

UNDT/2023/137, Naeem

UNAT Held or UNDT Pronouncements

The Tribunal recalled that receivability is a condition sine qua non for judicial review.

The Tribunal noted that by the time the Applicant filed his application, he had not been formally notified of the abolition of his post and the restructuring exercise was still ongoing. Up to the date of the judgment's issuance, the situation remained the same as showed by a November 2023 email from UNDP to the Applicant asking him to confirm his interest in the position of Programme Assistant at the G-5 level. So far, the Applicant is still serving at the G-6 level in UNDP Pakistan.

The Tribunal recalled the key characteristics of an administrative decision and noted that, to be reviewable, it must have a direct adverse impact on the terms of appointment or contract of employment of an individual staff member (Mkhabela 2022-UNAT-1289 para. 42, Loeber, para. 19).

In this respect, the Appeals Tribunal held in Lee, para. 51, that the stages of a restructuring process are merely "acts prefatory to or preceding an administrative decision that would [produce] direct legal consequences" to a staff member's employment. It found that "[a]"though Ms. Lee cannot challenge the discretionary authority of the Secretary-General to restructure the Organization or to abolish her post, she may challenge an administrative decision resulting from the restructuring once that decision has been made".

In line with the above, the Tribunal found that the Applicant could not challenge the Secretary-General's discretionary authority to restructure ECCU as the exercise of this discretion has had no direct impact on the Applicant's terms of appointment or contract of employment. The Tribunal concluded that the Applicant can only challenge an administrative decision resulting from the restructuring, which once made directly affects the terms of his appointment, such as his reassignment to another position or the termination of his appointment. However, no decision has yet been made in this respect.

Consequently, the Tribunal found the application not receivable *ratione materiae*.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to restructure the Environment and Climate Change Unit (“ECCU”) at the UNDP Country Office in Pakistan, “through which [his position] was being abolished”.

Legal Principle(s)

The Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review (Fasanella 2017-UNAT-765, para. 20).

The Appeals Tribunal has held that it will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment for staff (Loeber 2018-UNAT-844, para. 18).

However, even in a restructuring exercise, like in any other administrative decision, the Administration has the duty to act fairly, justly and transparently in dealing with staff members (see Loeber, para. 18; De Aguirre 2016-UNAT-705, para. 31).

The key characteristic of an administrative decision subject to judicial review is that the decision must “produce direct legal consequences” affecting a staff member’s terms and conditions of appointment (Lee 2014-UNAT-481, para. 49).

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Naeem

Entity

UNDP

Case Number(s)

UNDT/GVA/2022/030

Tribunal

UNDT

Registry

Geneva

Date of Judgement

13 Dec 2023

Duty Judge

Judge Sun

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Applicable Law

UNDT Statute

- Article 2(a)

Related Judgments and Orders

2017-UNAT-765

2018-UNAT-844

2016-UNAT-705

2014-UNAT-481

2022-UNAT-1289