

2021-UNAT-1130, Khank Van Nguyen

UNAT Held or UNDT Pronouncements

The staff member filed an appeal to UNAT arguing that she did not only challenge the withholding of her salary increment, but she also challenged the reasons behind the administrative decision. She claimed the JAB did not review whether there were improper motives behind the administrative decision. UNAT dismissed the appeal, finding that the claims relating to the salary increment were indisputably moot. She obtained the relief she had originally sought, and accordingly her appeal no longer presented an existing or live controversy. UNAT explained that any judicial examination of the reasons behind the administrative decision would not alter the fact that she received that which she had initially sought. Regarding the irreceivable claims, UNAT agreed that managerial review is a condition precedent to bring an appeal to the JAB, and that the latter only has jurisdiction to determine those decisions referred to managerial review.

Decision Contested or Judgment/Order Appealed

A staff member challenged the decision of the Administration to withhold her within-grade salary increment, after her supervisor had found her performance to fall below expectations. The staff member argued the administrative action was a disguised disciplinary measure that the Organization took without following the necessary procedures. In her statement of appeal to the Joint Appeal Board (JAB), the staff member alleged improper motives on the part of the supervisor and also made other allegations of harassment and discrimination. After the appeal was filed and following a conciliation process, the supervisor notified human resources to change the performance appraisal of the staff member to “successfully meets expectations” and also to grant her salary increment, retroactive to the time it was initially due. The appeal proceeded, nevertheless, as the staff member made additional demands for relief, including reprimand and censure of her supervisor and payment in moral damages. The JAB dismissed the appeal. First, the JAB found only the claim relating to the salary increment receivable as it was only that claim that was submitted for

management review. Given the salary increment was eventually granted, following the conciliation process, the JAB found that the issue was moot. The JAB also found the other claims brought by the staff member were not addressed through the proper channels prior to being brought to the JAB, and as such, they were not receivable. Accordingly, the JAB dismissed the appeal.

Legal Principle(s)

If under the regulatory framework, a salary increment may be withheld for performance reasons, such measure is not a de facto disciplinary sanction. If a staff member obtains the relief she had originally sought prior to appeal, the issue becomes moot and there is no longer an existing or live controversy for the Tribunal to adjudicate. Furthermore, a judicial review of the reasons behind the administrative decision would not alter the fact that the staff member received that which she had initially sought. Management review is a condition precedent to bring an appeal to the JAB, and the latter only has jurisdiction to determine those decisions referred to managerial review.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Appeal is dismissed, and the decision of the JAB is confirmed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Khank Van Nguyen

Entity

ISA

Case Number(s)

2020-1429

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Jun 2021

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Performance management

Performance evaluation

Applicable Law

ISA Staff Regulations and Rules

- Regulation 11.1

- Rule 3.5(a)
- Rule 10.1
- Rule 10.4
- Rule 11.2(a)

Laws of other entities (rules, regulations etc.)

- ISA ISBA/ST/AI/2017/3 (Performance Management and Appraisal System)