

2023-UNAT-1312, RoseMarie Heftberger

UNAT Held or UNDT Pronouncements

UNAT held that the Appellant's consent to foregoing an in-person hearing was not required, pursuant to Rule 22 of the ICAO Appeals Board Rules and ICAO Staff Rule 111.1(18). The Appellant was advised by the ICAO Appeals Board of its intention to proceed with a summary decision and she participated in this process by making submissions without objecting to it. Therefore, it was not an error of law for the Appeals Board of ICAO to have considered and decided the summary judgment without an in-person hearing but otherwise in compliance with due process requirements of participation therein by the parties.

UNAT held that the Appeals Board of ICAO failed to comply with the mandatory requirement to advise the Appellant of her right to appeal to UNAT, pursuant to ICAO Staff Rule 111.1(2), but that it made no difference to the outcome of the case as the Appellant brought her appeal to UNAT on time.

UNAT held that the Appellant's failure to seek a review of the decision to which she objected within the period of 30 days after she received notice of that decision, coupled with her subsequent failure to seek from the ICAO Secretary General a waiver or suspension of that time limit on grounds of extraordinary circumstances, caused her appeal to the ICAO Appeals Board to be not receivable by operation of law, pursuant to ICAO Staff Rule 111.1 (5) to (8).

Decision Contested or Judgment/Order Appealed

The Appellant, a staff member of ICAO, contested her non-appointment to the position of Acting Chief of the ICAO's Safety and Air Navigation Oversight Audit Section. In its Decision No. 2015-003, the Appeals Board of ICAO concluded that the Appellant had been notified of the Acting Chief appointment on 27 June 2014 at the

latest and that the 30-day period within which to seek administrative review thereof ran from that date so that her request made on 1 November 2014 was out of time. Therefore, the Appeals Board of ICAO dismissed her application as not receivable *ratione materiae*.

Legal Principle(s)

The usual procedural requirement to obtain the consent of parties if a case is to be decided without a hearing pursuant to ICAO Staff Rule 111.1(18) is subject to the ICAO Appeals Board Rules allowing it to determine applications for summary judgment in this manner. Rule 22 of the ICAO Appeals Board Rules creates this exception in the case of summary decision when there is no dispute as to the material facts.

A summary judgment is permitted in cases including where, irrespective of the merits, an application or appeal cannot succeed. The receivability of the application or appeal is one example of the appropriate use of the summary judgment procedure. The party facing the draconian finality of a summary judgment must be informed of the possibility and permitted to make submissions on this outcome.

Pursuant to ICAO Staff Rule 111.1(5) and (6), the first step to challenge an administrative decision must be taken by the staff member within 30 days of receipt of that decision. A staff member may request for this time limit to be waived or suspended under exceptional circumstances per ICAO Staff Rule 111.1(8).

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

RoseMarie Heftberger

Entity

International Civil Aviation Organization

Case Number(s)

2022-1685

Tribunal

UNAT

Registry

New York

Date of Judgement

24 Mar 2023

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Right to a hearing

Right to appeal

Time limit

Selection decision

Jurisdiction / receivability (UNAT)

Procedure (first instance and UNAT)

Due process

Management Evaluation

Staff selection (non-selection/non-promotion)

Jurisdiction / receivability (UNDT or first instance)

Procedure (first instance and UNAT)

Applicable Law

ICAO Staff Rules

- Rule 111.1.(8)
- Rule 111.1(2)
- Rule 111.1(5)
- Rule 111.1(6)

Related Judgments and Orders

2020-UNAT-1012