

2024-UNAT-1499, Philippe Schifferling

UNAT Held or UNDT Pronouncements

The Appeals Tribunal dismissed both appeals.

The Appeals Tribunal held that the UNDT correctly found that the Charge Letter did not constitute a reviewable administrative decision, and that as such Mr. Schifferling's application was not receivable *ratione materiae*.

The Appeals Tribunal further found that the question of whether the Dispute Tribunal erred in not joining the Secretariat as a necessary party to the application had become moot and that in any event, the interlocutory appeal was not receivable.

Decision Contested or Judgment/Order Appealed

Mr. Philippe Schifferling, a former UNOPS staff member, contested before the UNDT the decision to charge him with misconduct during the disciplinary process (the contested decision).

He subsequently filed a Motion seeking to "join [to his case] the Secretariat" which he considered to be "a necessary party".

By Order No. 118 (NY/2023), the UNDT dismissed Mr. Schifferling's Motion for lack of merit.

By Judgment No. UNDT/2023/134, the UNDT dismissed Mr. Schifferling's application as not receivable *ratione materiae* as the decision to charge for misconduct was an interim step in the disciplinary process and lacked direct legal effect.

Mr. Schifferling filed appeals against both the UNDT Order and the UNDT Judgment.

Legal Principle(s)

There is no legal authority to preclude the Dispute Tribunal from determining the issue of receivability in a final decision after issuance of case management orders.

The determination of its competence can be exercised *sua sponte* and even if the parties do not raise the issue, because it constitutes a matter of law, and the UNDT Statute prevents the UNDT from receiving a case which is non-receivable. The parties do not "acquire rights" to preclude the Dispute Tribunal from determining competency as a result of case management orders being issued. Otherwise, this would allow the parties, either deliberately or by negligence, to empower the Dispute Tribunal with jurisdiction in excess of the parameters established for it.

The "jurisdictional precondition" for the Dispute Tribunal is that the contested decision constitutes an administrative decision.

The impact or consequences of a disputed decision must be based on objective elements that both parties can accurately determine. Speculation about potential future possible consequences for a staff member's employment record or his reputation is an insufficient basis to conclude that a decision has had (not "may have") a direct and adverse impact such as to be "in non-compliance with the terms of appointment or contract of employment" as contemplated in Article 2(1)(a) of the UNDT Statute.

The onus is on the staff member to show on a balance of probabilities that the impugned decision is an appealable administrative decision.

A Charge Letter does not constitute an administrative decision as contemplated in Article 2 of the UNDT Statute.

Outcome

Appeal dismissed on merits; Appeal dismissed on receivability

Full judgment

[Full judgment](#)

Applicants/Appellants

Philippe Schifferling

Entity

UNOPS

Case Number(s)

2023-1874 & 2024-1894

Tribunal

UNAT

Registry

New York

Date of Judgement

11 Dec 2024

President Judge

Judge Sandhu

Judge Forbang

Judge Savage

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Interlocutory appeal

Subject matter (ratione materiae)

Case management

Oral hearings

Jurisdiction / receivability (UNAT)

Jurisdiction / receivability (UNDT or first instance)

Procedure (first instance and UNAT)

Applicable Law

UNAT RoP

- Article 18.1
- Article 18bis.1

UNAT Statute

- Article 8.2
- Article 8.3

UNDT RoP

- Article 11
- Article 19

UNDT Statute

- Article 2.6

Related Judgments and Orders

2020-UNAT-981

UNDT/2023/134

2017-UNAT-773

2014-UNAT-406

2018-UNAT-840

2023-UNAT-1313

2023-UNAT-1378

2019-UNAT-973

2022-UNAT-1300

2023-UNAT-1362