

2022-UNAT-1215, Secretary-General

UNAT Held or UNDT Pronouncements

UNAT reversed the UNDT Judgment finding that the Contested Decision was never implemented. Noting that the issue of mootness was raised for the first time on appeal, UNAT explained (paras. 32-33): “It is ordinarily impermissible to raise a new point on appeal that is not covered by the pleadings or was not canvassed in the evidence before the UNDT, unless the point is jurisdictional in nature. A question of jurisdiction may always be advanced on appeal for the first time. The reason for the jurisdictional exception is obvious. The principle of legality prohibits the UNDT from assuming a competence that it does not have. The UNDT cannot exceed its competence and pass judgment where it has no jurisdiction to do so. ... A finding of non-justiciability is essentially a finding that the tribunal lacks jurisdiction (the authority or competence) to decide the matter.” UNAT explained because the staff member continued to be employed for another year (after 30 June 2018), the Contested Decision to terminate her FTA prematurely (originally set 6 March 2019) never materialized. There was no longer a live controversy requiring decision by the UNDT. The Contested Decision was rendered moot by the decision on 18 May 2018 to extend the staff member’s sick leave beyond 30 June 2018, which impliedly rescinded the Contested Decision. Consequently, the UNDT should have found that the Contested Decision to terminate the staff member's FTA prematurely, lawful or not, was never implemented; and that her appointment was not terminated due to an unlawful decision to terminate FTA prematurely but after the expiry of her FTA through the effluxion of time followed by a period of extended sick leave. Because the Contested Decision was never implemented, the UNDT could not rescind that decision, and the application should have been dismissed as moot. UNAT granted the Secretary-General's appeal and reversed the UNDT Judgment.

Decision Contested or Judgment/Order Appealed

A staff member challenged the decision of the Administration to terminate her Fixed Term Appointment (FTA) as of 30 June 2018, following the abolition of her post as

part of a restructuring exercise. Her FTA was set to expire on 6 March 2019. The UNDT found her termination unlawful on account that the Administration had failed to follow the proper procedures during the restructuring exercise. The tribunal ordered rescission of the Contested Decision and set in lieu compensation at two years' net base salary. In addition, the UNDT also granted the staff member an award of USD 5,000 in moral damages. The Secretary-General on appeal for the first time raises a special plea of mootness. As noted above, the date of implementation of the Contested Decision was 30 June 2018, and the FTA expiration date was 6 March 2019. On 18 May 2018, however, Human Resources informed the staff member that because she was on sick leave at the time she was notified of the Contested Decision, her appointment would be extended until she was deemed fit to come back to work or until the exhaustion of her sick leave entitlements. She stayed in the employ of the Organization until the exhaustion of her sick leave, that is until 22 June 2019. The Contested Decision to terminate her employment on 30 June 2018 was therefore never implemented.

Legal Principle(s)

The issue of mootness can be raised for the first time on appeal. If there is no longer a live controversy, the tribunal lacks jurisdiction to decide on the matter. If a contested decision is not implemented but is rather superseded by another decision, implicit or explicit, a staff member cannot challenge the legality of the initial decision, as it never materialized. Such a challenge would be moot.

Outcome

Appeal granted

Outcome Extra Text

The Secretary-General's appeal is granted, and Judgment No. UNDT/2020/219 is reversed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Secretary-General

Entity

OCHA

Case Number(s)

2021-1529

Tribunal

UNAT

Registry

New York

Date of Judgement

18 Mar 2022

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Termination

Implied administrative decision

Fixed-term appointment

Subject matter (*ratione materiae*)
Abolition of position
Abolition of post
Administrative decision
Appointment (type)
Jurisdiction / receivability (UNDT or first instance)
Termination (of appointment)

Applicable Law

UNDT Statute

- Article 2
- Article 8

Related Judgments and Orders

2015-UNAT-547
2018-UNAT-874