

# UNDT/2022/031, Ross

## UNAT Held or UNDT Pronouncements

At the time of the contested decision to not investigate his complaint of harassment and abuse of authority into his separation from service and alleged blacklisting, the Applicant had been separated from service for more than four and a half years and was no longer a staff member in the strict sense. Therefore, for the application to be receivable, the contested decision must have a bearing on the Applicant's status as a former staff member in the sense that it affects his previous contractual rights. In determining whether the contested decision affects the Applicant's previous contractual rights or not, the Tribunal will assess whether any of the matters raised in his complaint can be considered as a breach of his rights as a former staff member under applicable Staff Rules and Regulations. In this respect, the Tribunal notes that while it does not prevent a former staff member from filing a formal complaint, UNHCR's Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority (UNHCR/HCP/2014/4) essentially seeks to protect the right of UNHCR staff members and its affiliate workforce not to be harassed at work and address prohibited conduct that occurs at workplace among staff members. The Applicant's separation from service arising from a natural expiry of his fixed-term contract could not constitute any prohibited conduct under UNHCR/HCP/2014/4. The incident of the "consult PER/EX" annotation occurred over half a year after the Applicant's separation from service. As such, the alleged harassment or abuse of authority in relation to this incident falls out of the scope of UNHCR/HCP/2014/4. Accordingly, any actions or inactions taken on the complaint filed by the Applicant in relation to his separation from service and the "consult PER/EX" annotation cannot be considered to have negatively impacted his contractual rights acquired during his previous employment. Indeed, the Applicant was not asserting any right acquired in terms of his previous contract of employment. Consequently, the contested decision had no bearing on his former employment in the sense that it affected any contractual rights he had acquired under it. Considering the foregoing, the Tribunal finds that there is no sufficient nexus between the Applicant's former employment and the contested decision to allow it to entertain the case and, therefore, the

application is not receivable *ratione personae*. Having found that the contested decision does not adversely impact the Applicant's contractual rights acquired during his previous employment, the Tribunal further concludes that the application is also not receivable *ratione materiae*.

## Decision Contested or Judgment/Order Appealed

The Applicant contests the decision “not to provide [him] with an effective remedy to a harassment, abuse of authority and retaliation complaint”.

## Legal Principle(s)

The Tribunal has “the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”, and “may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed” (see, e.g., Fasanella 2017-UNAT-765, para. 20; Cardwell 2018-UNAT-876, para. 23). Art. 3.1(b) of the Tribunal's Statute confers upon it a limited jurisdiction over applications filed by a former staff member. Indeed, a former staff member has standing to contest an administrative decision before the Tribunal only if there is “a sufficient nexus between the former employment and the contested decision” (see Arango 2021-UNAT-1120, para. 28; see also Shkurtaj 2011-UNAT-148, para. 29) and that “[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” (see, e.g., Arango, para. 28; Khan 2017-UNAT-727, para. 28). Pursuant to art. 2.1 of the Tribunal's Statute, the key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms and conditions of appointment; the administrative decision must have a direct impact on the terms of appointment or contract of employment of the individual staff member (see, e.g., Lee 2014-UNAT-481, para. 49).

## Outcome

Dismissed as not receivable

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Ross

## Entity

UNHCR

## Case Number(s)

UNDT/GVA/2021/17

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

29 Mar 2022

## Duty Judge

Judge Bravo

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Personal (ratione personae)

Subject matter (ratione materiae)

## Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNHCR Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority

UNDT RoP

- Article 16.1
- Article 16.2

UNDT Statute

- Article 2.1
- Article 3.1(b)

## Related Judgments and Orders

2016-UNAT-686

2020-UNAT-1000

2017-UNAT-765

2018-UNAT-876

2021-UNAT-1120

2011-UNAT-148

2014-UNAT-481

UNDT/2019/126

2019-UNAT-900

2015-UNAT-506

2017-UNAT-727