

# 2020-UNAT-1073, Erik Kennes

## UNAT Held or UNDT Pronouncements

UNAT affirmed UNDT's position regarding the moment the Appellant knew or reasonably should have known of the content and finality of the decision and that it triggered the time limit to request management evaluation. UNAT further affirmed UNDT's position that the Appellant's request for management evaluation was time-barred. UNAT, however, noted that UNDT should have found the application not receivable *ratione materiae*, which is the case if there is no timely request for management evaluation, rather than *ratione temporis*. UNAT further noted that this error by UNDT did not adversely affect its correct conclusion that the application was not receivable. UNAT held that the decision of the Administration not to complete the disciplinary process and instead to resume it if the Appellant become a staff member in the future did not constitute an appealable administrative decision as it did not have a present and direct adverse impact on the terms and conditions of the Appellant's appointment. UNAT held that the Administration has no duty to proceed with a disciplinary measure once a staff member has left the Organisation, as its authority to complete a disciplinary process is predicated on the fact that a staff member has an ongoing employment relationship with the Organisation. On the decision to put a note in the Appellant's OSF, UNAT held that it was not an appealable decision in that it had no direct legal consequences affecting the terms and conditions of his appointment. UNAT dismissed hypothetical allegations of potential future consequences should the Appellant seek employment with the Organisation. UNAT held that there was no administrative decision giving rise to present and certain negative effects to the Appellant's status, but merely an informative and instructive note placed in his OSF, which was not justiciable. UNAT dismissed the appeal and affirmed the UNDT judgment.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to complete the disciplinary process against him and to place a note in his Official Status File (OSF). UNDT rejected his

application as not receivable ratione temporis.

## Legal Principle(s)

UNDT has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject of judicial review. An appealable administrative decision is a decision whereby its key characteristic is the capacity to produce direct legal consequences affecting a staff member's terms and conditions of appointment. The date of an administrative decision is based on objective elements that both parties can accurately determine. The Administration has no duty to proceed with a disciplinary measure once a staff member has left the Organisation, as its authority to complete a disciplinary process is predicated on the fact that a staff member has an ongoing employment relationship with the Organisation.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Erik Kennes

## Entity

MONUSCO

## Case Number(s)

2020-1374

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

30 Oct 2020

## President Judge

Judge Raikos

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Administrative decision

Disciplinary matters / misconduct

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Subject matter (ratione materiae)

## Applicable Law

Staff Rules

- Rule 11.2(a)
- Rule 11.2(c)

UNDT Statute

- Article 8.1

## Related Judgments and Orders

UNDT/2020/001

2019-UNAT-967

2017-UNAT-786

2015-UNAT-562

2010-UNAT-099

2014-UNAT-481

2018-UNAT-840

2019-UNAT-917

2020-UNAT-1004

2020-UNAT-1003

2017-UNAT-765

2018-UNAT-876