

2020-UNAT-1072, Nadeau

UNAT Held or UNDT Pronouncements

UNAT held that UNDT did not exceed its jurisdiction by confirming that an appeal against the Order had no suspending effect and issuing a judgment on the merits while an appeal against the contested order was still pending with UNAT. UNAT held that UNDT did not err in declining to hold an additional case management discussion or to consider additional evidence as the Appellant failed to provide an adequate and convincing reason why his requests for further evidence or new case management discussion were not made earlier in the process as well as the relevancy of the evidence on the determination of the case. On the Appellant's claim that the Under-Secretary-General of the Department of Management (USG/DM) had no authority to take the contested decision, UNAT held that, while UNDT erred in law by applying ST/SGB/2019/2 which was not in effect at the relevant time, the legal framework in force at the time (ST/SGB/2015/1) did provide the authority for USG/DM to terminate appointments at the Appellant's level. UNAT held that UNDT did not err in deciding that the termination, based on unsatisfactory performance, was lawful and was not tainted by improper motive. UNAT held that the Appellant's allegation that UNDT's references to his counsel's previous failure to comply with UNDT orders and the Code of Conduct were discriminatory or indicative of bias were not corroborated by evidence. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to terminate his continuing appointment. By Order No. 184 (NY/2019), UNDT rejected the Applicant's requests for an oral hearing and for the production of a written document and extended deadlines for filing closing submissions. The Applicant then requested UNDT to suspend the execution of Order No. 184. In judgment No. UNDT/2020/013, UNDT rejected the Applicant's application and did not suspend the execution of the Order. UNAT dismissed the substantive application regarding the termination on the basis that the contested decision was lawful, holding that the decision-maker possessed the authority to terminate the continuing appointment; the termination of the Application's appointment had followed proper procedure, and the Applicant had failed to substantiate that the decision to terminate his continuing appointment was tainted by improper motives.

Legal Principle(s)

An interlocutory appeal is only receivable in cases when UNDT has clearly exceeded its jurisdiction or competence. An interlocutory appeal does not suspend proceedings at the UNDT.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Neve

Full judgment

[Full judgment](#)

Applicants/Appellants

Nadeau

Entity

OIOS

Case Number(s)

2020-1378

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Oct 2020

President Judge

Judge Neven

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Continuing appointment

Interlocutory or interim appeal / Appeal of UNDT order to UNAT

Execution of order pending appeal

Performance management

Termination (of appointment)

Applicable Law

Administrative Instructions

- ST/AI/2010/5

Secretary-General's bulletins

- ST/SGB/2019/2

Staff Regulations

- Regulation 9.3

UNAT Statute

- Article 2.1
- Article 7.5

UNDT RoP

- Article 18.1
- Article 18.3
- Article 18.5

UNDT Statute

- Article 11.3

Related Judgments and Orders

UNDT/2020/013

2014-UNAT-487

2015-UNAT-579

2015-UNAT-594
2018-UNAT-849
2018-UNAT-870
2019-UNAT-896
2019-UNAT-974
2020-UNAT-1058
2019-UNAT-975
2010-UNAT-005
2010-UNAT-008
2010-UNAT-011
2010-UNAT-062
2011-UNAT-160