

# **2021-UNAT-1079, Reilly**

## **UNAT Held or UNDT Pronouncements**

UNAT agreed with the UNDT finding that it lacked jurisdiction in respect of the staff member's application to review the determination of the Second Alternate Chair. UNAT noted that the subject matter jurisdiction of UNDT is limited to the review of administrative decisions. The determinations of the Second Alternate Chair do not constitute administrative decisions, and as such, any application to review them before the UNDT is not receivable. UNAT highlighted that ST/SGB/2017/2/Rev.1 confers on the Ethics Office only the power to recommend, advise and refer, and Section 10.3 of ST/SGB/2017/2/ provides explicitly that the recommendations of the Ethics Office and the alternate Chair of the Ethics Panel do not constitute administrative decisions and are not subject to challenge under chapter XI of the Staff Rules. Since the Ethics Office is limited to making recommendations to the Administration, its acts or determinations are without direct legal consequences and are thus not administrative decisions subject to judicial review. Only actual retaliatory actions or decisions have direct legal consequences, not the recommendations of the Ethics Panel. The remedy available to staff members is to challenge the retaliatory action or decision and not the Ethics Office investigation. Second, UNAT found that the Administration acted reasonably in accordance with its duty of care in giving effect to the recommendations of the Second Alternate Chair.

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

A staff member submitted a request for protection against retaliation to the UN Ethics Office pursuant to ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits and investigations). She contended that she had engaged in a number of protected activities under ST/SGB/2005/21, and as a result, she had suffered workplace reprisals and that her managers created a hostile work environment. Of the seven reported instances in her complaint, the Ethics Office found only two qualified as protected activities, but neither of these two instances showed a prima facie case of retaliation against her.

To avoid a conflict of interest, the case was referred to the Alternate Chair of the Ethics Panel, who reached the same conclusion of no prima facie case of retaliation. The staff member then requested her complaint be referred to the Second Alternate Chair.; The Second Alternate Chair reached the same conclusion, but she recommended that the Administration engage the staff member through ad hoc mediation and in the interim that she be reassigned to a different unit.; The staff member filed an application with the UNDT seeking: (i) an order referring the matter to the Office of Internal Oversight Services (OIOS) for investigation and that she be afforded protection from retaliation, including transfer with her fixed-term appointment to a suitable alternative post; (ii) an order that the relevant elements of a press release (announcing that her claims had been found to be unsubstantiated) be publicly retracted; (iii) compensation for the breach of her contractual rights in the form of the delay in processing her request for protection from retaliation; and (iv) moral damages flowing from the manner in which her complaint has been handled, the delay and the failure to take protective measures, in the amount of 18 months' net base salary. Although not asking for specific relief in relation to the issue, in the body of the application, the staff member complained that the recommendations made by the Second Alternate Chair had not been implemented and that this inaction was reviewable in terms of Section 10.1 of ST/SGB/2017/2 on the grounds of unreasonableness.; The UNDT issued a judgment holding that the finding of no prima facie retaliation by the Second Alternate Chair, the alleged procedural flaws committed during such review, and the delays in the process as well as the recusal decision of the (first) Director of the Ethics Office were not administrative decisions and thus not receivable. It held further that the Administration had fulfilled its duties with respect to the recommendations of the Second Alternate Chair.

## Legal Principle(s)

The determinations of the Ethics Office are not administrative decisions and do not carry direct legal consequences. Any application to review Ethics Office determinations is not receivable. ST/SGB/2017/2/Rev.1 confers on the Ethics Office only the power to recommend, advise and refer. However, staff members have the right to challenge any retaliatory action or decision, but not the Ethics Office determinations themselves. Action or inaction following Ethics Office recommendations is reviewable in terms of Section 10.1 of ST/SGB/2017/2/Rev.1.

## Outcome

Appeal dismissed on merits

## Outcome Extra Text

The appeal is dismissed, and the UNDT judgment is affirmed.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Reilly

## Entity

OHCHR

## Case Number(s)

2020-1423

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

19 Mar 2021

## President Judge

Judge Murphy

# Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Ethics office

Receivability

Retaliation

Whistleblower

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2005/21
- ST/SGB/2005/22
- ST/SGB/2017/2/Rev.1

Staff Rules

- Chapter XI

UNAT Statute

- Article 2.1

UNDT RoP

- Article 18
- Article 27
- Article 28

UNDT Statute

## Related Judgments and Orders

UNDT/2020/097

2014-UNAT-457

2015-UNAT-544

2016-UNAT-673

2014-UNAT-481