

2022-UNAT-1269, Ashok Kumar Nigam

UNAT Held or UNDT Pronouncements

UNAT held that the UNDT Judgment was inconsistent in finding parts of the application irreceivable but not addressing what was to happen to the balance of the claim which was receivable. UNAT held that to the extent that the UNDT held that some of the Appellant's claims were not receivable as they were not filed within time after management evaluation, UNDT did not err in fact or law and UNAT upheld such conclusions. UNAT held that there were errors by UNDT in respect of which the appeal had to be allowed, which were: (1) the UNDT decision not to receive the application in respect of claims that were made after management evaluation and within the time limit; and (2) the UNDT decision not to receive the application because of the Appellant's use of the word "negligence" in relation to the Secretary-General's actions or omissions. On the error relating to negligence, UNAT held that the preferable analysis of the issue was that there was no independent cause of action in the tort of negligence available to staff members in the Appellant's circumstances and such a claim was thereby irreceivable, with the proper remedy being to sever that impugned cause of action but to receive the balance of the application which was within jurisdiction. UNAT allowed the appeal in part, set aside the UNDT's finding of irreceivability and remanded the matter to the UNDT for decision on its merits based on and limited to those matters referred to in the Appellant's second management evaluation request.

Decision Contested or Judgment/Order Appealed

The Appellant made a number of claims arising out of an investigation into alleged misconduct against him. Specifically, he complained that his counter-complaints against the staff members who filed a complaint against him had not been adequately investigated. UNDT dismissed the claims as not receivable.

Legal Principle(s)

UNDT is constrained in its jurisdiction and powers by its Statute which does not allow causes of action founded on the tort of negligence; that is not to say that negligence can never be the basis of a claim brought by a staff member, however, negligence is not a stand-alone statutory cause of action.

Outcome

Appeal granted in part; Case remanded

Full judgment

[Full judgment](#)

Applicants/Appellants

Ashok Kumar Nigam

Entity

UN Secretariat

Case Number(s)

2021-1607

Tribunal

UNAT

Registry

New York

Date of Judgement

24 Aug 2022

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Subject matter (ratione materiae)

Temporal (ratione temporis)

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

UNDT Statute

- Article 2