

2019-UNAT-970, Adnan-Tolon

UNAT Held or UNDT Pronouncements

As a preliminary matter, UNAT declined to receive the Appellant's additional evidence on the basis that the Appellant failed to show exceptional circumstances, explain why the additional evidence could not have been filed before UNDT, or demonstrate its relevance and materiality. On the merits, UNAT held that working overtime over the years does not amount to an administrative decision, noting that the Appellant failed to provide evidence of the Administration requesting him to work overtime or of any request by him for compensation and a denial thereof. UNAT held that knowledge of the overtime or lack of action on the matter by the Administration, in this case, was not sufficient to constitute an administrative decision. UNAT held that UNDT did not err in finding the Appellant's claims regarding overtime were not receivable *ratione materiae*. Noting that the Appellant did not pursue the internal processes required by the ST/SGB/2008/5, UNAT held that UNDT did not err in finding that the Appellant's application regarding harassment and abuse of authority was not receivable. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The staff member filed an application seeking the official acknowledgement of his overtime and monetary compensation. UNDT dismissed his application on the basis that none of his claims were receivable, primarily because there was no specific, reviewable administrative decision.

Legal Principle(s)

An applicant has the statutory burden to establish that the administrative decision in issue was in non-compliance with the terms of his or her appointment or contract of employment; such a burden cannot be met where an applicant fails to identify an

administrative decision capable of being reviewed, that is, a specific decision which has a direct and adverse impact on his or her contract rights. In order to be allowed to adduce additional evidence before UNAT, an Applicant must show exceptional circumstances and explain why such evidence could not have been filed before UNDT.

Outcome

Appeal dismissed on receivability

Full judgment

[Full judgment](#)

Applicants/Appellants

Adnan-Tolon

Entity

UNFICYP

Case Number(s)

2019-1271

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Oct 2019

President Judge

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Definition

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Rules

- Rule 11.2
- Rule 11.2(a)

UNAT Statute

- Article 2.5

UNDT Statute

- Article 8.1

Related Judgments and Orders

UNDT/2019/111