2021-UNAT-1150, Andrea Barbato

UNAT Held or UNDT Pronouncements

UNAT remanded the case to the SAB, directing that the appeal be reconsidered by a neutral first instance process that issues a final decision. Citing Dispert & Hoe, Spinardi, Sheffer, Fogarty, and Fogarty et al., the Tribunal explained that the SAB must satisfy the requirement under Article 2 (10) of the UNAT Statute, which requires that the first instance process produce a final decision on the appeal and not a recommendation to the Secretary-General, as was the case under the then IMO Staff Regulations and Staff Rules (SRSR). The Tribunal also called into question whether the IMO Secretary-General could unilaterally amend the Staff Rules, as he did, to create a neutral first instance process that issues final decisions. In any case, the interim action of the Secretary-General was after the SAB had issued its "decision". Therefore, in the Tribunal's view, the SAB Report remained an advisory opinion or recommendation, and also per the then SRSR, it was still the Secretary-General making the final decisions. This did not meet the jurisdictional requirements under Article 2(10) of the UNAT Statute.

Decision Contested or Judgment/Order Appealed

A former staff member of the IMO contested the decision of the Administration to close a case that was initiated following a complaint he had made against his then Second Reporting Officer (SRO). The Organization concluded there was insufficient evidence to substantiate the allegations of the staff member and decided to close the case. The staff member appealed the decision with the Staff Appeals Board (SAB), which issued a "decision" partially granting the appeal. The SAB found an apparent conflict interest on the part of a third-party company which conducted the investigation, and as such, it "decided" that the Investigation Report could not be used as a basis to close the case against the SRO. The staff member appealed to UNAT arguing inter alia that the SAB did not constitute a neutral first instance process. The IMO cross-appealed asking UNAT to reverse the SAB "Decision" finding that the investigators had a conflict of interest.

Legal Principle(s)

UNAT shall have jurisdiction to hear and pass judgment on appeals from staff members of specialized agencies that enter into an agreement with the United Nations accepting the jurisdiction of UNAT, provided the agencies utilize a neutral first instance process that issues a final decision providing reasons, fact and law - not a recommendation to the Administrator.

Outcome

Case remanded

Outcome Extra Text

Case remanded to the SAB, directing that the appeal be reconsidered by a neutral first instance process that issues a final decision.

Full judgment

Full judgment

Applicants/Appellants

Andrea Barbato

Entity

IMO

Case Number(s)

2020-1492

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Oct 2021

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Due process
Access to justice
Jurisdiction / receivability (UNAT)
Appeal

Applicable Law

IMO Staff Regulations and Rules

- Rule 111.1(a)

UNAT Statute

- Article 10.5(a)
- Article 2.10

Related Judgments and Orders

2019-UNAT-949
2019-UNAT-958
2019-UNAT-957
2021-UNAT-1117
2021-UNAT-1148