2023-UNAT-1381, AAQ

UNAT Held or UNDT Pronouncements

The UNAT observed that neither party had raised whether AAQ's application was receivable before the UNDT. The UNAT nonetheless held that because this was a jurisdictional question, it was obliged to raise the issue itself. The UNAT noted that pursuant to Article 2(1)(a) of the UNDT Statute, the staff member was obliged to identify an administrative decision that was alleged to be in non-compliance with the terms of appointment or contract of employment. Further, pursuant to established case law, the administrative decision must have both a direct and adverse effect on the employment of the staff member. The effect must be an actual past, as opposed to a potential future, effect.

The UNAT accepted that there was an administrative decision refusing AAQ's request to have their status recognized as female in Umoja, but found this was insufficient. AAQ argued that the Administration's refusal to recognize their gender identity as female could impact their prospects in selection exercises. However, this scenario was a hypothetical and future possibility. The UNAT held that it could not presume direct negative legal consequences from a selection process that has not occurred. AAQ had also not alleged any actual specific benefit or entitlement that was negatively impacted by the fact that AAQ was not recognized as female.

The UNAT concluded that the UNDT was without jurisdiction to decide the case on the merits because AAQ's application was unreceivable.

AAQ's appeal was granted but only to the extent of setting aside the UNDT's judgment for absence of jurisdiction. The UNDT judgment was reversed.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2022/129, the Dispute Tribunal dismissed AAQ's application in which AAQ challenged the Administration's refusal to change their gender to

female in Umoja, based on AAQ’s preferred gender identity, although AAQ was a biological male.

AAQ appealed.

Legal Principle(s)

Appeals Tribunal jurisprudence requires that an administrative decision must have a direct impact and not a future injury to the staff member's terms and conditions of employment.

Potential future and potential adverse consequences of an administrative decision are an insufficient basis for UNDT jurisdiction.

The Appeals Tribunal must consider the jurisdictional issue of the receivability of an application before the UNDT on its own motion, even if the parties have not raised it.

Outcome

Appeal granted

Outcome Extra Text

Appeal granted only to the extent necessary to set aside the UNDT judgment for absence of jurisdiction. UNDT judgment reversed.

Full judgment

Full judgment

Applicants/Appellants

AAQ

Entity

UN Secretariat

Case Number(s)

2023-1783

Tribunal

UNAT

Registry

New York

Date of Judgement

9 Nov 2023

President Judge

Judge Colgan
Judge Sandhu
Judge Savage

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision
Definition
Jurisdiction / receivability (UNDT or first instance)
Subject matter (ratione materiae)

Applicable Law

Secretary-Generals Bulletins

Secretary-General's bulletins

- ST/SGB/2004/13/Rev.1

UNDT Statute
UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

2016-UNAT-689
2010-UNAT-058
2014-UNAT-481
2020-UNAT-1073
2023-UNAT-1314
2020-UNAT-1003
2020-UNAT-987