

2024-UNAT-1465, Sabrije Hoxha

UNAT Held or UNDT Pronouncements

The UNAT noted that the reclassification request was made by UNIFIL and not by the staff member.

The UNAT held that although extensive delays occurred before the request for reclassification was determined by the Administration, no final reclassification decision had been taken at the time the application was filed to the UNDT by the staff member. Accordingly, since no decision had been made yet, she could not have experienced a direct adverse effect on the terms of her appointment. The fact that there were delays in the reclassification decision does not change the analysis. It is a requirement of receivability that an administrative decision must have been taken.

The UNAT found that it had not been open to the UNDT in the circumstances of the case to infer that an implied administrative decision had been taken.

The UNAT was of the view that the UNDT had erred in finding the application receivable *ratione materiae*.

The UNAT granted the appeal and reversed the UNDT's Judgment.

Decision Contested or Judgment/Order Appealed

A staff member contested an implied decision not to reclassify her post to the FS-5 level.

In Judgment No. UNDT/2023/058, the UNDT granted the application and awarded compensation calculated as the difference in emoluments in the period of delay in the reclassification of the post plus interest.

The Secretary-General appealed.

Legal Principle(s)

An administrative decision is a unilateral decision of an administrative nature taken by the Administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences.

The determination as to whether a decision is of an administrative nature or not is to be undertaken on a case-by-case basis having regard to the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.

In certain circumstances, the failure to take a decision may be implied to be an administrative decision which is open to challenge.

The Secretary-General is required to make appropriate provision for the classification of posts and staff according to the nature of the duties and responsibilities required.

The decision to classify or reclassify posts lies within the wide discretion of the Secretary-General. This discretion may not be exercised in an arbitrary, capricious, or illegal manner, nor violate the principle of equal pay for equal work. The contract of employment and terms of appointment of a staff member do not entitle staff members to make such organizational decisions.

A challenge to a reclassification decision is receivable by the UNDT only where there has been (i) a final decision taken in accordance with ST/AI/1998/9 or (ii) a finding of unlawful reasons denying a reclassification request.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Sabrije Hoxha

Entity

UNIFIL

Case Number(s)

2023-1845

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Aug 2024

President Judge

Judge Savage

Judge Colgan

Judge Forbang

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Implied administrative decision

Classification (post)

Discretionary authority

Management Evaluation

Administrative decision

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Administrative Instructions

- ST/AI/1998/9

Staff Regulations

- Regulation 2.1

Staff Rules

- Rule 2.1

UNAT Statute

- Article 2.1(a)

UNDT Statute

- Article 8.1(d)(i)(a)

Universal Declaration of Human Rights

- Article 23.2

Related Judgments and Orders

UNDT/2023/058

2020-UNAT-987

2018-UNAT-840

2014-UNAT-481

2011-UNAT-107

2015-UNAT-595

2010-UNAT-030

2023-UNAT-1355