

2023-UNAT-1391, AAP

UNAT Held or UNDT Pronouncements

The UNAT held that the decision to cancel the appointment process and initiate a new process was one which fell squarely within the discretionary authority of the Administration. Given that a new appointment process had been embarked upon, there was no longer any administrative decision alleged to be in non-compliance with AAP's terms of appointment or contract of employment. Any dispute concerned with the initial appointment process was moot in the sense that there was no live issue in dispute which required determination by the UNDT. The UNAT held that the UNDT correctly dismissed AAP's application as not receivable on this basis.

The UNAT further dismissed AAP's contention that the UNDT erred in law in dismissing their application by summary judgment without allowing the parties to comment or submit closing statements. The UNDT was entitled under Article 9 of the UNDT Rules to exercise its discretion to determine the matter by way of summary judgment, without receiving closing statements or additional evidence from the parties, on the legal issue of receivability. Since the application was not in law receivable *ratione materiae*, the UNAT dismissed AAP's request to submit further documents pursuant to Article 2(5) of the UNAT Statute.

Decision Contested or Judgment/Order Appealed

AAP, a Human Resources Officer engaged with a United Nations Mission, contested before the UNDT the decision not to recommend/select them for a Logistics Officer position at the P-4 level.

The UNDT dismissed the application. The UNDT noted that the recruitment process for the position had been cancelled and re-advertised as a recruit-from roster with oversight by a different hiring manager, and that absent a reviewable administrative decision, the application was not receivable. The UNDT further found that the Administration had acted within the scope of its discretion and that no compensation

was therefore due.

AAP appealed.

Legal Principle(s)

The summary judgment procedure is a proper procedure for the UNDT to adopt in order to determine whether an application is receivable or not since the issue in such circumstances is one of law and not fact.

The UNDT is competent to hear and pass judgment on an application filed by an individual against the Secretary-General *inter alia* to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

An applicant has the statutory burden to establish that the administrative decision in issue was in non-compliance with the terms of their appointment or contract of employment. Such a burden is met where the applicant identifies an administrative decision capable of being reviewed, that is, a specific decision which has a direct and adverse impact on his or her contractual rights. What is required is a specific, recognizable decision, declaration or ruling made by the Administration (express or implied) that can then be challenged and on which the MEU deadlines can be imposed.

A selection process involves a series of steps or findings which lead to the administrative decision. These steps may be challenged only in the context of an appeal against the outcome of the selection process.

The Administration is not under an obligation to pursue a recruitment procedure once begun, by filling the post which has become vacant. This falls within the discretionary authority of the Administration to terminate a recruitment procedure and/or to initiate a new one.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

AAP

Entity

Other peacekeeping mission

Case Number(s)

2022-1755

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Nov 2023

President Judge

Judge Colgan

Judge Sandhu

Judge Savage

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Subject matter (*ratione materiae*)

Procedure (first instance and UNAT)

Admissibility of evidence

Applicable Law

UNAT Statute

- Article 2.5
- Article 2.1(a)

UNDT RoP

- Article 9

UNDT Statute

Related Judgments and Orders

2017-UNAT-740

2015-UNAT-557

2018-UNAT-821

2019-UNAT-970

2021-UNAT-1099

2022-UNAT-1250

2019-UNAT-932

2022-UNAT-1252