

2023-UNAT-1336, Felix Ross

UNAT Held or UNDT Pronouncements

The UNAT dismissed the appeal. The UNAT found that the UNDT erred in finding that the application was not receivable *ratione personae* and *ratione materiae*. The UNAT held that the refusal to investigate his complaint constituted an appealable administrative decision and the application was thus receivable *ratione materiae*. Furthermore, given that in this case the purported abuse was alleged to have been the improper rationale for the separation from service of Mr. Ross, as a former staff member, it was sufficiently connected to his employment to confer jurisdiction *ratione personae*. Turning thus to the merits of the case, the UNAT found that it was entirely rational and justifiable for the Inspector General's Office (IGO) to decline to investigate Mr. Ross' complaint given prior Appeals Tribunal pronouncements that there was no illegality or ill-intent in his separation from service. Accordingly, the UNAT held that the contested decision was lawful and reasonable.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Mr. Ross contested the decision not to provide him with an effective remedy to a harassment, abuse of authority and retaliation complaint (refusal to investigate his complaint). By Judgment No. UNDT/2022/031, the UNDT dismissed the application on grounds that it was not receivable *ratione personae* because none of the matters raised in the complaint could be construed as a breach of Mr. Ross' rights as a former staff member, and there was insufficient nexus between his former employment and the impugned decision. It also held that the application was not receivable *ratione materiae* because the decision did not have a direct impact on Mr. Ross' terms of appointment or contract of employment and thus did not constitute an administrative decision. Mr. Ross appealed.

Legal Principle(s)

In terms of Article 2 of the Statute of the UNDT, the UNDT is competent, and thus has jurisdiction, to hear and pass judgment on an application appealing an administrative decision that is alleged to be in non-compliance with the terms of appointment or contract of employment. An administrative decision is a decision which adversely affects the rights of a staff member and which has a direct, external, legal effect. Paragraph 4.6 of UNHCR/HCP/2014/4 confers a right upon staff members, specifically including former staff members, to file with the Inspector General's Office (IGO) a formal complaint alleging discrimination, harassment and abuse of power. That right, and the efficacy of the Policy, would be meaningless if it did not include the right or expectation to a proper and reasonable consideration of the complaint for the purpose of determining whether to produce an investigation report for furtherance to the Director, DHRM. It is clear from the language of Paragraph 4.6.2.1 of the Policy that the IGO has a discretion to decide whether to investigate the alleged prohibited conduct on the basis of the information at its disposal. It is required to exercise that discretion legally and rationally. There must be a rational basis for its decision to investigate and report to the Director, DHRM, or, on the contrary, to refuse to investigate further as happened in this case. It is hard to imagine in general how a decision not to investigate an allegation of illegal retaliation against a staff member, in the form of an alleged improper termination of employment, would not be sufficiently connected to or adversely affect his or her contract of employment. While the decision not to investigate may not deprive the staff member of any specific employment rights, especially if a fixed-term contract has expired through the effluxion of time, it nonetheless would determine adversely the allegation of abuse of authority – vicariously a breach of contract.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Felix Ross

Entity

UNHCR

Case Number(s)

2022-1697

Tribunal

UNAT

Registry

New York

Date of Judgement

2 May 2023

President Judge

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNAT)

Subject matter (ratione materiae)

Personal (ratione personae)

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNHCR Policy on Discrimination, Harassment, Sexual Harassment and Abuse of Authority

Laws of other entities (rules, regulations etc.)

- UNHCR/HCP/2014/4

UNDT Statute

- Article 2

Related Judgments and Orders

2020-UNAT-1000

UNDT/2022/031