

2024-UNAT-1454, Ying Yu

UNAT Held or UNDT Pronouncements

The UNAT found that the UNDT had appropriately dismissed Ms. Yu's application as not receivable *ratione temporis*. The UNAT emphasized that because Ms. Yu's position was based in Western Europe, the statutory time limits must be calculated based on Geneva time where the UNDT is located, and therefore, Ms. Yu missed the deadline by one day.

The UNAT rejected the new arguments and evidence related to the mediation process submitted to the UNAT for the first time. Even if these were considered, the UNAT concluded that the mediation did not pertain to the contested decision and therefore did not reset the time limit.

The UNAT decided that the receipt date of a management evaluation outcome is an objective standard, irrespective of whether the recipient acknowledges it. Additionally, whether the decision was sent during official working hours was irrelevant.

The UNAT held that the UNDT had not erred in striking from the record privileged and confidential materials pertaining to discussions with the Ombudsman.

The UNAT dismissed the appeal and affirmed the UNDT Judgment.

Decision Contested or Judgment/Order Appealed

A former staff member contested the decision not to reappoint her after the expiration of her temporary position.

In Judgment No. UNDT/2023/033, the UNDT found that Ms. Yu's application was not receivable *ratione temporis*, as the application had not been submitted timeously.

Ms. Yu appealed.

Legal Principle(s)

A party cannot raise a new argument for the first time on appeal, since this would violate the two-tier United Nations system for the administration of justice.

Statutory time limits are calculated in the time zone of the Tribunal's seat having geographical jurisdiction over the matter, not according to the location of parties.

It is the receipt of the management evaluation outcome that triggers the time limits for filing an application, not the moment when the staff member could reasonably be assumed to have taken notice of this response. Whether the decision is sent during official working hours is irrelevant, as the first day of the period would be the day after receipt.

The phrase "as appropriate" in Article 7(1)(a) of the UNDT Rules of Procedure does not alter the strict timeframe for application.

All documents prepared for and oral statements made during any informal conflict-resolution process or mediation are absolutely privileged and confidential and shall never be disclosed to the Dispute Tribunal.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Ying Yu

Entity

UNCTAD

Case Number(s)

2023-1826

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Jul 2024

President Judge

Judge Gao

Judge Savage

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Admissibility

Temporal (ratione temporis)

Admissibility of evidence

Evidence

Jurisdiction / receivability (UNDT or first instance)

Procedure (first instance and UNAT)

Applicable Law

UNDT Statute

- Article 8.1(d)(i)(a)
- Article 8.1(d)(iv)
- Article 7.5

UNDT RoP

- Article 7.1
- Article 15.7
- Article 34

Related Judgments and Orders

2021-UNAT-1174

2022-UNAT-1301

2013-UNAT-373

2017-UNAT-773

UNDT/2023/033