

2019-UNAT-946, Tosi

UNAT Held or UNDT Pronouncements

Following an appeal by the Appellant and the Secretary-General, there was a further cross-appeal by the Appellant. As a preliminary issue, UNAT dismissed the Appellant's cross-appeal as not receivable since the Appellant has already had the opportunity to file his own independent appeal and the cross-appeal seemed to be an attempt to complement his appeal. On the Secretary-General's appeal in Case No. UNDT/NBI/2015/095 related to the issue settlement agreement, UNAT held that UNDT erred on a matter of law on the receivability of the application, since it based its finding on the merits as a condition precedent to find that the application was filed in a timely manner and was therefore receivable. UNAT held that in reaching its conclusion regarding the last day for the implementation of the settlement agreement, UNDT erred on a matter of law. UNAT upheld the Secretary-General's appeal and dismissed the issues raised pertaining to the settlement agreement on grounds of receivability as it had been time-barred. On the Appellant's appeal in Case No. UNDT/NBI/2016/023 and the alleged failure to exercise the jurisdiction vested in the UNDT regarding prohibited conduct, UNAT held that UNDT's consideration satisfied the requirement of including stated reasons and that there was no error justifying a possible remand for additional considerations of the matter. On receivability issues, UNAT held that the application regarding the Ethic's Office determination was time-barred, but on consideration of the other two contested decisions (Special Representative of Secretary-General and Under-Secretary-General, Department of Field Support) in the application, the application was receivable *ratione materiae*. Noting that some of the Appellant's claims related to alleged facts which occurred after the relevant administrative decisions had been issued and that it would be an exaggerated interpretation to consider the issues the Appellant had with his manager meant he would be the subject of prohibited conduct by that manager, UNAT held that the Appellant failed to show that UNDT committed any error of law, fact or procedure in reaching its decision. UNAT upheld the appeal of the Secretary-General and vacated the UNDT judgment. UNAT dismissed the appeal and cross-appeal of the Appellant.

Decision Contested or Judgment/Order Appealed

The Applicant contested (i) the non-renewal of his fixed-term appointment and (ii) the implementation of a settlement agreement in a UNDT application and he also submitted a second UNDT application alleging discrimination and mistreatment by his former first reporting officer (FRO). UNDT dismissed his claims against his former FRO but found that the Administration had acted in bad faith and in violation of the spirit of the settlement agreement. UNDT rescinded the non-renewal decision and awarded compensation.

Legal Principle(s)

A party is not entitled to appeal the same judgment twice. In situations where a settlement agreement is silent about the date of implementation, the deadline for filing an application is interpreted as 90 days after the 30th day from the date of the signing of the agreement, which is in keeping with the UNDT Statute's provisions on mediation agreements.

Outcome

Appeal dismissed on merits; Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Tosi

Entity

MONUSCO

Case Number(s)

2019-1239

2019-1240

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Oct 2019

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Ethics office

Retaliation

Jurisdiction / receivability (UNAT)

Appeal

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Subject matter (ratione materiae)

Temporal (ratione temporis)

Management Evaluation

Time limit

Non-renewal

Arbitrary or improper motive

Applicable Law

Secretary-General's bulletins

- ST/SGB/2005/21

UNAT RoP

- Article 18.1
- Article 9

UNAT Statute

- Article 2.5
- Article 8.3

UNDT Statute

- Article 11
- Article 8.1
- Article 8.1(a)
- Article 8.2

Related Judgments and Orders

UNDT/2019/003