

# 2024-UNAT-1479, Polino Malish

## Abbas

### UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT committed an error of fact, resulting in a manifestly unreasonable decision, when it found that a termination decision was made on 1 April 2022. In this regard, the UNAT found that while a decision to place a note in the former staff member's Official Status File (OSF) was made on 1 April 2022, the termination decision was actually taken on 11 March 2022. Therefore, the UNDT should have identified either decision as the contested decision, but erred in following the former staff member's assertion that a termination decision was taken on 1 April 2022.

Nevertheless, the UNAT concluded that even if the UNDT had correctly identified the contested decision as that of 11 March 2022, his case would still not have been receivable. Indeed, the termination decision of 11 March 2022 was electronically notified to the former staff member on the same date, and the 1 April 2022 letter clearly indicated that he had already been separated from service before the issuance of that decision. Therefore, since he filed his application only on 5 June 2023, far beyond the legal deadline of 90 days for submission of his application, it was not receivable *ratione temporis*.

The UNAT also found that the UNDT did not err in rejecting the former staff member's request for an extended deadline to file his application on the grounds that he was incapacitated. On the contrary, it confirmed that a "simple linear fracture" or a "dislocation of the ankle joint" does not affect one's ability to manage one's own affairs.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2023/126, albeit for different reasons.

### Decision Contested or Judgment/Order Appealed

A former staff member with the United Nations Mission in South Sudan (UNMISS) contested a decision of the Administration dated 1 April 2022.

In its Judgment No. UNDT/2023/126, the UNDT dismissed his application as not receivable *ratione materiae* or *ratione temporis*.

Former staff member appealed.

## Legal Principle(s)

The burden of identifying the contested decision lies primarily with the staff member, who must: i) identify the administrative decision he or she wishes to contest; and ii) demonstrate that the contested decision is in non-compliance with the terms of his or her appointment.

The authority to render a judgment grants the Judge an inherent power to individualize and define the administrative decision challenged by a party and identify what is in fact being contested and subject to judicial review. The UNAT shall not intervene lightly in this exercise, as far as the first instance tribunal's determination is supported by a primary legal or factual basis from which such determination emanates.

Where management evaluation is not required, the application contesting the administrative decision must be filed within 90 days of its receipt by the staff member. The deadline to submit applications is extended for one year when the claim is made in the name of an incapacitated or deceased staff member. Incapacity involves an inability to manage a person's own affairs including, in such cases, an inability to file proceedings in the first instance tribunal or to have filed them on that person's behalf.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Polino Malish Abbas

## Entity

UNMISS

## Case Number(s)

2024-1892

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

15 Nov 2024

## President Judge

Judge Sheha

Judge Colgan

Judge Savage

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Administrative decision

Temporal (ratione temporis)

Oral hearings

Jurisdiction / receivability (UNDT or first instance)

Procedure (first instance and UNAT)

## Applicable Law

Staff Rules

- Rule 11.2(b)

UNAT Statute

- Article 2.5

UNDT Statute

- Article 8.1(d)(ii)
- Article 8.1(d)(iii)

## Related Judgments and Orders

UNDT/2023/126

2023-UNAT-1371

2019-UNAT-970

2012-UNAT-238

2020-UNAT-1022

2019-UNAT-917

2012-UNAT-275

2021-UNAT-1106