

2019-UNAT-967, Olowo-Okello

UNAT Held or UNDT Pronouncements

On the question of the non-renewal of appointment, UNAT held that UNDT correctly concluded that (1) the Appellant's application was non-receivable *ratione materiae*, as he had not submitted a request for management evaluation, and (2) that the Appellant's request for assistance from the Ombudsman did not constitute a request for management evaluation (and that even it did, it would have been time-barred). On the "decision" of the Administration to place adverse material in the Appellant's official status file and to block him from being rehired, UNAT held there was no final, appealable administrative decision, and that therefore there was no error in UNDT concluding that the application was not receivable *ratione materiae*, albeit for different reasons than UNAT. UNAT noted that if the Administration were to decide to place adverse material in the Appellant's official status file, the Appellant would not be precluded from challenging it, any administrative decision denying the removal of it, the non-renewal of his appointment, or any other administrative decision taken based on this material. On the Appellant's argument that a request for management evaluation was not a requirement because he had been subject to a disguised disciplinary measure, UNAT held that the Appellant could not evade the statutory obligation of requesting management evaluation by characterizing the disputed decision as a disciplinary matter. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the non-renewal of his appointment for lack of requisite medical clearance, the decision to block him from being rehired by UNHCR or other UN entities, and the placement of adverse material on his personnel file. UNHCR claimed that the Applicant failed to disclose that he suffered from an illness, which, had it been disclosed, would have meant he would not have been declared fit to work or been appointed. UNDT dismissed his application as not receivable *ratione materiae* on the grounds that the Applicant had failed to make a timely request for

management evaluation.

Legal Principle(s)

Requesting management evaluation is a mandatory first step in the appeal process. UNDT has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review. The nature of the decision, the legal framework under which the decision was made, and the consequences of the decision are key determinants of whether a decision is an administrative decision. On the question of whether a decision is an administrative decision, what matters more than which functionary took the decision is the nature of the function performed or the power exercised, essentially whether the task itself is administrative.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Olowo-Okello

Entity

UNHCR

Case Number(s)

2019-1267

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Oct 2019

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Definition

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

Staff Rules

- Rule 11.2
- Rule 11.2(a)

UNDT Statute

- Article 8.1(c)

Related Judgments and Orders

UNDT/2019/086