

# 2024-UNAT-1452, Ousmane Tamba Dia

## UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT did not commit any error in procedure that affected the outcome of the case by partially denying the former staff member's motions for production of additional evidence or by not granting him sufficient additional time to respond to the Secretary-General's submissions.

The UNAT also concluded that the UNDT appropriately identified the contested decision as the 1 April 2022 decision finding him ineligible to participate in ASHI. The UNAT observed that the former staff member himself identified this decision in both his UNDT application and his management evaluation request.

The former staff member was recruited and given a fixed-term appointment with UNICEF from 2016 until 2020. Prior to this, he served with the World Health Organization (WHO) from 1997 to 2005 in consultancy and short-term appointments. However, the UNAT held that this period of service with WHO could not be considered as continuous and counted towards the 10 years of contributory health insurance plan requirement, as it did not meet the qualifications for reinstatement outlined in Staff Rule 4.18. Therefore, the UNAT determined that he could only be eligible to enroll in the ASHI programme if he had participated in a contributory health insurance plan of the United Nations for a minimum of 10 years. Since he only participated in such a plan, in a fixed-term capacity, from 2016 until 2020, the UNAT concluded that he was not eligible to enroll in ASHI.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2023/051.

## Decision Contested or Judgment/Order Appealed

A former staff member of the United Nations Children's Fund (UNICEF) contested the decision to find him ineligible to participate in the Organization's after-service health insurance plan (ASHI).

In its Judgment No. UNDT/2023/051, the UNDT dismissed his application, concluding that the contested decision was lawful as he had not accumulated the required 10 years of contributory participation in a United Nations health insurance plan.

Former staff member appealed.

## Legal Principle(s)

The UNAT will not interfere lightly with the broad discretion of the UNDT in its case management. Additionally, the UNDT does not have to address each and every claim made by a litigant, particularly when a claim lacks merit.

The UNDT has the authority to individualize and define the contested administrative decision and identify what is in fact being contested and subject to judicial review. A management evaluation response is considered a decision or action of a complementary nature to the administrative decision.

A party, in order to be successful on appeal, not only has to assert and show that the UNDT committed an error in procedure but also that this error affected the decision on the case.

The eligibility to participate in ASHI for a staff member recruited on or after 1 July 2007 is contingent on meeting the criteria outlined in Section 2.1(a)(ii) of ST/AI/2007/3, which requires having been a participant in a

contributory health insurance plan of the United Nations for a minimum of ten years. Moreover, a staff member who is re-employed is treated as having a new appointment without regard to any period of former service.

#### Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Ousmane Tamba Dia

Entity

UNICEF

Case Number(s)

2023-1841

Tribunal

UNAT

Registry

New York

Date of Judgement

23 Jul 2024

President Judge

Judge Gao

Judge Forbang

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Benefits and entitlements

Production of documents

Case management

Procedure (first instance and UNAT)

Applicable Law

Administrative Instructions

- ST/AI/2007/3

#### Staff Rules

- Rule 4.17
- Rule 4.18

#### UNAT Statute

- Article 2.1(d)

#### UNDT RoP

- Article 18
- Article 19

Related Judgments and Orders

UNDT/2023/051

2015-UNAT-547

2017-UNAT-733

2017-UNAT-803

2012-UNAT-238

2017-UNAT-765

2015-UNAT-550

2015-UNAT-574