

# 2021-UNAT-1120, Jose Daniel Arango

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that the Secretary-General was correct to bide his time and to await the outcome on the merits before determining whether an appeal was necessary. UNAT held that the appeal of the Secretary-General was not time-barred. UNAT held that UNDT erred in concluding that Mr. Arango was a former staff member for the purposes of founding jurisdiction over the instant application: At the time of the contested decision not to select him Mr. Arango had been separated from service for more than two years, was no longer a staff member in the strict sense and was not asserting any right acquired in terms of his previous contract of employment. UNAT noted that he challenged (as an external candidate) a barrier to his reemployment which might have unfairly prevented his future appointment by the Organisation. UNAT held that there was no nexus between Mr. Arango's former employment, the rights acquired under that contract and the contested decision. UNAT held that Mr. Arango did not have standing and that the UNDT lacked jurisdiction *ratione personae* to hear and determine his appeal. UNAT upheld the appeal and reversed and set aside Judgment Nos. UNDT/2020/134 and UNDT/2020/004, the two judgments UNDT had issued on the matter (on receivability and merits respectively).

## Decision Contested or Judgment/Order Appealed

Mr. Arango contested his non-selection for a temporary appointment after having been recommended for the position on grounds that he was not medically cleared due to a medical record that had been placed in his Official Status File (OSF).

## Legal Principle(s)

Interlocutory orders are not appealable. An order is not an interlocutory order if it is such as to have a final and definitive effect on the main suit or irreparably

anticipates or precludes some relief sought by either party. A mistaken assumption of jurisdiction by a tribunal does not preclude dismissal on the merits. A mistaken refusal to accept or assume jurisdiction is final, definitive and immediately appealable. Before a person may be regarded as a former staff member in terms of Article 3 there must be a sufficient nexus between the former employment and the contested decision. A sufficient nexus exists when a decision has bearing on an applicant's former status as a staff member, specifically when it affects his or her previous contractual rights. UNDT will ordinarily not have authority to receive applications by job applicants alleging illegality, unfairness or discrimination in the recruitment process. A quasi-contract may well confer the status of staff member on a job applicant; however, a quasi-contract is only formed when an offer of employment is made and the conditions specified in the order are fulfilled.

## Outcome

Appeal granted

## Outcome Extra Text

N/A

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Jose Daniel Arango

## Entity

UNHCR

## Case Number(s)

2020-1465

## 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)

Personal (ratione personae)

## Applicable Law

UNAT RoP

- Article 7.2
- Article 7.1(a)

UNAT Statute

- Article 7.1(c)
- Article 9.1(b)

UNDT Statute

- Article 10.2
- Article 3.1

## Related Judgments and Orders

2010-UNAT-005

2011-UNAT-154

2017-UNAT-727

2020-UNAT-1000

2019-UNAT-901