

2024-UNAT-1464, Eduardo Alvear

UNAT Held or UNDT Pronouncements

With respect to the alleged discriminatory and arbitrary application of ICAO Staff Rule 105.3 regarding overtime, the Appeals Tribunal was satisfied that the Appeals Board had made no error in finding that Mr. Alvear had failed to identify any specific appealable administrative decision, and that it therefore did not err in dismissing his application.

Turning to Mr. Alvear's complaint that he did not receive the desk audit classification results for his position, the Appeals Tribunal found that the ICAO Appeals Board did err in finding the application not receivable since the Administration's failure in this case was an implied administrative decision. The Appeals Tribunal found that while ICAO did not explicitly violate the ICAO Staff Rules which are silent on the matter of notification of a staff member of a classification decision, there was an implicit obligation on the Administration to ensure that the staff member received timely notice of a decision impacting their employment contract. The Appeals Tribunal however found that the matter had become moot as Mr. Alvear had since received the desk audit report and the signed job description (including the final rating and supporting comments).

The Appeals Tribunal dismissed the appeal and affirmed the ICAO Appeals Board Decision. The Appeals Tribunal dismissed the Secretary General's request for costs, noting the difficulties presented by the lacuna in the Staff Rules.

Decision Contested or Judgment/Order Appealed

Mr. Eduardo Alvear, a G-6 assistant on a continuing appointment with the International Civil Aviation Organization (ICAO) contested two purported decisions. First, he complained that he had not received a copy of the Desk Audit Report with classification results of his assigned duties, which had been completed in July 2019; and second, he alleged that since September 2017, he had been subject to the

discriminatory and arbitrary application of ICAO Staff Rule 105.3 regarding overtime.

In Appeals Board Decision No. ICAO/2023/003, the ICAO Appeals Board dismissed both applications as not receivable on grounds that Mr. Alvear had failed to identify any appealable administrative decisions.

Mr. Alvear appealed.

Legal Principle(s)

Administrative decisions are characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

There must be a specific, recognizable decision, declaration or ruling made by the Administration (express or implied) that can then be challenged and on which the review deadlines can be imposed.

Decisions by the Administration to redeploy staff or not to reverse the redeployment or to properly staff a section are decisions of general application that may have an indirect impact on a staff member's working conditions, but they do not produce direct legal consequences, individually, to the staff member's terms of employment.

The absence of a response to a claim or complaint can in certain circumstances constitute an appealable administrative decision where it has direct legal consequences.

There is an implicit obligation on the Administration to ensure that the staff member receives timely notice of a decision impacting their employment contract. The Administration should provide notice to the staff member for the review and appeal process to operate meaningfully.

A judicial decision will be moot if any remedy issued would have no concrete effect because it would be purely academic or events subsequent to the issue have deprived the proposed resolution of the dispute of practical significance; thus placing the matter beyond the law, there no longer being an actual controversy between the parties or the possibility of any ruling having an actual, real effect. The mootness doctrine is a logical corollary to the court's refusal to entertain suits for advisory or speculative opinions.

Outcome

Appeal dismissed on merits; Appeal dismissed on receivability

Full judgment

[Full judgment](#)

Applicants/Appellants

Eduardo Alvear

Entity

ICAO

Case Number(s)

2023-1835

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Aug 2024

President Judge

Judge Sandhu

Judge Sheha

Judge Savage

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Costs

Implied administrative decision

Subject matter (ratione materiae)

Subject matter (ratione materiae)

Abuse of process before UNDT/UNAT

Administrative decision

Jurisdiction / receivability (UNAT)

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

ICAO Staff Regulations

- Regulation 11.1

ICAO Staff Rules

- Rule 102.2(13)
- Rule 111.1(5)

UNAT Statute

- Article 2.1

Related Judgments and Orders

2022-UNAT-1196

2024-UNAT-1435

2017-UNAT-761

2014-UNAT-460

2019-UNAT-970

2010-UNAT-030

2017-UNAT-716

