

# **2019-UNAT-969, Argyrou**

## **UNAT Held or UNDT Pronouncements**

UNAT held that the Appellant did not provide evidence with sufficient particularity of any specific instances in which he had requested compensation for overtime, or the Administration had denied such a request. UNAT held that the UNDT's finding that absent any identifiable administrative decision the application was not receivable *ratione materiae* was correct. UNAT held that the Appellant's argument that his overtime work without compensation over the years was in violation of the Administration's responsibility to establish a normal working week for its employees and was thus a continuous wrongful occurrence permitting an automatic waiver of the applicable time limits was unsustainable. UNAT held that the alleged existence of a continuous wrong cannot of itself be perceived as an implied administrative decision conferring jurisdiction. UNAT held that before it can be found that there was an implied administrative decision there must be evidence that the continuous wrong was challenged by a specific request to desist and a refusal or failure by the Administration to desist or an implied decision in the form of a failure to take any decision. UNAT held that the failure to properly staff the section was not an implied administrative decision, as it did not take the form of an administrative decision in non-compliance with the staff member's terms of appointment and it was not an individual decision with direct legal consequences for the staff member. UNAT held that UNDT did not have jurisdiction *ratione materiae* in relation to the issue of overtime. UNAT held that UNDT correctly concluded that the Appellant's claims of abuse and harassment in terms of ST/SGB/2008/5 were not receivable as UNDT had no jurisdiction to conduct *ab initio* an investigation of a harassment complaint. UNAT further noted that the Appellant had not made any allegations of harassment or abuse of authority in his request for management evaluation. UNAT dismissed the appeal and affirmed the UNDT judgment.

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

The staff member alleged that the Administration had violated Staff Rule 3. 11 and the UN Peacekeeping Force in Cyprus (UNFICYP) administrative circular governing compensation for overtime. He also alleged harassment and abuse of authority by his supervisors and the failure to complete his performance evaluation. UNDT dismissed the application as not receivable *ratione materiae*.

## Legal Principle(s)

A staff member is required to clearly identify the administrative decision which is contested. Before it can be found that there was an implied administrative decision, there must be evidence that the continuous wrong was challenged by a specific request to desist and a refusal or failure by the Administration to desist or an implied decision in the form of a failure to take any decision. UNDT does not have the jurisdiction to conduct *ab initio* an investigation of a harassment complaint.

## Outcome

Appeal dismissed on receivability

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Argyrou

## Entity

UNFICYP

## Case Number(s)

2019-1269

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

25 Oct 2019

## President Judge

Judge Murphy

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Administrative decision  
Implied administrative decision  
Jurisdiction / receivability (UNDT or first instance)  
Management Evaluation  
Subject matter (ratione materiae)  
Management Evaluation

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Rules

- Rule 11.2(c)

UNDT Statute

UNAT Statute

- Article 2.1(a)

## Related Judgments and Orders

UNDT/2019/109