

2020-UNAT-1003, Fairweather

UNAT Held or UNDT Pronouncements

UNAT denied the request for an oral hearing on the basis that the factual and legal issues arising from the appeal were clearly defined and an oral hearing would not assist in the expeditious and fair disposal of the case. UNAT refused to consider information pertaining to a confidential settlement proposal made to the Appellant. UNAT held that while the absence of a response to a staff member's request may constitute an implied administrative decision, the absence of a decision without direct legal consequences is not an implied decision subject to judicial review. UNAT held that in the absence of applications for the long-service step or the young professionals' program exam, the Appellant could not presume the direct negative legal consequences of a decision that might have existed but never did. UNAT held that the absence of a decision in response to a request for a rebuttal of performance appraisals had no direct legal effect and was neither an administrative decision nor an implied decision. By majority (Judge Colgan dissenting), UNAT dismissed the appeal on the basis that it was not receivable and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The staff member contested the Administration's failure to provide a rebuttal report with respect to two performance appraisals which, she alleged, meant that she did not obtain a long-service step and could not apply for the young professionals' program. In the absence of a timely requested management evaluation for any administrative decision pertaining to her eligibility for the young professionals' program exam, UNDT dismissed her application on grounds that it was not receivable.

Legal Principle(s)

Except in cases concerning enforcement of a settlement agreement, documents prepared for and oral statements made during any informal conflict resolution process or mediation are absolutely privileged and confidential and should never be disclosed to UNAT. The absence of a response to a staff member's request may constitute an implied administrative decision, however, the absence of a decision without direct legal consequences is not an implied decision subject to judicial review.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Fairweather

Entity

OHCHR

Case Number(s)

2019-1317

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Mar 2020

President Judge

Judge Neven

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Implied administrative decision

Due process

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Performance management

Performance evaluation

Applicable Law

Administrative Instructions

- ST/AI/2010/5
- ST/AI/2012/Rev.1

Information Circulars

- ST/IC/2008/45

UNAT RoP

- Article 15
- Article 18.1

UNAT Statute

- Article 8.3
- Article 2.1(a)

UNDT Statute

Related Judgments and Orders

UNDT/2019/134

2019-UNAT-942

2010-UNAT-030

2011-UNAT-177

2015-UNAT-566

2013-UNAT-304

2015-UNAT-562

2016-UNAT-621

2017-UNAT-786

2014-UNAT-404

2014-UNAT-460

2015-UNAT-509