

2021-UNAT-1170, Matthew Lee

UNAT Held or UNDT Pronouncements

This case was presided by Judge Halfeld, and Judge Murphy drafted the majority opinion. The Majority (Halfeld, Murphy, Raikos and Knierim) dismissed the appeal and held that the appeal was not receivable. Without deciding on the issue whether the UNDT has an inherent right to hold a non-party in contempt, the Majority found that the appeal did not meet the requirements of the UNAT Statute. The Majority explained that it had jurisdiction *ratione materiae* to hear and pass judgment on an appeal pursuant to Article 2(1) of the Statute in which it is asserted that the UNDT has: (a) exceeded its jurisdiction or competence; (b) failed to exercise jurisdiction vested in it; (c) erred on a question of law; (d) committed an error in procedure, such as to affect the decision of the case; or (e) erred on a question of fact, resulting in a manifestly unreasonable decision. This jurisdiction *ratione materiae*, however, is subject to the Tribunal's jurisdiction *ratione personae*, which is defined under Article 7(1)(b) of the Statute. The provision states that an appeal is receivable if the appellant is eligible to file the appeal pursuant to Article 2(2) of the Statute, which in turn provides that an appeal may be filed "by either party (i.e., the applicant, a person making claims in the name of an incapacitated or deceased applicant, or the respondent) to a judgment of the Dispute Tribunal". The journalist in this case was neither a staff member nor a person making a claim on behalf of a staff member, and as such, the Tribunal did not have jurisdiction *ratione personae* to hear the appeal. The Tribunal reasoned that as a special administrative tribunal, the purpose of the internal justice system was designed solely for the benefit of staff members who have a contractual or legal relationship with the Organization. The Majority also noted that the journalist did not have standing to contest the order granting anonymity to the appellant. As such, it dismissed the appeal, finding it irreceivable. Judge Colgan filed a dissenting opinion, joined by Judges Sandhu and Neven. One of the reasons advanced by the Minority to receive the appeal was that by issuing the Contempt Order against the journalist, that action of the UNDT in reality made the journalist a "party" in a contempt proceeding.

Decision Contested or Judgment/Order Appealed

A member of the press who was neither a staff member nor acting on behalf of a staff member filed an appeal against two orders of the UNDT. In particular, the journalist took issue with the order which found him in contempt and prohibited him from attending public hearings until he had purged the contempt by extinguishing all materials from a hearing that he had published online, which was in contravention of a Judge's explicit orders against recordings. The second order pertained to a case management order that granted anonymity to the appellant. In issuing the Contempt Order, UNDT explained that it had an inherent right to hold a party or an attendee in the public gallery in contempt for refusing to follow the tribunal's orders not to make any recordings. Even if the journalist did not take the photos himself, the tribunal reasoned it should have been clear to him that illegal recordings of the hearing cannot be reproduced and published online.

Legal Principle(s)

Pursuant to Article 7(1)(b) of the UNAT Statute, an appeal is receivable if the appellant is eligible to file such appeal as defined under Article 2(2) of the UNAT Statute, i.e. the appellant must be either party (the applicant, a person making claims in the name of an incapacitated or deceased applicant, or the respondent) to a judgment of the Dispute Tribunal. A member of the press against whom a contempt order has been issued and who is not a party to a Judgment is not eligible to file an appeal.

Outcome

Appeal dismissed on receivability

Outcome Extra Text

Appeal dismissed on receivability. UNAT does not have jurisdiction *ratione personae*.

Full judgment

[Full judgment](#)

Applicants/Appellants

Matthew Lee

Entity

N/A

Case Number(s)

2020-1502

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Oct 2021

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT

Contempt

Jurisdiction / receivability (UNAT)

Appeal

Personal (ratione personae)

Subject matter (ratione materiae)

Procedure (first instance and UNAT)

Confidentiality

Applicable Law

UNAT Statute

- Article 2.1
- Article 2.2
- Article 7.1

UNDT RoP

- Article 19

UNDT Statute

- Article 3
- Article 3.1
- Article 9.3