

# UNDT/2024/025, O'Mullane

## UNAT Held or UNDT Pronouncements

The Organization, and not the Applicant, is the aggrieved party in any alleged misconduct with respect to any staff member's possible noncompliance with United Nations financial rules and regulations.

While the Applicant had an ongoing obligation as a staff member to report any suspected misconduct in this regard, he did not have a right to any information about an investigation or action taken in relation to it. Sec. 4.7 of ST/AI/2017/1 provides that "[u]nless expressly provided for in the present instruction or other administrative issuances, staff members and third parties are not entitled to information about an investigation or action taken" regarding a complaint. As such, the Applicant lacked sufficient direct and substantial interest in the decision necessary to confer standing.

The Tribunal found that the statement by OIOS to the effect that it had "taken appropriate action in respect of the concerns raised" by the Applicant did not represent a decision to decline to investigate the Applicant's report, since an "appropriate action" could reasonably include the conduct of an investigation. There was, therefore, no basis for the assertion that OIOS declined to conduct an investigation into the Applicant's report.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the "decisions of the Office of Internal Oversight Services ("OIOS") to decline to open an investigation into [his] report of prohibited conduct against the [United Nations] Controller [...] for possible noncompliance of the UN Controller with UN financial rules and regulations".

## Legal Principle(s)

Under the jurisprudence of the Appeals Tribunal, the Dispute Tribunal is required to satisfy itself that an application is receivable under art. 8 of its Statute (see, for instance, *O'Neill* 2011-UNAT-182, as affirmed in *Christensen* 2013-UNAT-335, and *Barud* 2020-UNAT-998).

A staff member cannot compel the Organization to undertake an investigation unless such right is granted by the Staff Regulations and Rules of the United Nations (see the Appeals Tribunal in *Nwuke* 2010-UNAT-099, paras. 3 and 30).

The receivability of an application contesting a refusal to initiate an investigation would therefore “depend on the following question: Does the contested administrative decision affect the staff member’s rights directly”? (See *Nwuke*, para. 28, and similarly, *Ross* 2023-UNAT-1336, para. 24).

## Outcome

Dismissed as not receivable

## Outcome Extra Text

The Tribunal also rejected the Applicant's motion for the joinder of this case and Case No. UNDT/NY/2023/020.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

O'Mullane

## Entity

UN Secretariat

## Case Number(s)

UNDT/NY/2023/019

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

29 Apr 2024

## Duty Judge

Judge Adda

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Investigation

Subject matter (ratione materiae)

Jurisdiction / receivability (UNDT or first instance)

## Applicable Law

Administrative Instructions

- ST/AI/2017/1

## Related Judgments and Orders

2010-UNAT-099

2023-UNAT-1336

2011-UNAT-182

2013-UNAT-335

2020-UNAT-998