

UNDT/2023/029, Fernando Salon

UNAT Held or UNDT Pronouncements

The Applicant claims that several events of prohibited conduct occurred between 2018 and 2022 affecting him. However, he did not follow the procedural path under Bulletins ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) and ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) for the handling of formal reports of prohibited conduct and the Dispute Tribunal does not have jurisdiction to conduct an investigation into such allegations.

There is no evidence that the Applicant ever filed a complaint of harassment and abuse of authority against his supervisors in the framework of ST/SGB/2008/5 or ST/SGB/2019/8. He asserts that the “administrative decisions were implicit as per the nature of harassment and abuse of authority” but failed to demonstrate that he pursued the internal remedies set out in the Bulletins.

Furthermore, the Applicant failed to request management evaluation of the alleged contested administrative decisions as required by staff rule 11.2(c).

Under such circumstances, the Tribunal found that the application was not receivable *ratione materiae*.

Decision Contested or Judgment/Order Appealed

The Applicant contests the “long-term harassment, abuse of authority, humiliation, and retaliation suffered during the last four years of [his] career”.

Legal Principle(s)

The Tribunal does not have jurisdiction to hear and determine all matters in respect of which a staff member may feel aggrieved. The Tribunal must ensure that there is an administrative decision that is alleged to be in non-compliance with the staff member's terms of appointment or his or her contract of employment, as provided for in art. 2.1(a) of the Tribunal's Statute. Such decision must be unilaterally taken by the Administration, be directed to the staff member, and have direct legal consequences for the staff member (Lloret Alcaniz et al. 2018-UNAT-840; Adnan-Tolon UNDT/2019/056)

Before a staff member may file a harassment and abuse of authority claim with the Dispute Tribunal, he or she must make efforts to pursue internal remedies set out in the Bulletin which provides for an informal and formal process for addressing these allegations (Adnan-Tolon 2019-UNAT-970).

If a staff member has been subjected to acts of harassment and abuse of authority over several years, there is "a contractual entitlement to request that his allegations are addressed. That entitlement, and the procedural path he is obliged to take to bring his complaint to his employer, is set out in the Secretary-General's Bulletin ST/SGB/2008/5" (Luvai 2014-UNAT-417).

The Tribunal may only review decisions that have been the subject of a timely request for management evaluation (Khan 2022-UNAT-1284).

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Fernando Salon

Entity

OIOS

Case Number(s)

UNDT/NY/2022/035

Tribunal

UNDT

Registry

New York

Date of Judgement

18 May 2023

Duty Judge

Judge Hunter Jr.

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5
- ST/SGB/2019/8

Staff Rules

- Rule 11.2(c)

UNDT RoP

- Article 9

UNAT Statute

- Article 2.1(a)

UNDT Statute

Related Judgments and Orders

2014-UNAT-406

2013-UNAT-313

UNDT/2018/081

UNDT/2020/074

UNDT/2021/003

2018-UNAT-840

UNDT/2019/056

2014-UNAT-417

2022-UNAT-1284