

2024-UNAT-1425, Osvaldo Di Mario

UNAT Held or UNDT Pronouncements

The UNAT held that the terms of the impugned Judgment were sufficiently clear and unambiguous to be enforceable, and consequently, the former staff member's application was not receivable. In particular, the UNAT found that there was no ambiguity concerning the correctness of the grounds for and the nature of the disciplinary measure taken by the Administration against the former staff member.

Similarly, the UNAT held that the reasoning regarding the referral of the case to the High Commissioner for possible action to enforce accountability was clear and unambiguous. However, even if the application were deemed receivable, the UNAT held that it would have been devoid of legal effect due to the very nature of the action to enforce accountability that it sought to define. Indeed, since the referral for possible action to enforce accountability was discretionary, and not mandatory or automatic, the UNAT held that it was not within its role to impose a time limit or specific framework for the possible action to enforce accountability.

The UNAT dismissed the application for interpretation.

Decision Contested or Judgment/Order Appealed

Previous UNAT Judgment: The Applicant, a former staff member of the UNHCR, contested the decision to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice and with half of the termination indemnity for misconduct.

In its Judgment No. 2023-UNAT-1331, the UNAT affirmed Judgment No. UNDT/2021/163. It held that there was clear and convincing evidence that the former staff member used the UNHCR VAT exemption card and credit card for his personal use and that the disciplinary measure was proportionate to the nature and gravity of his misconduct.

Nevertheless, the UNAT also found that the regular use of private vehicles by UNHCR staff members for official purposes, compensated for by the reimbursement of gasoline expenses, was known to the Administration and, in particular, to the former staff member's supervisors. Consequently, the UNAT found that there had been apparent mismanagement and a breach of the policy on the use of vehicles in UNHCR and ordered that the case be referred to the High Commissioner for possible action to enforce accountability for possible misconduct by the former staff member's supervisors.

Former staff member applied for interpretation of Judgment No. 2023-UNAT-1331. He requested the UNAT, under the guise of interpreting the impugned Judgment, to establish the terms, time limits, and scope of the Organization's possible report on his supervisors' accountability.

Legal Principle(s)

An application for interpretation is only admissible if the wording of the judgment is not sufficiently clear, owing to ambiguity or incoherence, such that a party might, in good faith, be unsure of the meaning or scope of that judgment. By contrast, if the judgment which is the subject of an application for interpretation is sufficiently clear, or if the Applicant is seeking, in a disguised way, to have the case retried, such an application should be dismissed.

The Organization has discretionary power regarding the measures to be adopted following a referral for action to enforce accountability. It is not the role of the UNAT to impose on the Administration a specific time limit or scope of the action to enforce accountability.

The referral for accountability serves a dual purpose: to compensate for the damage suffered by the Organization as a result of the potential violation of the legal framework by its executives and to reinforce respect for the rule of law, as well as to emphasize that there is little room for impunity within the Organization.

Outcome

Revision, correction, interpretation or execution

Full judgment

[Full judgment](#)

Applicants/Appellants

Oswaldo Di Mario

Entity

UNHCR

Case Number(s)

2023-1808

Tribunal

UNAT

Registry

New York

Date of Judgement

1 May 2024

President Judge

Judge Ziadé

Judge Forbang

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Judgment-related matters
Interpretation of Judgment
Referral for accountability

Applicable Law

UNAT Statute

- Article 11.3
- Article 9.5

Related Judgments and Orders

UNDT/2021/163
2023-UNAT-1331
2021-UNAT-1129
2022-UNAT-1200
2013-UNAT-315