

2023-UNAT-1314, Nancy Mugo

UNAT Held or UNDT Pronouncements

UNAT held that the Administration's decision to suspend the consideration of initiating a disciplinary process and instead resume it should the Appellant become reemployed by the Organization in the future, did not constitute an appealable administrative decision for the purpose of Article 2(1)(a) of the UNDT Statute, as it did not produce a present and direct adverse impact on Ms. Mugo's terms or conditions of appointment.

UNAT held that all the Administration did was inquire if the Appellant was prepared to cooperate in a disciplinary process. Therefore, as no written allegations were ever issued against her, UNAT concluded that the disciplinary process had never been initiated and the Appellant had no right to force the Administration to initiate a disciplinary process against her.

UNAT further found that the Appellant was not deprived of her right to raise a proper defense, including regarding the alleged violation of her due process rights, should she become a staff member again and should the Administration resume the disciplinary process against her.

In terms of the decision to place a note in her Official Status File, UNAT held that the note was merely informative and instructive in nature and did not involve a certain and present adverse impact on the Appellant's status as a former staff member.

Decision Contested or Judgment/Order Appealed

The Appellant, a retired staff member with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), contested the decisions of the Administration to suspend the consideration of her disciplinary process until such time when she returned to the employment of the Organization following her retirement and to place a note in her Official Status File.

In its Judgment No. UNDT/2021/139, the UNDT concluded that the decisions were not appealable administrative decisions pursuant to Article 2(1)(a) of the UNDT Statute and therefore rejected the Appellant's application as not receivable *ratione materiae*.

Legal Principle(s)

To be appealable, a decision must produce direct legal consequences affecting the staff member's terms or conditions of appointment. The Administration's decision not to complete a disciplinary process against a staff member and instead resume it should the staff member become reemployed by the Organization in the future does not constitute an appealable administrative decision under Article 2(1)(a) of the UNDT Statute.

The Administration has no duty to proceed with, and lacks capacity to conduct, a disciplinary measure once a staff member has left the Organization, as its authority to complete a disciplinary process is predicated on the fact that a staff member has an ongoing employment relationship with the Organization.

In accordance with Section 8.2(a) of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process), a disciplinary process is initiated with the issuance of written allegations of misconduct to the staff member.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nancy Mugo

Entity

MONUSCO

Case Number(s)

2022-1654

Tribunal

UNAT

Registry

New York

Date of Judgement

3 Apr 2023

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Definition

Failure to report misconduct

Due process

Subject matter (ratione materiae)

Administrative decision

Disciplinary matters / misconduct

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Administrative Instructions

- ST/AI/2017/1

UNAT Statute

- Article 2.1(a)

UNDT Statute

Related Judgments and Orders

UNDT/2021/139

2020-UNAT-1073

2017-UNAT-786

2015-UNAT-562

2010-UNAT-099