

# **UNDT/2023/007, Garay**

## UNAT Held or UNDT Pronouncements

The Tribunal found that the Applicant's challenge of the decision to place a note on the Applicant's official status file and UNICEF's decision to not make a determination on whether or not the Applicant has committed misconduct is not receivable. The decisions have no direct consequences on the terms and conditions of the Applicant's former appointment.

## Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member with the United Nations Children's Fund ("UNICEF") filed an application in which she contests the "[d]ecision to place a note on Applicant's official status file which states that "[i]f [she] were to rejoin UNICEF as a staff member, a disciplinary process would be initiated".

## Legal Principle(s)

The Appeals Tribunal has clarified that a contested decision must have a "'direct' impact and not a future injury" in order to amount to a challengeable administrative decision. The consequences that the Applicant alleges flow from the placement of the note are entirely hypothetical. In particular, the note does not state that the Applicant should not be considered for future employment opportunities at the United Nations. The Appeals Tribunal has held that hypothetical allegations do not amount to direct legal consequences. The issue is whether a former staff member is entitled to the completion of a disciplinary process when an investigation is pending at the time of a staff member's separation. The Applicant does not identify any direct legal consequences affecting the terms and conditions of her former appointment because of UNICEF's decision to not make a final determination in the investigation. In the absence of any such consequences, there was no contestable administrative decision.

## Outcome

Dismissed as not receivable

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Garay

## Entity

UNICEF

## Case Number(s)

UNDT/NY/2022/008

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

31 Jan 2023

## Duty Judge

Judge Adda

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

## Applicable Law

Administrative Instructions

- ST/AI/2016/1

UNAT Statute

- Article 2.1(a)

UNDT Statute

- Article 8

## Related Judgments and Orders

2017-UNAT-765

2018-UNAT-876

2018-UNAT-840

UNDT/2020/001

2014-UNAT-481