeholders was significantly restricted and he was constrained by a firmer level of accountability and closer scrutiny of his performance. UNAT held that UNDT did not act improperly in the exercise of its discretion in terms of holding that further oral evidence would not assist in clarifying the issues in contention over and above identification of some inaccuracies, the resolution of which would not disturb the essential factual findings and the reasons for the decisions. UNAT held UNDT was correct in holding that the Executive Director was best placed to understand the legitimate managerial needs of the Organisation and enjoyed a margin of appreciation. UNAT held that the undisputed facts sufficiently demonstrated that there was a rational connection between the information available to the Executive Director, the reasons given for the contested decisions, and the purpose for which the decisions were taken. UNAT held that the decisions were tailored proportionally to the desired outcome without unduly restraining the Appellant from carrying out his job. UNAT held that the decisions were a legitimate, rational, and proportional exercise of the managerial prerogative. UNAT dismissed the appeal and affirmed the UNDT judgment.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contested decisions to limit his authority. UNDT dismissed the application, finding that the contested decisions did not deprive him of the ability to function, rather they subjected him to stricter scrutiny by his superiors as a result of concerns about his conduct, which was perceived to be against the interests of UN-Habitat. UNDT held that the decisions taken were preventive, rational, and

proportionate in view of the perceived risks.

## Legal Principle(s)

In matters involving no disciplinary sanction, Tribunals are required to defer appropriately to the managerial process and to reasonable exercises of managerial discretion necessary to run, manage and operate the Organisation. Managerial decisions should be sustained, provided they are free from invidious or improper motivations and are based upon the exercise of reason and proper judgment.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

El-Awar

## Entity

UN-Habitat

## Case Number(s)

2019-1227

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

28 Jun 2019

## President Judge

Judge Murphy

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Due process

Right to a hearing

## Applicable Law

UNDT Statute

- Article 9.2

## Related Judgments and Orders

UNDT/2018/116