



**UNITED NATIONS  
DISPUTE TRIBUNAL**



**UNITED NATIONS  
APPEALS TRIBUNAL**

Ten years of the new administration  
of justice system at the United Nations

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**DIGEST  
OF CASE LAW**

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**2009-2019**

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United Nations

**Ten years of the new administration of justice  
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**UNITED NATIONS DISPUTE TRIBUNAL  
UNITED NATIONS APPEALS TRIBUNAL**



United Nations  
New York, 2019

## Note

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## Foreword

In its resolution 61/261, the General Assembly decided to establish a new internal system for the administration of justice at the United Nations to provide formal and informal mechanisms for staff members of the Organization to resolve workplace disputes. The new system, which came into effect on 1 July 2009, is an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice, consistent with the relevant rules of international law and the principles of the rule of law and due process, to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike. The system is a marked improvement over the previous system in terms of expeditious review of cases and independence and impartiality in the adjudication of disputes.

The formal part of the system includes a management evaluation function and a two-tiered adjudication process, through a first instance tribunal – the United Nations Dispute Tribunal (UNDT) – and an appellate tribunal – the United Nations Appeals Tribunal (UNAT). For issues that cannot be resolved informally, the establishment of UNDT and UNAT has provided effective adjudication of disputes in individual cases and clarified legal principles. Those decisions, which are binding on the parties and on the Organization, have informed and supported better decision-making and expectations in the areas of supervisory relationships, procedures for the appointment and selection of staff and disciplinary proceedings. At the same time, the body of case law that has developed over the past 10 years has contributed to legal certainty as to how employment-related decisions should be made, and predictability in the application and interpretation of relevant provisions in the operative legal framework that governs the relationship between the United Nations and its staff. The jurisprudence being developed also contributes to the body of law for the international civil service.

In the preamble of resolution 59/283, the General Assembly emphasized “the importance for the United Nations to have an efficient and effective system of internal justice so as to ensure that individuals and the Organization are held accountable for their actions in accordance with relevant resolutions and regulations” and that a “transparent, impartial and effective system of administration of justice is a necessary condition for ensuring fair and just treatment of United Nations staff and important for the success of human resources reform in the Organization”. In the ten years since its establishment, the new internal justice system has contributed to fostering a culture of accountability and transparency in the United Nations, as envisaged by the General Assembly.

In recognition of some key achievements of the formal part of the system over the last decade, OAJ has compiled this Digest of key judgments and orders delivered by UNDT and UNAT since their establishment in 2009.

The Digest is intended as a research aid for all users of the system, especially staff members across the United Nations organizations, regardless of their functions, and legal practitioners appearing before the Tribunals, to support transparency and access to justice.

The digested cases are classified by principal topics, which are arranged alphabetically. The cases have been prepared in such a way as to present the most salient facts, the first instance<sup>1</sup> determinations, UNAT rulings and the legal principles established or applied in the specific case. In addition, each case is preceded by a caption that sets forth the judgment number, the name of the case, keywords reflecting, systematically and telegraphically, the content of the issues considered, as well as the relevant legal provisions. Some cases involved multiple legal issues and have been included under different topics. Since the decisions of UNAT create mandatory precedents that must be followed by UNDT (e.g., 2014-UNAT-410, Igbinedion), only a handful of UNDT judgments on issues which, at the time that the Digest was prepared, had been appealed before UNAT have been included. It is important to note that UNAT judgments rendered subsequent to this first release of the Digest may have departed from some of the legal principles established or affirmed by UNAT cases contained herein. Similarly,

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<sup>1</sup> UNAT’s jurisdiction extends to applications against agencies, entities and organizations which have accepted its jurisdiction.

issues addressed in UNDT cases contained in the Digest may have subsequently been overturned. The Digest will be updated periodically to reflect developments in the jurisprudence of the Tribunals.

The body of case law that has developed and the legal principles that have been clarified or established indicate that, on the whole, ten years on, the internal justice system is contributing to fostering a harmonious and respectful workplace—a valuable consideration in ensuring that the United Nations Organization can fulfil its mandate.

While there is a robust internal justice system to address work-related disputes, informally or formally, reduction or minimization of such disputes must continue to be a priority for all who enter the United Nations workplace. That requires a high level of self-awareness, on the part of each and every one of us, of how we impact the work environment, how we communicate across cultures and how we contribute, through each encounter with colleagues, to promoting a healthy and harmonious workplace. Managers must know and apply the rules, regulations, policies and principles of the Organization in their conduct and decision-making; staff members must uphold and properly discharge their obligations. All of us must demonstrate integrity, professionalism and respect.

We must each commit to bringing our best self to work every day.

**Alayne Frankson-Wallace**

Executive Director  
United Nations Office of Administration of Justice

# Acknowledgements

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## Abbreviations and acronyms

AAS	Appeals and Accountability Section
ABCC	Advisory Board on Compensation Claims
AJAB	Advisory Joint Appeals Board
ALS	Administrative Law Section <sup>2</sup>
ASG	Assistant Secretary-General
ASHI	After-Service Health Insurance
CPI	Consumer Price Index
DESA	Department of Economic and Social Affairs
DFS	Department of Field Support <sup>3</sup>
DGACM	Department for General Assembly and Conference Management
DM	Department of Management <sup>4</sup>
EOD	Entry on Duty
FRO	First Reporting Officer
FTA	Fixed-term appointment
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICSC	International Civil Service Commission
ICTY	International Criminal Tribunal for the former Yugoslavia
IJC	Internal Justice Council
ILOAT	Administrative Tribunal of the International Labour Organization
JAB	Joint Appeals Board
JIU	Joint Inspection Unit
MEU	Management Evaluation Unit
MINUSTAH	United Nations Stabilization Mission in Haiti
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
OAJ	Office of Administration of Justice
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
OHRM	Office of Human Resources Management <sup>5</sup>
OIOS	Office of Internal Oversight Services
OLA	Office of Legal Affairs
OSLA	Office of Staff Legal Assistance
SPA	Special Post Allowance
SRO	Second Reporting Officer
TJO	Temporary Job Opening
UN	United Nations
UNAdT	Former United Nations Administrative Tribunal
UNAKRT	United Nations Assistance to the Khmer Rouge Trials
UNAT	United Nations Appeals Tribunal
UNDT	United Nations Dispute Tribunal
UNJSPB	United Nations Joint Staff Pension Board (Pension Board)



UNJSPF	United Nations Joint Staff Pension Fund (Pension Fund)
UNMIS	United Nations Mission in Sudan
UNMISS	United Nations Mission in South Sudan
UNOG	United Nations Office at Geneva
UNOPS	United Nations Office for Project Services
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNRWA DT	United Nations Relief and Works Agency for Palestine Refugees in the Near East Dispute Tribunal
UNSPC	United Nations Staff Pension Committee
UNSU	United Nations Staff Union
USG	Under-Secretary-General
WIPO	World Intellectual Property Organization

# Digest of cases

## Abandonment of post

### Judgment 2019-UNAT-942 (El Shaer)

Abandonment of post – intent to abandon – absence from duty – separation from service – disciplinary cases – reinstatement

#### Applicable law:

- *Article 9 of the UNAT Statute*
- *UNRWA Area Staff Rule 109.4*
- *UNRWA Area Personnel Directive A/9/REV.10*

**Legal principle:** A staff member who has failed to report for duty but demonstrates that he or she did not intend to abandon his or her post, may be open for censure or discipline, but may not be separated for abandonment of post.

**UNRWA DT judgment:** Following allegations of misconduct, the staff member was temporarily reassigned to a different position, pending investigations. He was subsequently cleared of the allegations and requested to return to his original position which, out of fear of retaliation, he declined to do. Instead, he kept reporting to the position he had been re-assigned to. He was subsequently separated from service for abandonment of post. UNRWA DT dismissed the staff member's application contesting the decision to separate him from service pursuant to Area Staff Rule 109.4, finding that, despite several reminders and requests by the Administration, he had never resumed his duties of his original position and he had been absent from duty on three or more consecutive days. UNRWA DT concluded that the staff member had failed to demonstrate by convincing evidence that the decision to separate him from service for abandonment of post was unlawful.

**UNAT held:** UNAT found that the staff member had not voluntarily absented himself from duty. Rather, he reported for duty throughout at the office he had been re-assigned to, his whereabouts were known to the Agency and he clearly did not intend to abandon his position. As to the staff member's refusal to report to his original position as instructed, UNAT concluded that his conduct might have been a performance or conduct issue open to censure or discipline. However, the Agency failed to determine if the conduct constituted insubordination and, if so, a proportional sanction. Instead it concluded that the staff member had abandoned his post and separated him from service. UNAT held that in the premises, Area Staff Rule 109.4 on abandonment of post had no application, it was inappropriate for the Agency to have relied upon it and the staff member's separation from service was unlawful. UNAT rescinded the decision to separate the staff member from service and ordered his reinstatement on similar terms and conditions of employment with effect from the date of his unlawful separation. In the alternative to reinstatement, UNAT ordered payment of an amount of compensation equal to 12 months' net base salary.

Link to UNRWA DT judgment:

[http://www.unrwa.org/sites/default/files/unrwa-dt-2019-002\\_el\\_shaer\\_-\\_e.pdf](http://www.unrwa.org/sites/default/files/unrwa-dt-2019-002_el_shaer_-_e.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-942.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-942.pdf)

## Abolition of post

### Judgment 2018-UNAT-847 (Timothy)

Abolition of post – permanent staff member – indefinite appointment – continuing appointment – termination – alternative employment – suitable posts

#### Applicable law:

- *Article 101(3) of the Charter of the United Nations*
- *Article 10(5) of the UNDT Statute*
- *Staff Rules 9.6(e) and 9.6(f)*

**Legal principle:** The Administration is under an obligation to make proper, reasonable and good faith efforts to find an alternative suitable post for a redundant staff member holding an indefinite appointment at his or her grade level or even at a lower grade, if, in the latter case, the staff member concerned has expressed an interest. Staff members holding a continuing or indefinite appointment facing termination due to abolition of post are obliged to fully cooperate by applying for suitable vacant posts.

**UNDT judgment:** The staff member, who held an indefinite appointment at the GS-7 level, contested the decision to separate her from service. UNDT found that the decision to terminate her appointment for abolition of post and to separate her from the Organization had not been taken in line with the mandatory legal framework and was unlawful. UNDT ordered rescission of the contested decision and awarded the staff member three months' net base salary as compensation for moral damages.

**UNAT held:** UNDT was correct in concluding that the Administration's decision to terminate the staff member was unlawful, since it did not fully comply with its obligations under Staff Rule 9.6(e) and (f) to make all reasonable and *bona fides* efforts to consider her for available suitable posts, as an alternative to the abolished one. UNAT noted that the phrase "suitable posts" is not defined in the Staff Rules, and that nothing in the language of Staff Rule 9.6(e) and (f) indicates that the obligation of the Administration to consider the redundant staff member for suitable posts, vacant or likely to be vacant in the future, is limited to the staff member's grade level. UNAT held that the Administration is under an obligation to make proper, reasonable and good faith efforts to find an alternative post for the displaced staff member at his or her grade level or even at a lower grade, if, in the latter case, the staff member concerned has expressed an interest. Thus, UNAT concluded that the staff member should have been considered not only for suitable posts at the same level as her abolished G-7 post in New York, but also for all the lower available suitable posts in New York, for which she had expressed her interest by way of application thereto.

Nonetheless, UNAT found that UNDT made several errors of law: a) UNDT erred in finding that it sufficed, in order for the staff member to be retained in service, to have a relative competence for the new suitable post. UNAT held that if the redundant staff member was not fully competent to perform the core functions and responsibilities of an alternative suitable post, the Administration had no duty to consider him or her for the post; b) UNDT erred in finding that the staff member should have been considered for available suitable posts covering the entire parent organization, including but not limited to her duty station, because she had passed the exam for the Professional level. UNAT held that it was immaterial whether or not the staff member had passed the exam for the Professional level at some point since the abolished post she was encumbering at the critical time fell into the General Services category and not into the Professional category; c) UNDT erred in finding that an affected staff member had a right to be retained in suitable positions occupied at the date of abolition by staff members having a lesser level of protection under Staff Rule 9.6(e). UNAT held that the Administration was bound to consider the redundant staff members only for suitable posts that were vacant or likely to become vacant in the future; and d) UNDT further erred in finding that staff members were entitled to be retained without having to apply for vacant job openings. UNAT held that a staff member holding a continuing or indefinite appointment facing termination due to abolition of his or her post were obliged to fully cooperate by applying for suitable posts that were vacant.

UNAT ordered rescission of the contested decision; alternatively, the Secretary-General was ordered to pay 12 months' net base salary as compensation in lieu of rescission. UNAT vacated UNDT's award of compensation for moral damages as the staff member did not present evidence of any harm.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-080.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-080.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-847.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-847.pdf)

### **Judgment 2017-UNAT-759 (Hassanin)**

Abolition of post – permanent staff member – termination – alternative employment – priority consideration

#### **Applicable law:**

- *Article 101(3) of the Charter of the United Nations*
- *Staff Regulation 9.3*
- *Staff Rules 9.6 and 13.1*

**Legal principle:** The organization has the obligation to give priority consideration to permanent staff members facing termination due to abolition of post. Staff members, on the other hand, have the obligation to timely submit completed applications for positions for which they are suitable and qualified.

**UNDT judgment:** Several former staff members in the Publishing Division of DGACM filed applications before UNDT challenging the decision to terminate their permanent appointments following the abolition of posts in DGACM. UNDT found that the Administration had failed to act fully in compliance with Staff Rules 9.6 and 13.1 by subjecting permanent staff members to the requirement of competing for available posts against other non-permanent staff members and by failing to reassign permanent staff members as a matter of priority to another post matching their abilities and grade. UNDT ordered, in all cases in which staff members had not secured another position with the Organization at the time of their application with UNDT, rescission of the termination decision or, in lieu of rescission, two years' net base salary minus any termination indemnity paid to him or her. In addition, UNDT awarded compensation for emotional distress.<sup>6</sup>

**UNAT held:** UNAT vacated UNDT's compensation orders in the cases in which staff members had secured alternative employment, finding that the applications had become moot. In the remaining cases, UNAT considered that any permanent staff member facing termination due to abolition of post must show an interest in a new position (for which he or she is suitable and qualified) by timely and completely applying for that position. However, once the application process is completed, the Administration is required by Staff Rule 13.1(d) to consider the permanent staff member on a preferred or non-competitive basis for the position in an effort to retain the permanent staff member, which the Administration failed to do in this case.

Accordingly, UNAT upheld UNDT's findings that the termination decisions were unlawful in cases in which the respective staff members had complied with the aforementioned requirement to apply for alternative positions and vacated UNDT's findings in cases where the staff members had failed to submit timely and complete applications for positions for which they were suitable and qualified. In the former cases, UNAT upheld the award of in-lieu

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<sup>6</sup> See related UNDT judgments:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-190.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-190.pdf);  
[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-195.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-195.pdf);  
[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-193.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-193.pdf);  
[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-191.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-191.pdf);  
[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-192.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-192.pdf);  
[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-194.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-194.pdf).

compensation, albeit, unlike UNDT, not reducing the total amount by the termination indemnity paid but vacated the award of moral damages for lack of evidence of harm; in the latter cases, UNAT vacated UNDT's order of in-lieu compensation and moral damages.<sup>7</sup>

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-181.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-181.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-759.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-759.pdf)

## Abuse of process

### UNAT Order 353 (2019) (Nouinou)

Abuse of process – abusive conduct – serious accusations against Judges – Code of Conduct for Legal Representatives and Litigants in Person

#### Applicable law:

- *Article 9(2) of the UNAT Statute*
- *Articles 4 and 8 of the Code of Conduct for Legal Representatives and Litigants in Person*

**Legal principle:** Derogatory, baseless and abusive statements and accusations against UNAT Judges are in clear violation of the Code of Conduct for Legal Representatives and Litigants in Person warranting an award of costs.

**UNAT Order:** Following the dismissal of the staff member's appeal against a UNDT judgment, the staff member filed two motions which UNAT denied. The staff member subsequently filed further motions which UNAT rejected on the ground that they were clearly without merit and frivolous and constituted an abuse of process. UNAT warned the staff member that if she kept abusing the process, it would have to award costs against her pursuant to Article 9(2) of the Appeals Tribunal Statute. The staff member then proceeded to file an application for revision of judgment as well as two further motions. UNAT granted the motion for confidentiality but denied the second motion finding that the staff member's derogatory, baseless and abusive statements and accusations against UNAT Judges violated the Code of Conduct for Legal Representatives and Litigants in Person which required a party to "maintain the highest standards of integrity and ... at all times act honestly, candidly, fairly, courteously, in good faith" and "assist the Tribunals in maintaining the dignity and decorum of proceedings". UNAT found that the staff member's abusive conduct warranted an award of costs pursuant to Article 9(2) of the Appeals Tribunal Statute and ordered that she pay, within 15 calendar days of the issuance of the Order, USD 600 in costs failing which she would be refused access to prosecute any further cases before UNAT.

Link to UNAT Order:

[www.un.org/en/internaljustice/files/unat/orders/order-unat-2019-353.pdf](http://www.un.org/en/internaljustice/files/unat/orders/order-unat-2019-353.pdf)

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<sup>7</sup> See related UNAT judgments:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-763.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-763.pdf);  
[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-764.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-764.pdf);  
[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-765.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-765.pdf);  
[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-766.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-766.pdf);  
[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-767.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-767.pdf);  
[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-768.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-768.pdf).

## Judgments 2013-UNAT-328 (Gehr) and 2013-UNAT-333 (Gehr)

Abuse of process – manifest abuse – appeal lacking merit – frivolous

### Applicable law:

- *Article 9(2) of the UNAT Statute*

**Legal principle:** Where UNAT determines that a party has manifestly abused the appeals process, it may award costs against that party.

**UNAT held:** The staff member appealed seven UNDT judgments. UNAT found that, by continuously filing appeals lacking merit, the staff member had manifestly abused the proceedings, and awarded costs against the staff member for the first time since its inception.

Links to UNAT judgments:

[www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-328.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-328.pdf)

[www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-333.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-333.pdf)

## Judgment 2013-UNAT-370 (Bi Bea)

Abuse of process – manifest abuse – delay – JAB – frivolous or vexatious

### Applicable law:

- *Article 2(7) of the UNDT Statute*
- *Article 10(6) of the UNDT Statute*

**Legal principle:** A delay, in and of itself, is not a manifest abuse of proceedings. It is necessary to determine on the evidence that the delay was clearly and unmistakably a wrong or improper use of the proceedings of the court. Proof that the delay was frivolous or vexatious would satisfy this requirement.

**UNDT judgment:** After having waited several months and having received no response from the Secretary-General on JAB's recommendation that the staff member be paid compensation for the termination of his indefinite appointment, the staff member filed an appeal seeking the implementation of the recommendations of JAB. UNDT held that, in the absence of any reason given by the Secretary-General for the delay, it was a manifest abuse of the proceedings which entitled the staff member to an award of costs. Accordingly, UNDT awarded the staff member CHF 5,000.

**UNAT held:** UNAT vacated UNDT's award of CHF 5,000. While UNAT found that UNDT had the power to award costs for manifest abuse of proceedings before JAB, UNDT erred in finding that the Secretary-General's delay in responding to the JAB report constituted a manifest abuse of proceedings. UNAT held that the delay in question was not inordinate and, in any event, a delay in and of itself, did not constitute a manifest abuse of proceedings. Before UNDT could lawfully award costs against the Secretary-General, it was necessary to determine on the evidence that the delay constituted a "wrong or improper use of the proceedings of the court", such as proof that it was "frivolous or vexatious" to qualify as manifest abuse of proceedings.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2012-150.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2012-150.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-370.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-370.pdf)

## Acquired rights

Judgment 2018-UNAT-840 (Lloret-Alcañiz et al.)

Acquired rights – General Assembly resolution – Unified Salary Scale – transitional allowance

Applicable law:

- *General Assembly resolution 13(I)*
- *General Assembly resolution 70/244*
- *General Assembly resolution 71/263*
- *Article 2(1) of the UNDT Statute*
- *Staff Regulation 12.1*

**Legal principle:** In any contract of employment, an acquired right means a party's right to receive counter-performance in consideration for performance rendered. Thus, the aim of the intended protection is to ensure that staff members' terms and conditions may not be amended in a way that would deprive them of a benefit once the legal requirements for claiming the benefit have been fulfilled – in other words once the right to counter-performance (the salary or benefit) has vested or been acquired through services already rendered. Staff members only acquire a vested right to their salary for services already rendered.

The limited purpose of Staff Regulation 12.1, therefore, is to ensure that staff members are not deprived of a benefit once the legal requirements for claiming the benefit have been fulfilled. The protection of acquired rights therefore goes no further than guaranteeing that no amendment to the Staff Regulations may affect the benefits that have accrued to, or have been earned by, a staff member for services rendered before the entry into force of the amendment. Amendments may not retrospectively reduce benefits already earned. The doctrinal protection of acquired rights is essentially an aspect of the principle of non-retroactivity. The aim is to protect individuals from harm to their vested entitlements caused by retrospective statutory instruments.

**UNDT judgment:** Prior to 1 January 2017, staff members of the Organization in professional and higher categories were paid their net salary at either a single or a dependency rate, depending on their family status. In 2015, the General Assembly adopted the introduction of the Unified Salary Scale, providing one net salary for all staff members without regard to family status. In 2016, the General Assembly acceded to the Secretary-General's request to amend the Staff Regulations for the implementation of the approved changes. As the gross and net base salaries of the staff members who were previously paid at the dependency rate would be reduced, they would receive a progressively depreciating transitional allowance of six per cent of net remuneration for a six-year period.

Five staff members claimed that these unilateral variations of their remuneration were illegal and in breach of their contracts of employment and their acquired rights. UNDT held that the decisions implementing the Unified Salary Scale constituted administrative decisions in terms of Article 2 of the UNDT Statute since they negatively impacted the staff members' terms and conditions of appointment. UNDT accordingly held that the applications challenging these decisions were receivable. It held further that there was a normative conflict between General Assembly resolutions 70/244 and 71/263, adopting the Unified Salary Scale, and preceding General Assembly resolutions still in force protecting staff members' acquired rights. UNDT concluded that the Secretary-General's implementation of the Unified Salary Scale for the staff members, which resulted in their being paid reduced gross and net base salaries, violated their acquired rights and was thus unlawful. By way of remedy, UNDT rescinded the contested decisions and ordered that the six-per cent reduction be reintegrated as part of their salary. In regard to the staff members' claim that the transitional allowance had a discriminatory effect on them, UNDT found that it lacked jurisdiction to examine whether the decision of the General Assembly to provide for the transitional allowance was illegal and discriminatory because the claims concerned a legislative or regulatory decision and not an administrative decision.

**UNAT held:** UNAT found that the appeal raised significant questions of law about the power of the Organization to unilaterally alter or reduce the compensation of staff members of the Organization. For that reason, the President of UNAT in terms of Article 10(2) of the UNAT Statute elected to refer the appeal for consideration by the full bench of UNAT.

UNAT recalled that an administrative decision is a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences. A decision of an administrative nature is distinguished from other governmental action of a regulatory, legislative or executive nature. The majority of the judges held that the Secretary-General's implementation of the resolutions involved an administrative decision with an adverse impact. These judges accepted that the Secretary-General had little or no choice in the implementation of the General Assembly resolutions; the power he exercised was a purely mechanical power, more in the nature of a duty. However, they found that such exercises of power were administrative in nature and involved a basic decision to implement a regulatory decision imposing the terms and conditions mandated by it. They were thus administrative decisions that may adversely affect the terms of employment and were reviewable on narrow grounds of legality. Having found that the contested decisions constituted administrative decisions, UNAT examined whether there is indeed a normative conflict or an irreconcilable inconsistency between Resolution 13(I) of 1946, which provides that the Staff Regulations may only be supplemented or amended by the General Assembly without prejudice to the acquired rights of staff members, and Resolutions 70/244 and 71/263, which introduced the Unified Salary Scale. UNAT noted that the purpose of introducing Staff Regulation 12.1 was to afford staff members some degree of protection from subsequent amendments to the Staff Regulations prejudicing their acquired rights. In UNAT's view, an acquired right means a vested right and employees only acquire a vested right to their salary for services rendered. UNAT held that the limited purpose of Regulation 12.1 is to ensure that staff members are not retrospectively deprived of a benefit once the legal requirements for claiming the benefit have been fulfilled. UNAT concluded that the contested decisions did not violate the staff members' acquired rights as the General Assembly resolutions altered the staff members' future salaries. UNAT held that there was no normative conflict between the resolution 13(I) of 1946 and resolutions 70/244 and 71/263. Absent any normative conflict, the Secretary-General did not act illegally in implementing Resolutions 70/244 and 71/263. UNAT further held that the fact that the staff members' letters of appointment stated that their initial salary "may rise" did not constitute an express promise by the Organization to continue to increase their rate of pay and never to reduce it. The salary entitlements of staff members may be unilaterally amended by the General Assembly.

As for the staff members' cross-appeal claiming that UNDT erred in finding that it lacked jurisdiction to examine whether the decision of the General Assembly to provide for the transitional allowance was illegal, discriminatory and in violation of Article 8 of the Charter of the United Nations, UNAT held that UNDT was correct to decline jurisdiction on the basis that only appeals in relation to administrative decisions are receivable by it.

UNAT upheld the Secretary-General's appeal, dismissed the staff members' cross-appeal, and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-097.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-097.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-840.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-840.pdf)

## **Administrative decision**

### **Judgment 2018-UNAT-843 (Kozul-Wright)**

Administrative decision – decision to waive immunity – waiver of official's immunity – privileges and immunities – private legal obligations



**Applicable law:**

- *Article 105 of the Charter of the United Nations*
- *Convention on the Privileges and Immunities of the United Nations*
- *Article 2(1)(a) of the UNDT Statute*
- *Staff Regulation 1.1(f)*
- *Staff Rule 1.2(b)*

**Legal principle:** The Secretary-General's decision to waive a staff member's immunity does not constitute an administrative decision. Rather, it is an executive or policy decision.

**UNDT judgment:** The staff member contested the Secretary-General's decision to waive his diplomatic immunity with regard to his dispute over the lease of an apartment at his duty station in Geneva. At the request of the Permanent Mission of Switzerland to the United Nations, the Secretary-General lifted the staff member's immunity with respect to the execution of a judgment issued by a Geneva court ordering the staff member to pay compensation to the landlord. UNDT found the application to be receivable on the grounds that the decision to waive immunity constituted an administrative decision which had a direct impact on the staff member. It concluded, however, that the Administration had properly exercised its discretion to waive immunity and it had acted reasonably and properly, taking account of all relevant considerations, in lifting the immunity.

**UNAT held:** When responding to requests for the waiver of an official's immunity, the Organization must comply with its legal obligations to the requesting Member State under the relevant international instruments, which limit immunity to official acts and oblige the Secretary-General to cooperate at all times with the appropriate authorities to facilitate the proper administration of justice and to prevent the occurrence of any abuse in connection with the privileges and immunities. UNAT noted that the Secretary-General is best placed to appreciate the nature of the Organization's obligations to a Member State, what form of cooperation will be in the interests of the Organization, and whether non-waiver is necessary for the fulfillment of the purposes of the Organization. The factors he will take into consideration often may be political in nature and will involve issues of comity. These considerations imbue a decision of the Secretary-General to waive immunity with an executive or political character, negating the categorization of the decision as one administrative in nature. Accordingly, UNAT held that the staff member's application to UNDT was not receivable *ratione materiae* and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-843.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-843.pdf)

**Judgment 2018-UNAT-840 (Lloret-Alcañiz et al.)**

Administrative decision – General Assembly resolution – Unified Salary Scale – transitional allowance – acquired rights

**Applicable law:**

- *General Assembly resolution 13(I)*
- *General Assembly resolution 70/244*
- *General Assembly resolution 71/263*
- *Article 2(1) of the UNDT Statute*
- *Staff Regulation 12.1*

**Legal principle:** An administrative decision is a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences. A decision of an administrative nature is distinguished from other governmental action of a regulatory, legislative or executive nature.

The Secretary-General's decisions implementing the binding decisions of the General Assembly are administrative decisions that may adversely affect the terms of employment. The power the Secretary-General exercises is a purely mechanical power, more in the nature of a duty. However, such exercises of power are administrative in nature and involve a basic decision to implement a regulatory decision imposing the terms and conditions mandated by it. Therefore, while such decisions are reviewable administrative decisions, the scope of review is limited to grounds of legality.

**UNDT judgment:** Prior to 1 January 2017, staff members of the Organization in professional and higher categories were paid their net salary at either a single or a dependency rate, depending on their family status. In 2015, the General Assembly adopted the introduction of the Unified Salary Scale, providing one net salary for all staff members without regard to family status. In 2016, the General Assembly acceded to the Secretary-General's request to amend the Staff Regulations for the implementation of the approved changes. As the gross and net base salaries of the staff members who were previously paid at the dependency rate would be reduced, they would receive a progressively depreciating transitional allowance of six per cent of net remuneration for a six-year period.

Five staff members claimed that these unilateral variations of their remuneration were illegal and in breach of their contracts of employment and their acquired rights. UNDT held that the decisions implementing the Unified Salary Scale constituted administrative decisions in terms of Article 2 of the UNDT Statute since they negatively impacted the staff members' terms and conditions of appointment. UNDT accordingly held that the applications challenging these decisions were receivable. It held further that there was a normative conflict between General Assembly resolutions 70/244 and 71/263, adopting the Unified Salary Scale, and preceding General Assembly resolutions still in force protecting staff members' acquired rights. UNDT concluded that the Secretary-General's implementation of the Unified Salary Scale for the staff members, which resulted in their being paid reduced gross and net base salaries, violated their acquired rights and was thus unlawful. By way of remedy, UNDT rescinded the contested decisions and ordered that the six per cent reduction be reintegrated as part of their salary. With regard to the staff members' claim that the transitional allowance has a discriminatory effect on them, UNDT found that it lacked jurisdiction to examine whether the decision of the General Assembly to provide for the transitional allowance was illegal and discriminatory because the claims concerned a legislative or regulatory decision and not an administrative decision.

**UNAT held:** UNAT recalled that an administrative decision is a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences. A decision of an administrative nature is distinguished from other governmental action of a regulatory, legislative or executive nature. The majority of the judges held that the Secretary-General's implementation of the resolutions involved an administrative decision with an adverse impact. These judges accepted that the Secretary-General had little or no choice in the implementation of the General Assembly resolutions; the power he exercised was a purely mechanical power, more in the nature of a duty. However, they found that such exercises of power were administrative in nature and involved a basic decision to implement a regulatory decision imposing the terms and conditions mandated by it. They were thus administrative decisions that may adversely affect the terms of employment and were reviewable on narrow grounds of legality. Having found that the contested decisions constituted administrative decisions, UNAT examined whether there is indeed a normative conflict or an irreconcilable inconsistency between Resolution 13(I) of 1946, which provides that the Staff Regulations may only be supplemented or amended by the General Assembly without prejudice to the acquired rights of staff members, and Resolutions 70/244 and 71/263, which introduced the Unified Salary Scale. UNAT noted that the purpose of introducing Staff Regulation 12.1 was to afford staff members some degree of protection from subsequent amendments to the Staff Regulations prejudicing their acquired rights. In UNAT's view, an acquired right means a vested right and employees only acquire a vested right to their salary for services rendered. UNAT held that the limited purpose of Regulation 12.1 is to ensure that staff members are not retrospectively deprived of a benefit once the legal requirements for claiming the benefit have been fulfilled. UNAT concluded that the contested decisions did not violate the staff members' acquired rights as the General Assembly resolutions altered the staff members' future salaries. UNAT held that there was no normative

conflict between the resolution 13(I) of 1946 and resolutions 70/244 and 71/263. Absent any normative conflict, the Secretary-General did not act illegally in implementing Resolutions 70/244 and 71/263. UNAT further held that the fact that the staff members' letters of appointment stated that their initial salary "may rise" did not constitute an express promise by the Organization to continue to increase their rate of pay and never to reduce it. The salary entitlements of staff members may be unilaterally amended by the General Assembly.

As for the staff members' cross-appeal claiming that UNDT erred in finding that it lacked jurisdiction to examine whether the decision of the General Assembly to provide for the transitional allowance was illegal, discriminatory and in violation of Article 8 of the Charter of the United Nations, UNAT held that UNDT was correct to decline jurisdiction on the basis that only appeals in relation to administrative decisions are receivable by it.

UNAT upheld the Secretary-General's appeal, dismissed the staff members' cross-appeal, and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-097.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-097.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-840.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-840.pdf)

### Judgment 2011-UNAT-165 (Cherif)

Administrative decision – ICAO Council decision – appeal – receivability (UNAT)

#### Applicable law:

- *Article 58 (Chapter XI) of Convention on International Civil Aviation, Chicago, 4 April 1947*

**Legal principle:** The decisions of the governing body of ICAO are not, within the mandate of UNAT, administrative decisions. These decisions are regulatory decisions that are not subject to judicial review by UNAT.

**UNAT held:** The ICAO Secretary General contested two decisions taken by the ICAO Council, the governing body that employed him. In those decisions, the Council required that the ICAO Secretary General obtain the written approval of the President of the Council for any hiring, appointment, promotion, extension and termination of P-4 employees and above. UNAT held that the contested decisions of the ICAO Council are not, within the mandate of UNAT, administrative decisions. These decisions are regulatory decisions that are not subject to review by UNAT.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-165.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-165.pdf)

### Judgment 2015-UNAT-555 (Pedicelli)

Administrative decision – ICSC decision – impact – terms of appointment – appeal – receivability (UNDT)

#### Applicable law:

- *Article 2(1) of the UNDT Statute*

**Legal principle:** For the most part, a decision implementing an ICSC decision is of general application and therefore not reviewable. However, where a decision of general application negatively affects the terms of appointment of a staff member, such decision shall be treated as an "appealable administrative decision".

**UNDT judgment:** The staff member contested the Administration's decision implementing an ICSC decision which, by lowering the number of GS levels from nine to seven, had reclassified the post she encumbered from G-7 to G-6. The staff member claimed that the downgrading had negative practical effects on her career, one of which "would be to deprive her of possible future entitlements that would only be granted to staff members at the higher level". UNDT found the staff member's application not receivable since she had failed to challenge

an “appealable administrative decision” in that the contested decision was made by the ICSC and the Secretary-General had no discretionary authority in proceeding with implementation of the ICSC’s decision. UNDT further found that the contested decision was not taken solely with respect to the staff member, and that she did not establish that the renumbering exercise gave rise to legal consequences that adversely affected her.

**UNAT held:** The Secretary-General was duty bound to implement decisions by the ICSC as directed by the General Assembly and that for the most part, such decisions are of general application and therefore not reviewable. UNAT found, however, that where a decision of general application negatively affects the terms of appointment of a staff member, such decision shall be treated as an “administrative decision” within the scope of Article 2(1) of the UNDT Statute. Based on the staff member’s Personnel Action Forms, before and after implementation of the ICSC’s renumbering exercise, UNAT found that the exercise had a direct adverse impact on her salary. UNDT failed to give any consideration to the staff member’s Personnel Action Forms and thus erred in law and fact in concluding that her application was not receivable. UNAT vacated the judgment and remanded the matter back to UNDT.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2014-087.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2014-087.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-555.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-555.pdf)

### **Judgment 2017-UNAT-746 (Auda)**

Administrative decision – non-renewal – date of notification – verbal notification – written notification – appeal – time limit to request management evaluation – time bar

**Applicable law:**

- *Staff Rule 11.2(c)*

**Legal principle:** Written notification is not a prerequisite to contest an administrative decision.

**UNDT judgment:** The staff member contested the decision not to renew his fixed-term appointment. UNDT found that the application was receivable since the staff member had requested management evaluation within the prescribed time limit on the grounds that the time limit started to run from the date of the written notification of the previously verbally communicated non-renewal decision. On the merits, UNDT concluded that the staff member had not met the burden of proving an “express promise” in writing containing a “firm commitment” of the Administration to renew his fixed-term appointment, so as to support his contention that he had a legitimate expectancy of renewal.

**UNAT held:** The fact that the non-renewal decision was communicated verbally was, by itself, of no consequence since there is no explicit requirement in law for such notification to be in writing. Staff Rule 11.2(c) does not require a written notification as a prerequisite to contest an administrative decision. UNAT affirmed the UNDT judgment dismissing the staff member’s application, but set aside its finding that the application was receivable.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-117.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-117.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-746.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-746.pdf)

### **Judgment 2011-UNAT-130 (Koda)**

Administrative decision – OIOS report – OIOS recommendation – receivability (UNDT)

**Applicable law:**

- *Article 97 of the Charter of the United Nations*

**Legal principle:** While reports and recommendations made by OIOS do not constitute administrative decisions, an administrative decision that is taken on the basis of an OIOS report or recommendation may be impugned.

**UNDT judgment:** The applicant contested the decision to constructively dismiss her. UNDT found that she was not constructively dismissed and held that OIOS' decision, regarding the content of its audit report, was not within its jurisdiction.

**UNAT held:** UNAT affirmed the UNDT judgment. UNAT held that OIOS operates under the "authority" of the Secretary-General, but has "operational independence". It further noted that, insofar as the contents and procedures of an individual report are concerned, the Secretary-General has no power to influence or interfere with OIOS. Thus, UNDT also has no jurisdiction to do so, as it can only review the Secretary-General's administrative decisions. UNAT however noted that to the extent that any OIOS decisions are used to affect staff member's terms or contract of employment, OIOS' report may be impugned. For example, an OIOS report might be found to be so flawed that the Administration's taking disciplinary action based thereon must be set aside. UNAT noted that though UNDT found flaws in the OIOS' report, no disciplinary action was based upon it since the Administration disregarded OIOS' recommendation.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-110.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-110.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-130.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-130.pdf)

### **Judgment 2011-UNAT-135 (Larkin)**

Administrative decision – OSLA – legal services – representation – appeal – receivability (UNDT)

#### **Applicable law:**

- *Article 2(1) of the UNDT Statute*
- *Secretary-General's Bulletin ST/SGB/2010/3 (Organization and terms of reference of the Office of Administration of Justice)*
- *Guiding principles of conduct for OSLA affiliated counsel*

**Legal principle:** The services provided by OSLA and the way the representation is implemented can have an impact on a staff member's terms of employment and therefore constitute an administrative decision subject to review by UNDT.

**UNDT judgment:** The staff member contested the decision taken by the former Chief of OSLA not to disclose a potential conflict of interest in his case. UNDT rejected the staff member's application, holding that the alleged omission was not an administrative decision subject to review by UNDT.

**UNAT held:** The services provided by OSLA and the way the representation is implemented can have an impact on a staff member's terms of employment and can therefore fall within the jurisdiction of UNDT, without interfering with the professional independence of counsel. UNAT found that the decision taken by the former Chief of OSLA not to disclose a potential conflict of interest in the staff member's case could have an impact on his terms of employment and therefore constituted an administrative decision subject to review by UNDT. UNAT reversed the UNDT judgment and remanded the case to UNDT for a trial on the merits.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-028.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-028.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-135.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-135.pdf)

### Judgment 2012-UNAT-199 (Worsley)

Administrative decision – OSLA – legal services – representation – legal assistance – impact – terms of appointment – receivability (UNDT)

#### Applicable law:

- *Staff Rules 11.4(d) and 11.5(d)*
- *Article 12 of the UNDT Rules of Procedure*
- *Article 13 of the UNAT Rules of Procedure*

**Legal principle:** The services provided by OSLA and the way the representation is implemented can have an impact on a staff member's terms of appointment and therefore constitutes an administrative decision subject to review by UNDT.

**UNDT judgment:** The staff member contested OSLA's decision to refuse to continue to provide legal assistance to her on the basis that the lawyer/client relationship had broken down irretrievably. UNDT was of the view that the contested decision was a legitimate exercise of the discretionary authority vested in OSLA. UNDT held that the right to receive assistance by OSLA does not amount to a right to representation by OSLA.

**UNAT held:** UNAT recalled its holding in a previous case “that the services provided by OSLA and the manner in which the representation is implemented can have an impact on a staff member's terms of appointment and therefore can fall within the jurisdiction of UNDT, without interfering with the professional independence of [the] counsel[s]”. UNAT held that the discretionary power of OSLA not to represent a person is not unfettered. However, in this case, the staff member had failed to show how OSLA's actions had affected her rights or her case. UNAT affirmed UNDT's finding that the right of staff members to receive assistance from OSLA does not amount to a right to representation by OSLA. UNAT affirmed the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-024.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-024.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-199.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-199.pdf)

### Judgment 2016-UNAT-661 (Kalashnik)

Administrative decision – receivability (UNDT) – *ratione materiae* – management evaluation outcome

#### Applicable law:

- *Article 8(1) of the UNDT Statute*

**Legal principle:** The outcome of a management evaluation (that is the Secretary-General's response to a request for management evaluation) is not an appealable administrative decision.

**UNDT judgment:** The staff member submitted requests for management evaluation of the decisions not to roster him for the position of P-4 Resident Investigator and not to select him for the P-4 Investigator positions. USG/DM responded to the staff member's requests for management evaluation, upholding the recommendations of MEU and finding no merit in his claims. The staff member subsequently filed an application with UNDT contesting the decision of USG/DM. UNDT held that the staff member's application was not receivable *ratione materiae* because the Administration's response to a request for management evaluation is not a judicially reviewable administrative decision.

**UNAT held:** UNAT affirmed UNDT's finding and held that “the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision” all support the conclusion that the Administration's response to a request for management evaluation is not a reviewable decision. UNAT noted

that the response to a request for management evaluation is an opportunity for the Administration to resolve a staff member's grievance without litigation and not a fresh decision.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2015-087.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2015-087.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-661.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-661.pdf)

## Appointment

### Judgment 2019-UNAT-901 (Latimer)

Appointment – appointment of family member – conditions of appointment – retired staff member – retiree – when actually employed contract – family relationships – request to resign – constructive dismissal

#### Applicable law:

- *Staff Rule 4.7*
- *Article 101 of the Charter*
- *Administrative Instruction ST/AI/2003/8/Amend.2. (Retention in service beyond the mandatory age of separation and employment of retirees)*

**Legal Principles:** i) The Tribunals do not have the authority to examine whether or not the Staff Rules as approved by the General Assembly are in accord with the Charter of the United Nations or other higher norms. Neither UNDT nor UNAT is a constitutional court. ii) Staff Rule 4.7(a) only forbids the Secretary-General “to grant an appointment” to a person who has a close family relationship but does not provide a legal basis to revoke a staff member's appointment.

**UNDT judgment:** The former staff member, after having retired from the Organization in 2008, was engaged on a series of temporary appointments on a “when actually employed” (WAE) basis. In October 2012, prior to his daughter's offer of temporary appointment, the retired staff member resigned from the Organization as requested by the Administration. The daughter received another temporary appointment with the Organization from 7 October 2013 to 22 November 2013. The retired staff member was re-engaged on a WAE appointment on 25 November 2013. He received four further WAE appointments, including his most recent appointment, which was from 1 January 2016 to 31 December 2016. In March 2016, his daughter received an FTA, effective June 2016. In October 2016, there was an e-mail exchange between the retired staff member and the Administration regarding a potential 2017 WAE appointment in which the Administration inquired whether he would be available, and he confirmed his availability. On 17 November 2016, the retired staff member was asked to resign pursuant to Staff Rule 4.7(a) which provides, in relevant part, that “[a]n appointment shall not be granted to a person who is the father, mother, son, daughter, brother or sister of a staff member”. He submitted his resignation on the same day and filed an application with UNDT alleging that the request for resignation constituted a constructive dismissal which is unlawful. The Administration decided not to grant the retired staff member a WAE appointment for 2017

UNDT held that the Administration's request to the retired staff member to resign was unlawful and amounted to a constructive dismissal (i.e. a situation where an employer creates such working conditions or changes the terms of employment that the affected employee has no choice but to resign). It found, inter alia, that i) the decision was based on Staff Rule 4.7(a) which in itself is discriminatory and inconsistent with higher norms, including Article 101 of the Charter of the United Nations; and ii) the non-execution of the retired staff member's 2017 WAE appointment was unlawful. UNDT ordered rescission of the termination of the retired staff member's 2016 WAE contract or in-lieu compensation in the amount of USD 10,000. It further ordered that the retired staff member be considered eligible for future WAE contracts within the Secretariat.

**UNAT held:** UNDT exceeded its jurisdiction and erred in law in reviewing the legality of Staff Rule 4.7(a). As Staff Rule 4.7(a) was approved by the General Assembly, the Tribunals had no authority to examine whether or not it is in accord with the Charter of the United Nations or any other higher norms. Nonetheless, UNAT found that Staff Rule 4.7(a) only forbids the Secretary-General “to grant an appointment” to a person who has a close family relationship but does not provide a legal basis to revoke a staff member’s appointment. Accordingly, UNAT concluded that the termination of the retired staff member’s 2016 WAE appointment was unlawful and affirmed the rescission of the termination of the 2016 WAE appointment. However, it found the in-lieu compensation awarded to be excessive and reduced it to USD 2,000.

As for the decision not to grant the retired staff member a WAE appointment for 2017, UNAT noted that there was merely an informal e-mail exchange between the retired staff member and the Administration regarding a potential 2017 WAE appointment and no valid contract, or quasi-contract, had been concluded. Therefore, UNDT erred in finding that the retired staff member had a valid WAE contract for 2017. As for future WAE appointments, UNAT held that the retired staff member’s eligibility will depend on whether or not his daughter remains employed by the Organization. For as long as she is a UN staff member, Staff Rule 4.7(a) will apply and the Administration will be precluded from granting an appointment to him. Consequently, UNAT vacated UNDT’s order with regard to eligibility for future WAE appointments.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2018-066.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2018-066.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-901.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-901.pdf)

#### **Judgment 2013-UNAT-357 (Baig et al.)**

Appointment – conversion – permanent appointment – denial – discretion – individual consideration – suitability

#### **Applicable law:**

- *Secretary-General’s Bulletin ST/SGB/2009/10 (Consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 June 2009)*
- *Former Staff Rules 104.12(b) and 104.13 (100 Series)*

**Legal principle:** In matters of delegation of authority, the legal instrument delegating authority must be read carefully and restrictively. Staff members are entitled to individual, full and fair consideration of their suitability for conversion to permanent appointment.

**UNDT judgment:** The staff members contested the decision of the ASG/OHRM not to grant them a permanent appointment. UNDT held that the authority to appoint staff, which was expressly delegated to the ICTY Registrar, included the authority to grant permanent appointments. Accordingly, it held that the ASG/OHRM was not the competent decision-maker to determine the granting of permanent contracts to ICTY staff members and, thus, “the contested decisions were tainted by a substantive procedural flaw”. UNDT ordered rescission of the decision not to grant the staff members permanent appointments, noting that the rescission of the decision does not mean that they should have been granted permanent appointments, but that a new conversion procedure should be carried out. UNDT further ordered an award of in-lieu compensation in the amount of 2,000 Euros.

**UNAT held:** The ASG/OHRM, and not the ICTY Registrar, had discretionary authority in matters of permanent appointment. UNAT found that the ASG/OHRM had failed to exercise her discretion in a lawful manner in adopting a blanket policy of denial of permanent appointments to ICTY staff members rather than affording them the individual consideration to which they were entitled. Finding that the staff members were discriminated against and the impugned decision was legally void, UNAT rescinded the impugned decisions and remanded the matter to the ASG/OHRM for consideration of retroactive conversion.

The above decision by UNAT rendered the appeals of the UNDT award of 2,000 Euros moot. However, UNAT awarded the staff members compensation in the amount of 3,000 Euros each for moral damage.



Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2012-129.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2012-129.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-357.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-357.pdf)

### Judgment 2013-UNAT-303 (O'Hanlon)

Appointment – conversion – permanent appointment – eligibility – previous agency – prior service

#### Applicable law:

- *Secretary-General's Bulletin ST/SGB/2009/10 (Consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 June 2009)*
- *Staff Rule 4.9(a)*

**Legal principle:** A staff member's service with his/her previous entity must be counted in determining whether the eligibility requirement of five years of continuous service for conversion to permanent appointment is met, provided that he/she was transferred or seconded, under the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations Applying the United Nations Common System of Salaries and Allowances (Inter-Organization Agreement).

**UNDT judgment:** The staff member contested the decision that he was not eligible for conversion to a permanent appointment. UNDT rejected the staff member's application, holding that his prior service with UNRWA did not qualify as service under the 100 series of the Staff Rules, as required by ST/SGB/2009/10.

**UNAT held:** UNAT rejected UNDT's finding and held that, pursuant to the Inter-Organization Agreement (which states that service in the releasing organization will be counted as service in the receiving organization), the staff member's service with UNRWA should have been counted as service with the United Nations and that he thus met the service criterion for eligibility. UNAT granted the appeal and remanded the case to the Administration to decide whether the staff member met the remaining criteria for conversion to a permanent appointment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2012-031e.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2012-031e.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2013-unat-303.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2013-unat-303.pdf)

### Judgment 2015-UNAT-574 (Couquet)

Appointment – former staff member – new appointment – re-employment – terms of appointment – EOD – ASHI – enrolment – eligibility

#### Applicable law:

- *Staff Rule 4.17*

**Legal principle:** The EOD for the purpose of determining the terms of appointment of a former staff member who receives a new appointment after separating from the Organization is the date of the new appointment.

**UNDT judgment:** The staff member filed an application with UNDT contesting the Administration's decision that she was ineligible for enrolment in the ASHI programme as she had not reached the 10-year threshold. UNDT concluded that the staff member's eligibility for ASHI should be determined based on the date of her recruitment to the ICTY in October 2006 instead of her appointment to UNAKRT in October 2009. UNDT held that the staff member was eligible for ASHI and ordered that the contested decision be rescinded.

**UNAT held:** UNAT found that UNDT erred in concluding that the staff member's eligibility for ASHI should be determined based on the date of her recruitment to the ICTY in October 2006 instead of her appointment to UNAKRT in October 2009. Under Staff Rule 4.17, the date of recruitment that is relevant for determining the terms of appointment of a former staff member who receives a new appointment after separating from the Organization is the date of the new appointment. In the staff member's case, her new appointment with UNAKRT was a re-employment under Staff Rule 4.17 and not a reinstatement. Therefore, her eligibility for ASHI was properly determined by reference to the date of her recruitment to UNAKRT in October 2009. UNAT allowed the Secretary-General's appeal and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2014-112.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2014-112.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-574.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-574.pdf)

### Judgment 2018-UNAT-847 (Timothy)

Appointment – indefinite appointment – permanent staff – abolition of post – alternative employment – suitable posts

#### Applicable law:

- *Article 101(3) of the Charter of the United Nations*
- *Article 10(5) of the UNDT Statute*
- *Staff Rules 9.6(e) and 9.6(f)*

**Legal principle:** The Administration is under an obligation to make proper, reasonable and good faith efforts to find an alternative suitable post for a redundant staff member holding an indefinite appointment at his or her grade level or even at a lower grade, if, in the latter case, the staff member concerned has expressed an interest. Staff members holding a continuing or indefinite appointment facing termination due to abolition of post are obliged to fully cooperate by applying for suitable vacant posts.

**UNDT judgment:** The staff member, who held an indefinite appointment at the GS-7 level, contested the decision to separate her from service. UNDT found that the decision to terminate her appointment for abolition of post and to separate her from the Organization had not been taken in line with the mandatory legal framework and was unlawful. UNDT ordered rescission of the contested decision and awarded the staff member three months' net base salary as compensation for moral damages.

**UNAT held:** UNDT was correct in concluding that the Administration's decision to terminate the staff member was unlawful, since it did not fully comply with its obligations under Staff Rule 9.6(e) and (f) to make all reasonable and *bona fides* efforts to consider her for available suitable posts, as an alternative to the abolished one. UNAT noted that the phrase "suitable posts" is not defined in the Staff Rules, and that nothing in the language of Staff Rule 9.6(e) and (f) indicates that the obligation of the Administration to consider the redundant staff member for suitable posts, vacant or likely to be vacant in the future, was limited to the staff member's grade level. UNAT held that the Administration was under an obligation to make proper, reasonable and good faith efforts to find an alternative post for the displaced staff member at his or her grade level or even at a lower grade, if, in the latter case, the staff member concerned had expressed an interest. Thus, UNAT concluded that the staff member should have been considered not only for suitable posts at the same level as her abolished G-7 post in New York, but also for all the lower available suitable posts in New York, for which she had expressed her interest by way of application thereto.

Nonetheless, UNAT found that UNDT made several errors of law: a) UNDT erred in finding that it sufficed, in order for the staff member to be retained in service, to have a relative competence for the new suitable post. UNAT held that if the redundant staff member was not fully competent to perform the core functions and responsibilities of an alternative suitable post, the Administration had no duty to consider him or her for the post; b) UNDT erred in finding that the staff member should have been considered for available suitable posts covering the entire parent

organization, including but not limited to her duty station, because she had passed the exam for the Professional level. UNAT held that it was immaterial whether or not the staff member had passed the exam for the Professional level at some point since the abolished post she was encumbering at the critical time fell into the General Services category and not into the Professional category; c) UNDT erred in finding that an affected staff member had a right to be retained in suitable positions occupied at the date of abolition by staff members having a lesser level of protection under Staff Rule 9.6(e). UNAT held that the Administration was bound to consider the redundant staff members only for suitable posts that were vacant or likely to become vacant in the future; and d) UNDT further erred in finding that staff members were entitled to be retained without having to apply for vacant job openings. UNAT held that a staff member holding a continuing or indefinite appointment facing termination due to abolition of his or her post were obliged to fully cooperate by applying for suitable posts that were vacant.

UNAT ordered rescission of the contested decision; alternatively, the Secretary-General was ordered to pay 12 months' net base salary as compensation in lieu of rescission. UNAT vacated UNDT's award of compensation for moral damages as the staff member did not present evidence of any harm.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-080.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-080.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-847.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-847.pdf)

### **Judgment 2012-UNAT-276 (Valimaki-Erk)**

Appointment – terms of appointment – conditions of appointment – professional and higher level – renouncement of permanent residency

#### **Applicable law:**

- *Report of the Fifth Committee (A/2615)*
- *Report of the Advisory Committee on Administrative and Budgetary Questions (A/65/537)*
- *Staff Rule 4.3*

**Legal principle:** The Organization's policy to require an individual to renounce permanent residency in a country outside his or her country of nationality before he or she could take up an appointment with the Organization has no legal basis and is unlawful.

**UNDT judgment:** The staff member contested the former JAB's decision that she must either apply for Australian citizenship or renounce her Australian permanent resident status as a condition for a two-year appointment for the post of Procurement Officer. UNDT concluded that such requirement lacked legal basis since there was no regulation in the Staff Regulations and Rules nor provision in any of the General Assembly resolutions that required staff members to renounce their permanent resident status in a country which is not their country of nationality before he or she could enter into service with the Organization at the professional or higher level.

**UNAT held:** UNAT affirmed the UNDT judgment. It held that although the Secretary-General has discretion in the appointment of staff, he has no discretion to impose unwritten regulations and rules that are prejudicial to staff members.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2012-004.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2012-004.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-276.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-276.pdf)

## After-Service Health Insurance (ASHI)

### Judgment 2015-UNAT-574 (Couquet)

ASHI – enrolment – eligibility – former staff member – new appointment – re-employment – EOD

#### Applicable law:

- *Staff Rule 4.17*

**Legal principle:** The EOD for the purpose of determining the terms of appointment of a former staff member who receives a new appointment after separating from the Organization is the date of the new appointment.

**UNDT judgment:** The staff member filed an application with UNDT contesting the Administration's decision that she was ineligible for enrolment in the ASHI programme as she had not reached the 10-year threshold. UNDT concluded that the staff member's eligibility for ASHI should be determined based on the date of her recruitment to the ICTY in October 2006 instead of her appointment to UNAKRT in October 2009. UNDT held that the staff member was eligible for ASHI and ordered that the contested decision be rescinded.

**UNAT held:** UNAT found that UNDT erred in concluding that the staff member's eligibility for ASHI should be determined based on the date of her recruitment to the ICTY in October 2006 instead of her appointment to UNAKRT in October 2009. Under Staff Rule 4.17, the date of recruitment that is relevant for determining the terms of appointment of a former staff member who receives a new appointment after separating from the Organization is the date of the new appointment. In the staff member's case, her new appointment with UNAKRT was a re-employment under Staff Rule 4.17 and not a reinstatement. Therefore, her eligibility for ASHI was properly determined by reference to the date of her recruitment to UNAKRT in October 2009. UNAT allowed the Secretary-General's appeal and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2014-112.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2014-112.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-574.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-574.pdf)

## Basic rights and obligations of staff

### Judgment 2018-UNAT-892 (Ozturk)

Basic rights and obligations of staff – private legal obligations – indebtedness to third parties – national court order – alimony – child support – implementation of court order – salary deduction – amount to be deducted – Administration's discretionary authority

#### Applicable law:

- *Article 2(7) of the Charter of the United Nations*
- *Staff Rules 1.2(b) and 3.18(c)*
- *Secretary-General's Bulletin ST/SGB/1999/4 (Family and child support obligations of staff members)*

**Legal principle:** Under Staff Rule 3.18(c)(iii), the Secretary-General has discretionary authority to make a proper and fair decision, in cases of a staff member's indebtedness to third parties. In these cases, the Administration is entitled, and at the same time compelled, to engage in an exercise of its discretion by taking into consideration all relevant factors and, if need be, by varying the deductions made from the staff member's salary or other emoluments.

**UNDT judgment:** The staff member contested the Administration's decision to deduct 25 per cent of his salary as child support for El., one of his four children, in implementation of an order of a Kazakh court.

UNDT held that the Administration was incorrect in assuming that it had no discretion regarding the amount to be garnished from the staff member's salary. The Administration had discretionary authority under Staff Rule 3.18(c)(iii) and Section 2.1 of ST/SGB/1999/4 in determining the amount to be deducted.

UNDT considered that the Administration had failed to lawfully exercise its discretion by taking into account all relevant considerations, including whether other national court orders had granted alimonies to the staff member's other family members. UNDT further found the monthly deduction of 25 per cent (which ranged between USD 1,957 – 2,773) unreasonable in light of the amount of monthly child dependency allowance paid to the child's mother — who worked as a national staff member of OCHA in Kazakhstan — by the United Nations in Kazakhstan (USD 27).

By way of remedy, UNDT rescinded the contested decision and ordered reimbursement of the amounts deducted from the date of the contested decision minus the child allowance paid to the staff member for El. as of that date. UNDT further held that the Organization had to determine anew, in a legal exercise of its discretion, taking all relevant matters into account, the amount to be deducted from the staff member's salary in favour of El. from the date of the contested decision onwards.

**UNAT held:** UNAT noted that under the provisions of Staff Rule 1.2(b), staff members must comply with local laws and honour their private legal obligations, including, but not limited to, the obligation to honour orders of competent courts. However, the ST/SGB/1999/4 legal framework has to be interpreted within the context of the authorising Staff Rule 3.18(c)(iii), which grants the Administration discretionary authority, as is reflected in the use of the word “may” in it, to make a proper and fair decision, in cases of indebtedness to third parties, under the proviso that a deduction for this purpose is authorized by the Secretary-General. In these cases, such as the present case of a family support court order, the Administration is entitled, and at the same time compelled, to engage in an exercise of its discretion by taking into consideration all relevant factors and, if need be, by varying the deductions made from the staff member's salary or other emoluments. UNAT held that this approach does not contravene the provision of Article 2(7) of the Charter, that the United Nations should not intervene in matters which are essentially within the domestic jurisdiction of any state.

UNAT further held that there is no valid exercise of the discretion vested in the Administration when the latter always addresses the administrative matters at issue in the same direction or acts in the misconception that it is fettered to make a specific choice, to the exclusion of all other choices amongst the various courses of action open to it. In these situations, the Administration has, illegally, failed to engage in a balancing exercise of the competing interests, by considering all aspects relevant for the exercise of its discretion, in order to select the proper legal consequence. UNAT dismissed the Secretary-General's appeal and affirmed the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2018-055.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2018-055.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-892.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-892.pdf)

## Benefits and entitlements

### Judgment 2010-UNAT-031 (Jarvis)

Benefits and entitlements – home leave – lump sum payment – acceptance – calculation – amount – right to appeal

#### Applicable law:

- *Former Staff Rules 105 and 107 (100 Series)*
- *Administrative Instruction ST/AI/2006/4 (Official travel)*

**Legal principle:** The acceptance of a lump-sum option for home leave does not preclude a staff member from claiming before UNDT wrongful calculation of it.

**UNDT judgment:** The staff member (and two other applicants) contested the calculation of the lump-sum payment for home leave travel. UNDT rejected the application as inadmissible, noting that the staff members, by opting for the lump-sum payment proposed, forfeited any right of appeal.

**UNAT held:** UNAT noted that the staff members had accepted the lump-sum calculated by the ICTY travel unit while reiterating their disagreement with the calculation. UNAT held that UNDT erred in finding that by accepting a lump-sum payment for home leave travel, the staff members forfeited any right to contest the calculation of the amount of the lump sum payment. It remanded the case to UNDT for consideration on the merits.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2009-077e.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2009-077e.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-031.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-031.pdf)

## Burden of proof

### Judgment 2012-UNAT-201 (Obdeijn)

Burden of proof – non-renewal of contract – arbitrary or improper motives – complainant – shift of burden of proof

**Applicable law:**

- *General Assembly resolution 63/253*
- *Article 2(1) of the UNDT Statute*
- *Staff Rule 4.13*

**Legal principle:** As a general principle, a staff member bears the burden of proof of showing that a decision was arbitrary or tainted by improper motives. However, the Administration's refusal to disclose the reasons for the contested decision shifts the burden of proof so that it is for the Administration to establish that its decision was neither arbitrary nor tainted by improper motives.

**UNDT judgment:** The staff member contested the Administration's decision not to renew his fixed-term appointment without disclosing the reasons for the non-renewal. UNDT found that the Administration had breached its obligation to disclose the reasons for the decision not to renew the staff member's appointment, particularly in response to his requests for reasons, in violation of the requirements of good faith and fair dealing.

**UNAT held:** The Administration cannot legally refuse to state the reasons for a decision that creates adverse effects on the staff member, such as a decision not to renew a fixed-term appointment, where the staff member requests it or the Tribunal orders it. The refusal to disclose the reasons for a contested decision shifts the burden of proof so that it is for the Administration to establish that its decision was neither arbitrary nor tainted by improper motives, and the Tribunal is entitled to draw an adverse inference from the Administration's refusal. UNAT affirmed UNDT's finding that the contested decision was unlawful and the award of USD 8,000 for moral injury. However, it vacated the award of six months' net base salary for economic loss, finding that the staff member was unable to establish any economic loss.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-032.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-032.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-201.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-201.pdf)

## Compensation

### Judgment 2010-UNAT-059 (Warren)

Compensation – award of interest – jurisdiction to order interest – interest rate

#### Applicable law:

- *Articles 10(5)(b) and 10(7) of the UNDT Statute*
- *Articles 9(1)(b) and 9(3) of the UNAT Statute*

**Legal principle:** UNDT and UNAT have the authority to award interest on orders for compensation.

**UNDT judgment:** The staff member claimed that the amount paid to him as his lump sum entitlement for home leave travel had been incorrectly calculated. UNDT held that the amount had been calculated on the wrong basis and ordered that the Secretary-General pay the staff member the difference between the amount of the lump sum entitlement as determined by UNDT and the amount already paid pursuant to the Organization's calculation. UNDT further ordered that the Secretary-General pay the staff member interest on the difference at the rate of eight per cent per year, from the date of the contested decision to the date of payment.

**UNAT held:** The Secretary-General claimed that UNDT had no power to award interest. UNAT found that both UNDT and UNAT have the power to award interest in the normal course of ordering compensation. The very purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its statutory obligations. In many cases, interest will be by definition part of compensation. To say that the tribunals have no jurisdiction to order the payment of interest would, in many cases, mean that the staff member could not be placed in the same position, and that therefore, proper "compensation" could not be awarded. Noting the inconsistent approach of UNDT in several of its judgments, UNAT decided to award interest at the US Prime Rate applicable at the due date of the entitlement, calculated from the due date of the entitlement to the date of payment of the compensation awarded by UNDT. UNAT further ordered that the Secretary-General make payment within 60 days of the UNAT judgment and that an additional five per cent be added to the US Prime Rate from the date of expiry of the 60-day period to the date of payment, if payment of the compensation is not made within 60 days.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-015.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-015.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-059.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-059.pdf)

### Judgment 2011-UNAT-109 (Hastings)

Compensation – evidence of harm – non-promotion – significant chance for promotion – loss of chance

#### Applicable law:

- *Article 10(5) of the UNDT Statute*
- *Former Staff Rule 112.2(b) (100 Series)*
- *Administrative Instruction ST/AI/2006/3 (Staff selection system)*

**Legal principle:** Moral damages may not be awarded without specific evidence supporting the award.

**UNDT judgments:** The staff member contested the decision not to grant her an exception to Section 5.2 of ST/AI/2006/3 (which provides that staff members shall not be eligible to be considered for promotion to posts more than one level higher than their personal grade). UNDT found that it was more likely than not that the staff member's case for an exception had not been properly considered and accordingly the decision to reject her application on

the basis that no exceptions were possible was not lawful. In its judgment on Remedies, UNDT awarded moral damages, finding that the staff member “must have suffered some distress at the unlawful decision”.

**UNAT held:** UNAT found that there was no evidence of damages or injuries in this case. UNAT reaffirmed the principle that an award for moral damages must be supported by specific evidence.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2009-030.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2009-030.pdf)

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-071.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-071.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-109.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-109.pdf)

### **Judgment 2011-UNAT-131 (Cohen)**

Compensation – harm – maximum amount – higher compensation – exceptional circumstances

**Applicable law:**

- *Article 10(5)(b) of the UNDT Statute*
- *Universal Declaration of Human Rights*

**Legal principle:** When the Administration elects to pay compensation in lieu of the performance of a specific obligation ordered by the Tribunal, in addition to the compensation that the Tribunal ordered it to pay for the damages suffered by the applicant, that election may render the circumstances of the case exceptional within the meaning of Article 10(5)(b) of the UNDT Statute. In such a situation, the Tribunal is not bound to give specific reasons to explain what makes the circumstances of the case exceptional.

**UNDT judgment:** The former staff member contested the decision to summarily dismiss her for serious misconduct. UNDT concluded that the Secretary-General had not presented facts supporting the grounds for misconduct and summary dismissal. UNDT ordered the reinstatement of the staff member or, in lieu thereof, payment of two years’ net base salary. It also ordered that the staff member be paid compensation for lost earnings in the amount of 30 months’ net base salary and for the breach of her right to due process in the amount of two months’ net base salary.

**UNAT held:** UNAT recalled that Article 10(5) of the UNDT Statute limits the total compensation awarded under subparagraphs (a) or (b), or both, to an amount that shall normally not exceed two years’ net base salary of the applicant, unless the Tribunal orders the payment of higher compensation and gives the reasons for that decision. In cases where UNDT rescinds an illegal decision to dismiss a staff member, the Administration must both reinstate the staff member and pay compensation for loss of salaries and entitlements. If the Administration elects to pay compensation in lieu of the performance of a specific obligation such as reinstatement, in addition to the compensation that the Tribunal ordered it to pay for the damage suffered by the applicant, that election may, depending on the extent of the damage, render the circumstances of the case exceptional within the meaning of Article 10(5)(b) of the UNDT Statute. In such a situation, the Tribunal is not bound to give specific reasons to explain what makes the circumstances of the case exceptional. The option given to the Administration to pay compensation in lieu of performance of a specific performance should not render ineffective the right to an effective remedy.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-118.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-118.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-131e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-131e.pdf)

### **Judgment 2010-UNAT-092 (Mmata)**

Compensation – harm – maximum amount – higher compensation – exceptional circumstances – aggravating factors



**Applicable law:**

- *Article 10(5)(b) of the UNDT Statute*

**Legal principle:** In exceptional cases, compensation may be ordered in excess of two years' net base salary. Article 10(5) (b) of the UNDT Statute does not require a formulaic articulation of aggravating factors; rather it requires evidence of aggravating factors which warrant higher compensation.

**UNDT judgment:** The former staff member contested the decision to impose on him the disciplinary measure of separation from service without notice. UNDT found that the Secretary-General unfairly dismissed the former staff member and ordered reinstatement with loss of earnings up to the date of reinstatement. In the alternative, UNDT ordered compensation for loss of earnings up to the date of judgment and an additional amount of compensation of two years' net base salary.

**UNAT held:** UNAT affirmed the UNDT award of compensation for loss of earnings for seven months from the date of the staff member's separation from service to the date of the UNDT judgment (as an alternative to the order for reinstatement of the staff member) plus an additional amount of two years' net base salary. The Secretary-General maintained that, while the total of these amounts exceeded the compensation limit of two years' net base salary, UNDT did not particularize any reasons to justify an increased award under Article 10(5)(b) of the UNDT Statute. In the opinion of UNAT, Article 10(5)(b) does not require a formulaic articulation of aggravating factors; rather it requires evidence of aggravating factors which warrant higher compensation. In addition to finding that the staff member was unfairly dismissed for serious misconduct, UNDT found evidence of blatant harassment and an accumulation of aggravating factors that supported an increased award. UNAT found no error in law or in fact concerning UNDT's finding that this was an exceptional case justifying the amount of compensation awarded.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-053.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-053.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-092.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-092.pdf)

**Judgment 2017-UNAT-787 (Auda)**

Compensation – moral harm – evidence of harm – sole testimony of complainant – corroboration

**Applicable law:**

- *Article 10(5) of the UNDT Statute*
- *Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)*

**Legal principle:** Testimonial evidence without corroboration by independent evidence (expert or otherwise) is not satisfactory proof to support an award of moral damages.

**UNDT judgment:** A staff member filed an application before UNDT contesting the Administration's decision to close an investigation into his complaint filed under ST/SGB/2008/5. UNDT concluded that the decision to close the complaint without further action was improper as the investigation was tainted by serious procedural breaches. UNDT awarded USD 5,000 as moral damages for the harm to the staff member's reputation and general well-being.

**UNAT held:** UNAT upheld both UNDT's finding that the decision to close the investigation was improper as well as UNDT's refusal to order rescission of that decision on account of the subject of the investigation having separated from the Organization. UNAT, however, vacated UNDT's moral damages award on the grounds that the staff member did not present any evidence, apart from his own unsworn testimony to support the claim. UNAT held that "generally speaking, the testimony of an applicant alone without corroboration by independent evidence

(expert or otherwise) affirming that non-pecuniary harm has indeed occurred is not satisfactory proof to support an award of damages.” As the staff member’s testimony was the only evidence presented to support his allegation of harm to his reputation and general well-being, UNDT committed an error of law in stating that this alone was sufficient to sustain an award of compensation under Article 10(5)(b) of the UNDT Statute.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-007.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-007.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-787.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-787.pdf)

### **Judgment 2017-UNAT-742 (Kallon)**

Compensation – moral harm – evidence of harm – burden of proof —sole testimony of complainant

#### **Applicable law:**

- *Article 10(5) of the UNDT Statute*
- *Article 9(1) of the UNAT Statute*

**Legal principle:** Harm for which compensation is requested must be supported by evidence. A staff member’s testimony alone is not sufficient to present evidence supporting harm under Articles 9(1)(b) of the Appeals Tribunal Statute and 10(5)(b) of the UNDT Statute.

**UNDT judgment:** A staff member at MINUSTAH contested, before UNDT, the administrative decisions to remove his designation as Chief Procurement Officer (CPO) at MINUSTAH and to deny him the required designation to take up the post of CPO at another duty station. UNDT rescinded the decisions finding they were taken in reaction to allegations that the staff member had failed to properly exercise his delegated authority and without due process or substantiation. UNDT declined to reinstate the staff member’s designation but ordered USD 50,000 in non-pecuniary damages with interest for the stigmatization, reputational damage, stress, anxiety, and moral injury caused to the staff member.

**UNAT held:** The Secretary-General’s appeal was decided by a full bench of UNAT. The majority of the judges upheld UNDT’s findings that the contested decisions were substantively and procedurally flawed and dismissed the appeal. As for UNDT’s moral damages award, the majority noted that the purpose of the amendment to Article 10(5)(b) of the UNDT Statute, made following General Assembly resolution 69/203, was to introduce an express requirement that compensation for harm can be awarded only when there is a sufficient evidentiary basis. The majority held that evidence of moral injury consisting exclusively of the testimony of the complainant, if credible, reliable and satisfactory in material respects, may be sufficient to discharge the evidentiary burden. The three dissenting opinions took the view that evidence consisting exclusively of the complainant’s testimony is not sufficient without corroboration by independent evidence (expert or otherwise). The majority included one concurring opinion which agreed with the three dissenting judges on the requirements of compensation, but joined the majority in the outcome of the case.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2015-126.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2015-126.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-742.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-742.pdf)

### **Judgment 2010-UNAT-035 (Crichlow)**

Compensation – payment pending appeal – appeal moot

**Legal principle:** Payment of compensation ordered by UNDT amounts to acceptance of the UNDT judgment. Therefore, the party’s subsequent cross-appeal challenging the award of compensation is moot.

**UNDT judgment:** The staff member appealed the decision to reassign her to another post. UNDT held that the Administration provided balanced and objectively verifiable reasons for the decision to reassign the staff member from one post to another. However, it found that the way the Administration handled the situation caused the staff member unnecessary stress and anxiety. Therefore, it awarded one-month net base salary as compensation for suffering and stress.

**UNAT held:** The Administration paid the compensation ordered by UNDT and the Secretary-General subsequently filed his cross-appeal challenging UNDT's decision to award compensation. UNAT found that, by paying the compensation ordered, the Secretary-General accepted the UNDT judgment and his cross-appeal was therefore moot.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2009-028.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2009-028.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-035.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-035.pdf)

## Contempt

### Judgment 2014-UNAT-410 (Igbinedion)

Contempt – absence of compliance – UNDT interlocutory order – suspension of action – appeal – receivability (UNAT) – excess of jurisdiction

#### Applicable law:

- *Articles 2(2), 10(2) and 10(8) of the UNDT Statute*
- *Articles 9(5) and 10(2) of the UNAT Statute*

**Legal Principles:** i) The absence of compliance may merit contempt proceedings. ii) The Appeals Tribunal sets precedent, to be followed in like cases by the Dispute Tribunal (principle of *stare decisis*). iii) An interlocutory order by UNDT remains legally valid until such time as it has been vacated by UNAT. Parties before UNDT must obey its binding decisions.

**UNDT judgment:** A UN-Habitat staff member contested the decision not to extend his appointment. UNDT issued Order No. 30, granting his request for suspension of action of the contested decision pending management evaluation. UNDT issued Order No. 33, granting suspension of action until the case was reviewed on the merits. In Order No. 110, UNDT reiterated the suspension of the non-extension decision pending the determination of the merits. UNAT vacated Orders No. 30 and No. 33. In respect of Order No. 30, UNAT concluded that UNDT had exceeded its jurisdiction and committed an error of law, as it had extended the suspension of action beyond the date of completion of management evaluation. Regarding Order No. 33, UNAT concluded that UNDT had exceeded its jurisdiction by extending the suspension of action until the final determination of the case on its merits, in contravention of Article 10(2) of the UNDT Statute, which excludes such a possibility in cases of appointment, promotion or termination. UN-Habitat did not extend the staff member's appointment, in contravention of that order, and in Judgment No. UNDT/2013/024, the Dispute Tribunal held that there was an obligation to execute UNDT Order No. 33, which had not been met. UNDT found, inter alia, that three UN-Habitat officials and OLA were in contempt of its authority and made referrals for accountability. The Secretary-General appealed the judgment.

**UNAT held:** UNDT did not act lawfully in issuing an order in direct contravention of the established UNAT jurisprudence. However, UNAT also held that parties before UNDT must obey its binding decisions and that a decision by UNDT remained legally valid until such time as UNAT vacated it. Noting that its jurisprudence was clear on this point, UNAT found the Secretary-General's refusal to comply with UNDT's order to be vexatious. UNAT reiterated its jurisprudence that the absence of compliance may merit contempt proceedings.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2013-024.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2013-024.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-410.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-410.pdf)

## Disciplinary cases

### Judgment 2018-UNAT-811 (Aghadiuno)

Disciplinary cases – disciplinary sanction – summary dismissal – misconduct – fraud – forgery – special education grant – standard of proof – proportionality of sanction

#### Applicable law:

- *Staff Regulation 1.2(b)*
- *Administrative Instruction ST/AI/2011/4 (Education grant and special education grant for children with a disability)*

**Legal principle:** Fraud, forgery and uttering falsified documents to the Organization constitute serious misconduct. Dishonesty and impropriety of this kind justifies summary dismissal without any benefits.

**UNDT judgment:** The staff member appealed the decision to summarily dismiss her. UNDT found that there was clear and convincing evidence to substantiate the allegation that the staff member had committed misconduct by submitting requests for special education grants for her children overstating the fees charged by the school and by omitting to declare sibling discounts and scholarships received from the school for three school years. However, UNDT held that the decision to summarily dismiss her from service for fraud was disproportionate, excessive, too severe and therefore unlawful. UNDT consequently upheld the staff member's application in part, ordered partial rescission of the dismissal decision (to be replaced with separation from service with termination indemnity) or six months' net base salary as an alternative compensation in place of the complete rescission of the dismissal decision.

**UNAT held:** The Secretary-General discharged his burden to establish the facts of misconduct by clear and convincing evidence in relation to all the allegations of wrongdoing regarding the special education grants. The evidence proved not only fraud in the form of false accounting, but also the uttering of forged and falsified documents to the Organization. The staff member's behaviour constituted serious misconduct by which she enriched herself by approximately USD 50,000 at the expense of the Organization. UNAT held that dishonesty and impropriety of this kind justified summary dismissal without any benefits. Accordingly, UNAT upheld the Secretary-General's appeal and vacated UNDT's judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-811.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-811.pdf)

### Judgment 2018-UNAT-873 (Belkhabbaz (formerly Oummih))

Disciplinary case – discretion – fact-finding investigation – investigation panel – harassment – abuse of authority – retaliation – misconduct – referral for disciplinary action

#### Applicable law:

- *Article 10(5) of the UNDT Statute*
- *Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)*

**Legal principle:** A Tribunal’s order directing the ASG/OHRM to “institute” disciplinary proceedings impinges upon the discretion of the ASG/OHRM. The appropriate order is one directing the ASG/OHRM to act in terms of section 5.18(c) of ST/SGB/2008/5.

**UNDT judgment:** The staff member filed a complaint against her former supervisor and former colleague, pursuant to ST/SGB/2008/5. The complaint alleged improper deprivation of functions, discrimination and abuse of authority, retaliation through performance appraisals, defamation and preferential treatment of another staff member. The complaint was investigated by two separate fact-finding panels resulting ultimately in the decision of the ASG/OHRM that no prohibited conduct took place and a decision to close the matter without further action. The staff member contested the decision to take no further action on her complaint. UNDT concluded that the contested decision was unjustifiable and unlawful. Its conclusion was based on various findings of procedural unfairness and unreasonableness. UNDT rescinded the contested decision to take no further action and remanded the case to the ASG/OHRM to institute disciplinary procedures against the staff member’s former supervisor. It also ordered that the staff member be paid moral damages in the amount of USD 20,000 for the psychological harm she suffered as supported by medical evidence, as well as compensation in the amount of USD 10,000 for the harm of a loss of opportunity to have her complaint fully and properly investigated, as a result of the impossibility to conduct a third investigation after the first two had been vitiated as irregular.

**UNAT held:** UNDT’s findings that the former supervisor may have retaliated against the staff member for her work-related conduct and for seeking recourse in the internal justice system and that he used his position of authority to improperly influence her work conditions are supported by the available evidence. UNAT found that the former supervisor had evicted the staff member from her functions preventing her from carrying out her duties, and intended to humiliate and embarrass her by unjustifiably copying uninterested persons in personal and confidential communications concerning her performance. The former supervisor adopted an aggressive and abrasive tone, made demeaning remarks in his communications to the staff member and thereby created a hostile and offensive work environment. Such actions constituted possible misconduct or harassment as defined in ST/SGB/2008/5. For these reasons, the contested decision to take no further action into the staff member’s complaint against her former supervisor was irrational and not one that a reasonable decision-maker could reach. UNAT concluded that the rescission of the contested decision by UNDT was therefore correct and within its remedial powers under Article 10(5) of the UNDT Statute. As for the contention that the investigation panel was improperly constituted, UNAT noted that Section 5.14 of ST/SGB/2008/5 does not introduce a mandatory condition that the panel be constituted by individuals from the department, office or mission and only exceptionally from the OHRM roster, but merely professes a preference. UNAT held that non-compliance with that preference will not lead to the nullity of any appointment from the roster provided that the selection is not unreasonable. UNAT further held that UNDT’s order directing the ASG/OHRM to “institute” disciplinary proceedings impinges upon the discretion of the ASG/OHRM. UNAT modified the order of UNDT to direct the ASG/OHRM to act in terms of Section 5.18(c) of ST/SGB/2008/5. UNAT further found that the medical evidence convincingly established that the staff member suffered psychological harm from the alleged harassment and the manner of the investigation of her complaints. Nonetheless, UNAT noted that the staff member had contributed to several months of delay and that she did not lose an opportunity to have her complaint properly investigated. Therefore, UNAT reduced UNDT’s award of moral damages to USD 10,000.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2018-016%20Corr.1.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2018-016%20Corr.1.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-873.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-873.pdf)

## Discrimination

### Judgment 2019-UNAT-914 (Oglesby)

Discrimination – sex discrimination – sexual orientation – same-sex marriage – equal treatment – marital status – marriage after separation from service – UNJSPF – survivor’s benefits – widower’s benefit – prospective survivor – competence of tribunal – power to grant relief

#### Applicable law:

- *Article 2(9) of the UNAT Statute*
- *Article 8 of the Charter of the United Nations*
- *Universal Declaration of Human Rights*
- *Articles 34, 35 and 35ter of the UNJSPF Regulations*

**Legal principle:** i) Where the UNJSPF acts in keeping with its Regulations and if there is any discrimination inconsistent with the Charter, it is a matter for the Secretary-General or the General Assembly. ii) The Appeals Tribunal does not have the prerogative to apply the Charter or the Universal Declaration of Human Rights directly, nor the power to strike down internal or subsidiary legislative provisions conflicting with the norms they enact. The Appeals Tribunal is not akin to a constitutional court and, thus, has no jurisdiction to declare the UNJSPF Regulations constitutionally incompatible or to strike them down as invalid. The jurisdiction of the Appeals Tribunal is clearly circumscribed by Article 2(9) of the Appeals Tribunal’s Statute. It may only determine if there has been “non observance” of the Regulations.

**UNJSPB Decision:** A former staff member married his same-sex partner of 36 years in New York in April 2018, 20 years after his separation from service in December 1998. At the time of his separation from service, same-sex marriage was not legal in any country and therefore he could not marry his same-sex partner. The day after the marriage, he visited the Fund’s New York office to inquire whether he could include his husband as his surviving spouse. He was advised that, since he had not been married to his husband at the time of his separation from service in 1998, his husband did not meet one of the fundamental requirements for eligibility for a widower’s benefit under Articles 34 and 35 of the UNJSPF Regulations and accordingly, his husband would not be recognized as his surviving spouse. The Fund advised that in 2016 the Pension Board had extended the interpretation of marriage to include unions and registered partnerships that are legally entered into in the jurisdiction where the status is established and that confer similar rights as marriage, including pension rights. However, the application of the guidelines was not retroactive and moreover, under the expanded recognition of unions and registered partnerships, de facto unions and registered partnerships in New York were not accepted as being equivalent to marriage because they did not confer the same rights and obligations as marriage, including pension rights. The Fund advised of the option to purchase an annuity (i.e. a periodic benefit for life in a specified amount that is payable to a spouse married after separation from service) in his husband’s favour under Article 35ter of the Regulations, which would take effect 18 months after the date of marriage.

The former staff member requested the Fund to interpret the Articles in a constructive and humane manner taking into consideration that he had served the Organization for approximately 25 years, was 79 years old and was being treated for a serious heart condition, thus rendering the annuity a non-viable alternative since it would lapse if he did not live until its effective 18 months after the date of marriage. The Standing Committee of the UNJSPB upheld the decision to refuse to recognize his husband as a prospective survivor. The former staff member appealed against that decision, contending that the provisions of Articles 34 and 35 unfairly discriminate against persons in same-sex relationships and they are inconsistent with Article 8 of the Charter of the United Nations and Article 7 of the Universal Declaration of Human Rights, which prohibit unfair discrimination on illegitimate grounds including sexual orientation and marital status, and that he should be afforded relief on that basis.

**UNAT held:** UNAT found that at the time of his separation from service, the former staff member was not married to his husband; their same-sex relationship did not enjoy similar status to marriage under the law of the United States;

the Regulations did not afford retrospective recognition of their marriage in 2018; and the Regulations specifically regulated the situation of the former staff member by providing for an annuity under Article 35*ter*. Therefore, UNAT concluded that under the express terms of Articles 34 and 35, the former staff member's spouse was not entitled to a survivor's benefit.

Nonetheless, UNAT found that “[t]here was (...) merit in [the appellant’s] line of argument” that the differentiation between spouses in heterosexual marriages and homosexual persons in same-sex relationships was unfair and discriminatory. UNAT, however, held that unfortunately it had no remedial power to grant the relief sought. UNAT emphasized that it did not have the prerogative to apply the Charter of the United Nations or the Universal Declaration of Human Rights directly, nor the power to strike down internal or subsidiary legislative provisions inconsistent with the norms it enacts. UNAT further held that it was not akin to a constitutional court and its jurisdiction was restricted by Article 2(9) of its Statute to determining whether there had been “non-observance” of the UNJSPF Regulations. UNAT concluded that in this case, UNJSPF acted in keeping with its Regulations and if there was indeed any enduring discrimination on the grounds of sexual orientation inconsistent with the Charter, that was a matter for the Secretary-General or the General Assembly. Accordingly, UNAT concluded that the appeal “regrettably” had to fail.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-914.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-914.pdf)

## Due process rights

### Judgment 2016-UNAT-618 (Subramanian et al.)

Due process rights – access to justice – right to file appeal – procedure (UNDT) – request for extension of time – summary judgment – procedural error

#### Applicable law:

- *Articles 2(1) and 8(3) of the UNDT Statute*
- *Article 7(5) of the UNDT Rules of Procedure*

**Legal principle:** UNDT has the competence and jurisdiction under Article 8 of its Statute to determine whether an application is receivable. However, it cannot convert a request for an extension of time into an “application” and summarily dismiss it as not receivable. Such act amounts to excess of competence and jurisdiction and a violation of the staff members’ right to due process of law.

**UNDT judgment:** The staff members requested an extension of time before UNDT to file their applications against OHRM’s decision that “the comprehensive salary survey conducted in New Delhi, India, in June 2013 found that the current salaries for locally-recruited staff are above the labour market”. UNDT did not rule on the motion for time extension, but proceeded to rule on the merits of the case finding that the staff members’ challenges were not receivable *ratione materiae*.

**UNAT held:** UNDT exceeded its competence and jurisdiction and violated the staff members’ statutory rights to file an application and to have access to justice and made procedural errors when it, on its own motion, converted the staff members’ request for an extension of time into an application and summarily dismissed it as not receivable. Accordingly, UNAT vacated the UNDT judgment and remanded the matter to UNDT with instructions to permit the staff members to file an application.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2015-025.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2015-025.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-618.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-618.pdf)

## Judgment 2013-UNAT-302 (Applicant)

Due process rights – accused – sexual harassment – disciplinary sanction – summary dismissal – right to confront accusers

### Applicable law:

- *Standards of Conduct for the International Civil Service*
- *Staff Regulation 1.2(b)*
- *Staff Regulation 10.2 (100 Series)*

**Legal principle:** Due process does not always require that a staff member defending a disciplinary action for summary dismissal has the right to confront and cross-examine his/her accusers.

**UNDT judgment:** The UNICEF staff member contested the Administration’s decision to summarily dismiss him based on allegations of sexual harassment made by five non-staff members who were employed as waiters and security guards at a residential camp in South Sudan. UNDT concluded that the sanction of summary dismissal was based on unsubstantiated charges and that the staff member’s due process rights were violated when he could not cross-examine the complainants, who did not appear at the hearing before UNDT.

**UNAT held:** UNAT vacated UNDT judgment and affirmed the decision to summarily dismiss the staff member. UNAT found that the weight of the evidence in that case justified the decision taken by UNICEF. While acknowledging the importance of confrontation and cross-examination of witnesses, UNAT considered that due process did not always require that a staff member defending a disciplinary action for summary dismissal had the right to confront and cross-examine his/her accusers. Under certain circumstances, denial of this right did not necessarily fatally flaw the entire process, so long as it was established to UNAT’s satisfaction that the accused was afforded fair and legitimate opportunities to defend his/her position. In the instant case, UNAT was satisfied that the key elements of the staff member’s rights of due process were met: he was fully informed of the charges against him and the identity of his accusers and their testimony. As such, he was able to mount a defense and to call into question the veracity of their statements.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2012-054.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2012-054.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2013-unat-302.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2013-unat-302.pdf)

## Duty to protect

### Judgment 2019-UNAT-939 (Delaunay)

Duty to protect staff – harassment – compensation – moral damages – legal fees

### Applicable Law:

- *Article 2(10) of the UNAT Statute*
- *Secretary-General’s Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)*
- *Article 11.5 and 11.7 of the former Staff Regulations for the ICJ Registry*

**Legal principle:** The Organization has a duty to protect its staff from harassment. A failure to fulfil this duty may lead to an award of compensation.

**ICJ Conciliation Committee’s Report and ICJ Registrar’s Decision:** From 2009, the staff member served as a doctor at the ICJ under a 25 per cent part-time arrangement. Concurrently, she served as a doctor on a contractual



basis at the European Patent Office (EPO). In 2010, she informed the Security Service of the Registry of a “medical emergency situation” involving the Head of the ICJ Library. In March 2013, she informed the Registrar of a second incident again involving the Head of the Library. The Head of the Library in turn complained that the staff member had interfered in the management of her service, that she had failed to provide medical assistance to a staff member visibly in distress and breached medical ethics. She also alleged that the medical doctor was the subject of similar complaints at EPO and the French Medical Board. She followed up several times, each time copying others, including the ICJ President and the Staff Committee on her correspondence.

In September 2013, the Registry informed the staff member of the allegations against her and of the Registrar’s decision to launch an investigation into the allegations. She responded in order to “formally complain” about harassment, requesting that appropriate measures be taken and “a disciplinary or investigative process” be undertaken. Subsequently, she submitted a formal complaint about the defamation and slander committed by the Head of the Library. That same day, the Registrar mandated a panel to investigate the allegations made by the staff members against each other.

In January 2014, the panel submitted its report to the Registrar concluding that the Head of the Library had verbally assaulted the medical doctor in March 2013, that nearly all of the allegations against her had not been supported by any evidence and had been shown to be deliberate lies and, consequently, the Head of the Library had harassed the medical doctor.

In April 2014, the Registrar informed the staff member that he had concluded that the Head of the Library had committed misconduct by her involvement in acts of harassment and defamation against her and that he had decided to take disciplinary action against the Head of the Library by terminating her employment. The Registry also informed the staff member that most of the allegations by the Head of the Library against her had not been substantiated.

In November 2017, the staff member submitted a document to the Registrar in which she alleged that senior officials had prior knowledge that the Head of the Library posed a danger to her subordinates and that the ICJ was in breach of its duty to protect its employees from harassment. In January 2019, the Conciliation Committee issued its report in which it recommended payment of USD 1,000 “for the moral damage [she had] suffered as a result of the Administration having exceed[ed] her consent in the handling of her personal information”. The staff member appealed.

**UNAT held:** The ICJ had breached its duty to protect the staff member against harassment by another staff member. Once senior management had become aware of the incidents, it should have envisaged that similar incidents could happen in the future and it failed to take the appropriate measures to protect its staff. UNAT awarded USD 12,500 to compensate the staff member for harm suffered, and especially the harm to her reputation during the course of the investigations. It also awarded EURO 3,630 in legal fees.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-939.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-939.pdf)

## Evidence

### Judgment 2010-UNAT-087 (Liyanarachchige)

Evidence – disciplinary proceedings – investigation – witnesses – anonymous statements – due process rights

#### Applicable law:

- *Article 9(1) of the UNAT Statute*
- *Former Staff Rules 101.2(a) and 110.2 (100 Series)*
- *Secretary-General’s Bulletin ST/SGB/2002/13 (Status, basic rights and duties of United Nations staff members)*
- *Secretary-General’s Bulletin ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse)*

**Legal principle:** A disciplinary measure may not be founded solely on anonymous statements.

**UNDT judgment:** The staff member contested the decision to summarily dismiss him for serious misconduct. UNDT rejected his application.

**UNAT held:** UNDT erred in law by upholding the decision to summarily dismiss the staff member, which was taken in violation of the requirements of adversarial proceedings and due process. The Tribunal held that, while the use of statements gathered in the course of an investigation from witnesses who remain anonymous throughout the proceedings, including before UNAT, cannot be excluded as a matter of principle from disciplinary matters, a disciplinary measure may not be founded solely on anonymous statements. UNAT ordered rescission of the contested decision to summarily dismiss the staff member; alternatively, the Secretary-General was ordered to pay 12 months' net base salary as compensation in lieu of rescission.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-041.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-041.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-087e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-087e.pdf)

### **Judgment 2017-UNAT-742 (Kallon)**

Evidence – evidence of harm – moral harm – sole testimony of complainant – compensation

#### **Applicable law:**

- *Article 10(5) of the UNDT Statute*
- *Article 9(1) of the UNAT Statute*

**Legal principle:** Harm for which compensation is requested must be supported by evidence. A staff member's testimony alone is not sufficient to present evidence supporting harm under Articles 9(1)(b) of the Appeals Tribunal Statute and 10(5)(b) of the UNDT Statute.

**UNDT judgment:** A staff member at MINUSTAH contested, before UNDT, the administrative decisions to remove his designation as Chief Procurement Officer (CPO) at MINUSTAH and to deny him the required designation to take up the post of CPO at another duty station. UNDT rescinded the decisions finding they were taken in reaction to allegations that the staff member had failed to properly exercise his delegated authority and without due process or substantiation. UNDT declined to reinstate the staff member's designation but ordered USD 50,000 in non-pecuniary damages with interest for the stigmatization, reputational damage, stress, anxiety, and moral injury caused to the staff member.

**UNAT held:** The Secretary-General's appeal was decided by a full bench of UNAT. The majority of the judges upheld UNDT's findings that the contested decisions were substantively and procedurally flawed and dismissed the appeal. As for UNDT's moral damages award, the majority noted that the purpose of the amendment to Article 10(5)(b) of the UNDT Statute, made following General Assembly resolution 69/203, was to introduce an express requirement that compensation for harm can be awarded only when there is a sufficient evidentiary basis. The majority held that evidence of moral injury consisting exclusively of the testimony of the complainant, if credible, reliable and satisfactory in material respects, may be sufficient to discharge the evidentiary burden. The three dissenting opinions took the view that evidence consisting exclusively of the complainant's testimony is not sufficient without corroboration by independent evidence (expert or otherwise). The majority included one concurring opinion which agreed with the three dissenting judges on the requirements of compensation, but joined the majority in the outcome of the case.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2015-126.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2015-126.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-742.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-742.pdf)

## Judgment 2017-UNAT-787 (Auda)

Evidence – evidence of harm – moral harm – sole testimony of complainant – corroboration – compensation

### Applicable law:

- *Article 10(5) of the UNDT Statute*
- *Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)*

**Legal principle:** Testimonial evidence without corroboration by independent evidence (expert or otherwise) is not satisfactory proof to support an award of moral damages.

**UNDT judgment:** A staff member filed an application before UNDT contesting the Administration's decision to close an investigation into his complaint filed under ST/SGB/2008/5. UNDT concluded that the decision to close the complaint without further action was improper as the investigation was tainted by serious procedural breaches. UNDT awarded USD 5,000 as moral damages for the harm to the staff member's reputation and general well-being.

**UNAT held:** UNAT upheld both UNDT's finding that the decision to close the investigation was improper as well as UNDT's refusal to order rescission of that decision on account of the subject of the investigation having separated from the Organization. UNAT, however, vacated UNDT's moral damages award on the grounds that the staff member did not present any evidence, apart from his own unsworn testimony to support the claim. UNAT held that "generally speaking, the testimony of an applicant alone without corroboration by independent evidence (expert or otherwise) affirming that non-pecuniary harm has indeed occurred is not satisfactory proof to support an award of damages." As the staff member's testimony was the only evidence presented to support his allegation of harm to his reputation and general well-being, UNDT committed an error of law in stating that this alone was sufficient to sustain an award of compensation under Article 10(5)(b) of the UNDT Statute.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-007.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-007.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-787.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-787.pdf)

## Gender parity

### Judgment 2015-UNAT-536 (Zhao, Zhang and Xie)

Gender parity – staff selection – female candidate – male candidate – superior qualifications

### Applicable law:

- *Administrative Instruction ST/AI/1999/9 (Special measures for the achievement of gender equality)*
- *Administrative Instruction ST/AI/2010/3 (Staff selection system)*

**Legal principle:** The obligation to submit a written analysis indicating how the qualifications and experience of the recommended candidate are "clearly" superior to those of female candidates who were not recommended refers to the final stage of the selection process, i.e. it is when making his or her final recommendation for the selection of a male candidate over a female candidate, to the head of department/office, authorized to select the candidate, that the Hiring Manager must submit such written analysis.

**UNDT judgment:** Three staff members, all interpreters at the P-4 level in the Interpretation Service, UNOG contested the decision not to select him or her for an advertised position of Senior Interpreter at the P-5 level. UNDT found that the selection process had been marred by several irregularities, including, among others, that the Hiring Manager's conversion of the panel's rating to the *Inspira* rating scale had resulted in a distortion of

the candidates' ratings, that the panel had given misleading instructions to interviewees, and that the Hiring Manager had failed to indicate in the recommendation memorandum how the qualifications and experience of the recommended candidate were clearly superior to those of Ms. Xie, as a female candidate, in breach of Section 1.8(d) of ST/AI/1999/9. UNDT ordered the rescission of the selection decision and awarded in-lieu compensation in the amount of USD 3,000 to Mr. Zhuang and USD 4,000 to Ms. Xie as well as compensation for moral harm in the amount of USD 4,000 to each of the three staff members. The Secretary-General appealed.

**UNAT judgment:** UNAT dismissed the Secretary-General's appeal and affirmed the UNDT judgment. With respect to the application of Section 1.8(d) of ST/AI/1999/9 to Ms. Xie, UNAT clarified that the obligation to submit a written analysis indicating how the qualifications and experience of the recommended candidate are "clearly" superior to those of female candidates who were not recommended refers to the final stage of the selection process, i.e. it is when making his or her final recommendation for the selection of a male candidate over a female candidate, to the head of department/office, authorized to select the candidate, that the Hiring Manager must submit such written analysis. UNAT therefore rejected the Secretary-General's contention that a specific written analysis comparing the qualifications and experience of the recommended candidate and Ms. Xie was not required at the time the Hiring Manager submitted the recommendation memorandum to the Director-General of UNOG.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2014-036e.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2014-036e.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-536.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-536.pdf)

## Interlocutory appeal

### Judgment 2012-UNAT-243 (Hersh)<sup>8</sup>

Interlocutory appeal – UNDT interlocutory order – appeal – receivability (UNAT) – exceptional circumstances – manifest excess of jurisdiction

**Applicable law:**

- *Articles 2(2) and 10(2) of the UNDT Statute*
- *Article 13 of the UNDT Rules of Procedure*

**Legal principle:** In general, only appeals against judgments on the merits are receivable. Appeals against decisions taken during proceedings are receivable only in exceptional cases where UNDT has manifestly exceeded its jurisdictional powers. Converting an application for suspension of action into an application on the merits and inviting the parties to make submissions on the merits constitutes a clear excess of jurisdiction.

**UNDT order:** The staff member requested suspension of the administrative decision not to transfer her to UNMISS when the UNMIS mandate expired. UNDT held that her application for a suspension of action order should be refused on the grounds that the application did not satisfy one of the three conditions required for granting it. Nonetheless, having judged that the impugned decision not to transfer the staff member to UNMISS was unlawful, it ordered her application for suspension of action to be transferred to the "general cause list" for a hearing on the merits.

**UNAT held:** In general, only appeals against judgments on the merits are receivable. Appeals against decisions taken during proceedings are receivable only in exceptional cases where UNDT has manifestly exceeded its jurisdictional powers. UNAT granted the Secretary-General's appeal on the basis that UNDT manifestly exceeded its jurisdictional powers by converting an application for suspension of action into an application on the merits

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<sup>8</sup> See also Judgment 2012-UNAT-244 (Bali) at [www.un.org/en/internaljustice/files/unat/judgments/2012-unat-244e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-244e.pdf).

and inviting the parties to make submissions on the merits. UNDT took an *ultra petita* decision by ordering measures for which no claim had been made.

Link to UNDT order:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-154.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-154.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-243e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-243e.pdf)

### **Judgment 2010-UNAT-032 (Calvani)**

Interlocutory appeal – UNDT interlocutory order – discretionary authority – case management – production of documents – interest of justice – receivability (UNAT)

#### **Applicable law:**

- *Article 9(1) of the UNDT Statute*
- *Articles 18(2) and 19 of the UNDT Rules of Procedure*
- *Staff Rule 10.4*

**Legal principle:** UNDT has discretionary authority in case management and the production of evidence in the interest of justice. It is not in the interest of the internal system of justice to consider an appeal against a simple measure of inquiry receivable.

**UNDT order:** The staff member filed an application for suspension of action of the decision to place him on administrative leave without pay. Following an oral hearing, UNDT ordered the Administration to submit a signed confirmation from the Secretary-General that he made the decision to place the staff member on administrative leave without pay pursuant to Staff Rule 10.4.

**UNAT held:** UNAT rejected the Secretary-General's interlocutory appeal against the UNDT order as not receivable, finding that UNDT had discretionary authority in case management and the production of evidence in the interest of justice. UNAT found that UNDT had decided on a measure of inquiry, the necessity of which it had sole authority to assess. UNAT held that it was not in the interest of the internal system of justice to consider an appeal against a simple measure of inquiry receivable.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-032e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-032e.pdf)

### **Judgment 2010-UNAT-062 (Bertucci)**

Interlocutory appeal – UNDT interlocutory order – jurisdiction – competence – exceptional circumstances

#### **Applicable law:**

- *Articles 2(1) and 7 of the UNAT Statute*

**Legal principle:** UNAT generally has no jurisdiction to receive interlocutory appeals (i.e. appeals against rulings made during the course of trial before a final judgment is rendered). Interlocutory appeals are only receivable where UNDT has clearly exceeded its jurisdiction or competence.

**UNDT orders:** The staff member contested his non-selection for the post of ASG/DESA. Before and during the hearing of the case, UNDT issued a series of Orders (i.e. Order Nos. 40, 42, 43, 44 and 46 (NY/2010)).

**UNAT held:** The Secretary-General filed appeals against UNDT Orders. UNAT determined that, generally, only appeals against final judgments are receivable. It observed that an interlocutory appeal is receivable exceptionally in cases where UNDT has clearly exceeded its jurisdiction or competence. UNAT held that it would not interfere lightly with the broad discretion of UNDT in the management of cases. Further, it noted that one of the goals

of the new system of administration of justice is rendering timely judgments; cases before UNDT could seldom proceed if either party were able to appeal interlocutory decisions. UNAT held that in this case, it saw no reason to depart from the general rule that only appeals against final judgments are receivable. UNAT dismissed the Secretary-General's interlocutory appeals as not receivable.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-062.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-062.pdf)

### **Judgment 2011-UNAT-160 (Villamorán)**

Interlocutory appeal – UNDT interlocutory order – preliminary suspension of action – administrative decision – execution of order pending appeal

#### **Applicable law:**

- *Article 2(2) of the UNDT Statute*
- *Articles 8(6), 13 and 19 of the UNDT Rules of Procedure*

**Legal principle:** Where the implementation of an administrative decision is imminent and takes place before the five-day period provided for under Article 13 of UNDT Rules of Procedure has elapsed, UNDT has the discretion to grant a preliminary suspension of action pending its consideration of the application for suspension of action. Such an order rendered by UNDT requires execution even in cases where the order is being appealed.

**UNDT order:** The staff member requested the suspension of two administrative decisions: (i) the decision to place her on a temporary appointment after the expiration of her fixed-term contract; and (ii) the decision to require her to take a break in service of 31 days prior to her placement on a temporary appointment. UNDT noted that under Article 13 of UNDT Rules of Procedure, it had five days from the service of an application of suspension of action on the respondent to consider the application; and that in this case, the contested administrative decision was due to be implemented before the five-day period. UNDT determined that further submissions were required for the fair and expeditious disposal of the application and to do justice to the parties. Therefore, it ordered a preliminary suspension of the implementation of the contested decisions pending the final determination of the application for suspension of action.

**UNAT held:** The Secretary-General appealed the UNDT order. UNAT held that, where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of UNDT Rules of Procedure have elapsed, and where UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of UNDT Rules of Procedure meaningless in cases where the implementation of the contested administrative decision is imminent. UNAT concluded that UNDT did not exceed its jurisdiction in rendering the impugned order and the Secretary-General's interlocutory appeal was therefore not receivable. UNAT further held that Article 8(6) of the UNAT Rules of Procedure, which provides that "[t]he filing of an appeal shall suspend the execution of the judgment contested", does not apply to appeals of interlocutory orders rendered by UNDT and that any orders rendered by UNDT require execution even in cases where the order is being appealed. It falls to UNAT to decide whether UNDT exceeded its jurisdiction in rendering an interlocutory order and the Administration cannot refrain from executing an order by filing an appeal against it on the basis that UNDT exceeded its jurisdiction.

Link to UNDT order:

[www.un.org/en/internaljustice/files/undt/orders/Order%202011-NY-171.pdf](http://www.un.org/en/internaljustice/files/undt/orders/Order%202011-NY-171.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-160.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-160.pdf)

### Judgment 2014-UNAT-410 (Igbinedion)

Interlocutory appeal – UNDT interlocutory order – obligation to obey – suspension of action – administrative decision – management evaluation – appeal – receivability (UNAT) – excess of jurisdiction

#### Applicable law:

- *Articles 2(2), 10(2) and 10(8) of the UNDT Statute*
- *Articles 9(5) and 10(2) of the UNAT Statute*

**Legal Principles:** i) The Appeals Tribunal sets precedent, to be followed in like cases by the Dispute Tribunal (principle of *stare decisis*). ii) An interlocutory order by UNDT remains legally valid until such time as it has been vacated by UNAT. Parties before UNDT must obey its binding decisions. iii) The absence of compliance may merit contempt proceedings.

**UNDT judgment:** A UN-Habitat staff member contested the decision not to extend his appointment. UNDT issued Order No. 30, granting his request for suspension of action of the contested decision pending management evaluation. UNDT issued Order No. 33, granting suspension of action until the case was reviewed on the merits. In Order No. 110, UNDT reiterated the suspension of the non-extension decision pending the determination of the merits. UNAT vacated Orders No. 30 and No. 33. In respect of Order No. 30, UNAT concluded that UNDT had exceeded its jurisdiction and committed an error of law, as it had extended the suspension of action beyond the date of completion of management evaluation. Regarding Order No. 33, UNAT concluded that UNDT had exceeded its jurisdiction by extending the suspension of action until the final determination of the case on its merits, in contravention of Article 10(2) of the UNDT Statute, which excludes such a possibility in cases of appointment, promotion or termination. UN-Habitat did not extend the staff member's appointment, in contravention of that order, and in Judgment No. UNDT/2013/024, the Dispute Tribunal held that there was an obligation to execute UNDT Order No. 33, which had not been met. UNDT found, inter alia, that three UN-Habitat officials and OLA were in contempt of its authority and made referrals for accountability. The Secretary-General appealed the judgment.

**UNAT held:** UNDT did not act lawfully in issuing an order in direct contravention of the established UNAT jurisprudence. However, UNAT also held that parties before UNDT must obey its binding decisions and that a decision by UNDT remained legally valid until such time as UNAT vacated it. Noting that its jurisprudence was clear on this point, UNAT found the Secretary-General's refusal to comply with UNDT's order to be vexatious. UNAT reiterated its jurisprudence that the absence of compliance may merit contempt proceedings.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2013-024.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2013-024.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-410.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-410.pdf)

### Judgment 2012-UNAT-256 (Benchebbak)

Interlocutory appeal – UNDT interlocutory order – suspension of action – interim measure – administrative decision – appointment – management evaluation – excess of jurisdiction

#### Applicable law:

- *Articles 2(2) and 10(2) of the UNDT Statute*
- *Articles 13 and 14 of the UNDT Rules of Procedure*

**Legal principle:** In cases where UNDT has clearly exceeded its jurisdiction, UNAT will exceptionally receive the appeal, e.g.: (1) where UNDT has exceeded its jurisdiction under Article 2(2) of UNDT Statute and Article 13 of UNDT Rules of Procedure by ordering the suspension of the contested decision beyond the date of completion of management evaluation; and (2) where UNDT has exceeded its jurisdiction under Article 10(2) of the UNDT

Statute and Article 14 of the UNDT Rules of Procedure by ordering during the proceedings suspension of the contested decision as an interim measure in a case of appointment, promotion or termination.

**UNDT orders:** On 6 October 2011, the staff member requested management evaluation of the decision not to extend his appointment beyond 22 October 2011. On 17 October 2011, the staff member asked UNDT to suspend the implementation of the contested decision, pending management evaluation. On 19 October 2011, UNDT issued Order No. 129 by which it ordered the suspension of the contested decision until 10 November 2011, to “allow the filing of the Respondent’s comments, the hearing and the determination of this matter”. The Secretary-General requested that the Order be discharged. On 31 October 2011, Mr. Benchebbak filed an application on the merits with the Dispute Tribunal as well as a request for interim relief. That same day, UNDT issued Order No. 136, by which it rejected the Secretary-General’s request to have Order No. 129 discharged. On 3 November 2011, the Dispute Tribunal held an oral hearing.

On 10 November 2011, UNDT issued Order No. 142 by which it disposed of Mr. Benchebbak’s application for suspension of action under Article 14 of the UNDT Rules of Procedure. UNDT found the application receivable as the contested decision amounted to a non-renewal rather than a termination. UNDT accordingly found that the prohibition of the suspension of decisions on appointment, promotion, and termination provided for in Article 10(2) of the UNDT Statute and Article 14 of the UNDT Rules of Procedure did not apply. UNDT found that the criteria for suspending the contested decision were met and consequently ordered the continued suspension of the contested decision, pending the determination of the case on the merits.

The Secretary-General appealed the three orders.

**UNAT held:** UNAT found that the appeals were receivable because: (1) UNDT exceeded its jurisdiction under Article 2(2) of the UNDT Statute by ordering the suspension of the contested decision beyond the date of completion of management evaluation; and (2) UNDT exceeded its jurisdiction under Article 10(2) of the UNDT Statute by ordering, during the proceedings, a suspension of the contested decision as an interim measure in a case of appointment.

Order No. 129 suspended the contested decision beyond management evaluation and Order No. 136 confirmed Order No. 129 despite the fact that management evaluation had been finalized. UNDT thereby violated Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules of Procedure, which provide for suspension of the implementation of a contested decision only “during the pendency of the management evaluation”. Order No. 142 decided a suspension in a matter of appointment during UNDT proceedings and thereby violated Article 10(2) of the UNDT Statute, which prohibits the suspension of the implementation of an administrative decision in cases of appointment, promotion, or termination. Accordingly, UNAT granted the Secretary-General’s appeals and vacated UNDT orders.

Link to UNDT Order(s):<sup>9</sup>

[www.un.org/en/internaljustice/files/undt/orders/nbi-2011-142.pdf](http://www.un.org/en/internaljustice/files/undt/orders/nbi-2011-142.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-256.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-256.pdf)

## Investigation

### Judgment 2015-UNAT-505 (Benfield-Laporte)

Investigation – harassment – abuse of authority – Administration’s discretion – fact-finding  
investigation – scope of investigation

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<sup>9</sup> Other orders not available online.



**Applicable law:**

- *Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)*

**Legal principle:** The Administration has a degree of discretion as to how to conduct a review of a complaint filed under ST/SGB/2008/5 and may decide whether an investigation into all or some of the allegations is warranted. Where there is no risk of undermining the investigation, it is good practice to hear both sides in order to determine whether there are sufficient grounds to warrant a fact-finding investigation.

**UNDT judgment:** The staff member contested the decision not to conduct a formal fact-finding investigation into her complaint against her former supervisor. UNDT found that ASG/OHRM did not err in deciding that the staff member's complaint did not provide sufficient grounds to warrant a formal fact-finding investigation. Nonetheless, UNDT awarded the staff member compensation in the amount of USD 3,000 for emotional distress and anxiety caused by the six-month delay by the Administration in communicating its decision to her.

**UNAT held:** UNAT affirmed UNDT's finding that the ASG/OHRM did not err in deciding that the staff member's complaint did not provide sufficient grounds to warrant a formal fact-finding investigation. UNAT held that the ASG/OHRM has a degree of discretion as to how to conduct a review and assessment of a complaint and to decide whether an investigation regarding all or some of the charges is warranted. It further held that where there is no risk of undermining the investigation, it is a good practice to hear both sides in order to decide whether there are sufficient grounds to warrant a fact-finding investigation. Noting that a period of six months to communicate the decision not to open a formal fact-finding investigation was far from prompt, UNAT also affirmed UNDT's award of compensation.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2013-162.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2013-162.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-505.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-505.pdf)

**Judgment 2015-UNAT-518 (Oummih)**

Investigation – harassment – abuse of authority – Administration's discretion – fact-finding investigation – scope of investigation – investigation panel

**Applicable law:**

- *Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)*

**Summary:** The Administration has a degree of discretion as to how to conduct a review and assessment of complaints filed under ST/SGB/2008/5 and may decide whether to undertake a fact-finding investigation into all or some of the allegations. The investigation must be conducted by a panel of two persons from the department who received the internal investigation training provided by OIOS or, if that is not possible, from the roster maintained for that purpose by OHRM.

**UNDT judgment:** The staff member contested the refusal by the former Executive Director of OAJ to open an investigation into all the allegations of harassment and abuse of authority she alleged had been committed by her supervisor and one of her former colleagues. UNDT determined that the refusal by the former Executive Director to open an investigation into all of the allegations violated ST/SGB/2008/5. It further determined that the former Executive Director had failed to comply with ST/SGB/2008/5 by hiring two consultants from outside the Organization to conduct the investigation. UNDT ordered that the contested decision be rescinded and ordered the Administration to pay the staff member CHF 8,000 as moral damages.

**UNAT held:** UNAT found that UNDT erred in concluding that the refusal by the former Executive Director to open an investigation into all the allegations raised violated ST/SGB/2008/5. UNAT held that the Administration

has a degree of discretion as to how to conduct a review and assessment of a complaint and may decide whether to undertake a fact-finding investigation into all or some of the allegations. UNAT affirmed UNDT's conclusion that the former Executive Director did not comply with ST/SGB/2008/5 by hiring two consultants from outside the Organization to conduct the investigation. Under ST/SGB/2008/5, the responsible official must entrust the fact-finding investigation to a panel of two persons from the department who are trained for that purpose or, if that is not possible, appoint two persons from the roster maintained for that purpose by OHRM. UNAT remanded the matter to the former Executive Director to establish a new fact-finding panel in accordance with ST/SGB/2008/5. However, UNAT determined that the staff member had not experienced any inordinate delay with regard to the handling of her complaint which would merit the award of damages and vacated UNDT's award of CHF8,000 in moral damages.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2014-004e.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2014-004e.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-518.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-518.pdf)

## Judges

### Judgment 2010-UNAT-001 (Campos)

Judges – appointment of judges – Internal Justice Council – staff representative – recusal request – conflict of interest

#### Applicable law:

- *Article 4(2) of the UNDT Statute*
- *Article 3(2) of the UNAT Statute*
- *Articles 27 and 28 of the UNDT Rules or Procedure*
- *Articles 22 and 23 of the UNAT Rules of Procedure*

**Legal principle:** The judges of UNDT and UNAT are not appointed by the IJC whose mandate is limited to identifying and recommending potential judicial candidates to the General Assembly.

**UNDT judgments:** The staff member contested a) the decision not to nominate him as a staff representative on the IJC and b) all decisions taken by the IJC which he alleged was illegally constituted. He also filed several motions to have the judges of UNDT recuse themselves on the ground that they all had a conflict of interest by having been recruited and recommended by the IJC for judicial appointment. UNDT rejected the staff member's applications.

**UNAT held:** UNAT affirmed the UNDT findings that there was no flaw in the procedure used by the Staff Management Coordinating Committee to select the staff representative on the IJC. It also affirmed the UNDT judgments rejecting the staff member's allegations of conflict of interest on the part of the UNDT judges. UNAT further rejected the staff member's request that UNAT judges recuse themselves from the hearing of the appeal, noting the limited role of the IJC in the appointment of the UNAT judges and the lack of any professional relationship between the person appointed as a staff representative and the judges. As for the request that UNAT be dissolved, UNAT held that it lacks the statutory authority to dissolve UNAT which is a body created by the General Assembly.

Links to UNDT judgments:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2009-005.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2009-005.pdf)

[www.un.org/en/internaljustice/files/undt/judgments/undt-2009-010.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2009-010.pdf)

[www.un.org/en/internaljustice/files/undt/judgments/undt-2009-021e.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2009-021e.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-001.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-001.pdf)

## Jurisdiction

### Judgment 2015-UNAT-607 (Zakharov)

Jurisdiction – competence – receivability (UNAT) – Standing Committee of UNJSPB – Standing Committee decision – appeal

#### Applicable law:

- *Article 2(9) of the UNAT Statute*
- *Section K and Article 48 of the UNJSPF Regulations*

**Legal principle:** UNAT’s jurisdiction over the UNJSPB is limited to hearing appeals of decisions of the Standing Committee of the UNJSPB.

**UNJSPB Decision:** The staff member challenged the UNJSPB’s refusal to submit his case to the Standing Committee. He claimed that the decision violated the “international civil servants’ right of appeal” and applied the UNJSPF Regulations in an “arbitrary, unfair or prejudicial manner”.

**UNAT held:** UNAT found that the decision of the UNJSPB not to submit the staff member’s appeal to the Standing Committee contravened his rights under the UNJSPF Regulations by depriving him of access to the appeals process and was a serious violation of his due process rights. Noting that UNAT’s jurisdiction was limited to hearing appeals of decisions of the Standing Committee and that the staff member’s case had not been reviewed by the Standing Committee, UNAT found that it had no jurisdiction to hear the appeal and remanded it to the Standing Committee.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-607.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-607.pdf)

### Judgment 2019-UNAT-914 (Oglesby)

Jurisdiction – UNJSPF —survivor’s benefits – widower’s benefit – same-sex marriage – marital status – marriage after separation from service – sex discrimination – equal treatment – Charter of the United Nations – Universal Declaration of Human Rights – non-observance of UNJSPF Regulations – power to grant relief

#### Applicable law:

- *Article 2(9) of the UNAT Statute*
- *Article 8 of the Charter of the United Nations*
- *Universal Declaration of Human Rights*
- *Articles 34, 35 and 35ter of the UNJSPF Regulations*

**Legal principle:** The Appeals Tribunal does not have the prerogative to apply the Charter or the Universal Declaration of Human Rights directly, nor the power to strike down internal or subsidiary legislative provisions conflicting with the norms they enact. The Appeals Tribunal is not akin to a constitutional court and, thus, has no jurisdiction to declare the UNJSPF Regulations constitutionally incompatible or to strike them down as invalid. The jurisdiction of the Appeals Tribunal is clearly circumscribed by Article 2(9) of the Appeals Tribunal’s Statute. It may only determine if there has been “non observance” of the Regulations.

**UNJSPB Decision:** A former staff member married his same-sex partner of 36 years in New York in April 2018, 20 years after his separation from service in December 1998. At the time of his separation from service, same-sex marriage was not legal in any country and therefore he could not marry his same-sex partner. The day after the marriage, he visited the Fund’s New York office to inquire whether he could include his husband as his surviving spouse. He was advised that, since he had not been married to his husband at the time of his separation from service in 1998, his husband did not meet one of the fundamental requirements for eligibility for a widower’s

benefit under Articles 34 and 35 of the UNJSPF Regulations and accordingly, his husband would not be recognized as his surviving spouse. The Fund advised that in 2016 the Pension Board had extended the interpretation of marriage to include unions and registered partnerships that are legally entered into in the jurisdiction where the status is established and that confer similar rights as marriage, including pension rights. However, the application of the guidelines was not retroactive and moreover, under the expanded recognition of unions and registered partnerships, de facto unions and registered partnerships in New York were not accepted as being equivalent to marriage because they did not confer the same rights and obligations as marriage, including pension rights. The Fund advised of the option to purchase an annuity (i.e. a periodic benefit for life in a specified amount that is payable to a spouse married after separation from service) in his husband's favour under Article 35*ter* of the Regulations, which would take effect 18 months after the date of marriage.

The former staff member requested the Fund to interpret the Articles in a constructive and humane manner taking into consideration that he had served the Organization for approximately 25 years, was 79 years old and was being treated for a serious heart condition, thus rendering the annuity a non-viable alternative since it would lapse if he did not live until its effective 18 months after the date of marriage. The Standing Committee of the UNJSPB upheld the decision to refuse to recognize his husband as a prospective survivor. The former staff member appealed against that decision, contending that the provisions of Articles 34 and 35 unfairly discriminate against persons in same-sex relationships and they are inconsistent with Article 8 of the Charter of the United Nations and Article 7 of the Universal Declaration of Human Rights, which prohibit unfair discrimination on illegitimate grounds including sexual orientation and marital status, and that he should be afforded relief on that basis.

**UNAT held:** UNAT found that at the time of his separation from service, the former staff member was not married to his husband; their same-sex relationship did not enjoy similar status to marriage under the law of the United States; the Regulations did not afford retrospective recognition of their marriage in 2018; and the Regulations specifically regulated the situation of the former staff member by providing for an annuity under Article 35*ter*. Therefore, UNAT concluded that under the express terms of Articles 34 and 35, the former staff member's spouse was not entitled to a survivor's benefit.

Nonetheless, UNAT found that "[t]here was (...) merit in [the appellant's] line of argument" that the differentiation between spouses in heterosexual marriages and homosexual persons in same-sex relationships was unfair and discriminatory. UNAT, however, held that unfortunately it had no remedial power to grant the relief sought. UNAT emphasized that it did not have the prerogative to apply the Charter of the United Nations or the Universal Declaration of Human Rights directly, nor the power to strike down internal or subsidiary legislative provisions inconsistent with the norms it enacts. UNAT further held that it was not akin to a constitutional court and its jurisdiction was restricted by Article 2(9) of its Statute to determining whether there had been "non-observance" of the UNJSPF Regulations. UNAT concluded that in this case, UNJSPF acted in keeping with its Regulations and if there was indeed any enduring discrimination on the grounds of sexual orientation inconsistent with the Charter, that was a matter for the Secretary-General or the General Assembly. Accordingly, UNAT concluded that the appeal "regrettably" had to fail.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-914.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-914.pdf)

## Legal assistance

### Judgment 2012-UNAT-199 (Worsley)

Legal assistance – OSLA – administrative decision – representation – refusal – discretion

**Applicable law:**

- *Staff Rules 11.4(d) and 11.5(d)*
- *Article 12 of the UNDT Rules of Procedure*
- *Article 13 of the UNAT Rules of Procedure*

**Legal Principles:** i) The services provided by OSLA and the way the representation is implemented can have an impact on a staff member's terms of appointment and therefore constitutes an administrative decision subject to review by UNDT.  
ii) The right to receive legal assistance by OSLA does not amount to a right to representation by OSLA. OSLA has the discretionary power not to represent a person.

**UNDT judgment:** The staff member contested OSLA's decision to refuse to continue to provide legal assistance to her on the basis that the lawyer/client relationship had broken down irretrievably. UNDT was of the view that the contested decision was a legitimate exercise of the discretionary authority vested in OSLA. UNDT held that the right to receive assistance by OSLA does not amount to a right to representation by OSLA.

**UNAT held:** UNAT recalled its holding in a previous case "that the services provided by OSLA and the manner in which the representation is implemented can have an impact on a staff member's terms of appointment and therefore can fall within the jurisdiction of UNDT, without interfering with the professional independence of [the] counsel[s]". UNAT held that the discretionary power of OSLA not to represent a person is not unfettered, however, in this case, the staff member had failed to show how OSLA's actions affected her case. UNAT affirmed the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-024.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-024.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-199.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-199.pdf)

**Judgment 2011-UNAT-135 (Larkin)**

Legal assistance – OSLA – representation – conflict of interest – administrative decision – receivability (UNDT) – *ratione materiae*

**Applicable law:**

- *Article 2(1) of the UNDT Statute*
- *Secretary-General's Bulletin ST/SGB/2010/3 (Organization and terms of reference of the Office of Administration of Justice)*
- *Guiding principles of conduct for OSLA affiliated counsel*

**Legal principle:** The services provided by OSLA and the way the representation is implemented can have an impact on a staff member's terms of employment and therefore constitute an administrative decision subject to review by UNDT.

**UNDT judgment:** The staff member contested the decision taken by the former Chief of OSLA not to disclose a potential conflict of interest in his case. UNDT rejected the staff member's application, holding that the alleged omission was not an administrative decision subject to review by UNDT.

**UNAT held:** The services provided by OSLA and the way the representation is implemented can have an impact on a staff member's terms of employment and can therefore fall within the jurisdiction of UNDT, without interfering with the professional independence of counsel. UNAT found that the decision taken by the former Chief of OSLA not to disclose a potential conflict of interest in the staff member's case could have an impact on his terms of employment and therefore constituted an administrative decision subject to review by UNDT. UNAT reversed UNDT judgment and remanded the case to UNDT for a trial on the merits.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-028.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-028.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-135.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-135.pdf)

## Management evaluation

### Judgment 2013-UNAT-345 (Neault)

Management evaluation – delayed response – appeal – time limit – receivability (UNDT) – *ratione temporis*

#### Applicable law:

- *Article 8(1) of the UNDT Statute*
- *Article 7 of the UNDT Rules of Procedure*
- *Staff Rule 11.2(d)*

**Legal principle:** When the management evaluation is received after the deadline of 30 or 45 calendar days but before the expiration of 90 days for applying to UNDT, the receipt of the management evaluation response will result in setting a new deadline for seeking judicial review before UNDT.

**UNDT judgment:** The staff member contested the decision not to select her for a G-5 post. UNDT found, *inter alia*, that the staff member's application was receivable, *ratione temporis*, as it had been filed within 90 calendar days of the tardy MEU response.

**UNAT held:** UNAT considered it both reasonable and practical to provide for two different dates from which the time limit commenced to run. When the management evaluation is received within the deadline of 45 days, an application must be filed with the UNDT within 90 calendar days of an applicant's receipt of the management evaluation response. However, when the management evaluation is received after the deadline of 45 calendar days but before the expiration of 90 days for applying to UNDT, the receipt of the management evaluation will result in setting a new deadline for seeking judicial review before UNDT. UNAT dismissed the Secretary-General's appeal and affirmed the UNDT decision that the application was filed within the time limit and was thus receivable.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2012-123.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2012-123.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-345.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-345.pdf)

### Judgment 2019-UNAT-941 (Dieng)

Management evaluation – extension of time – good faith – estoppel – receivability (UNDT) – *ratione temporis*

#### Applicable law:

- *Article 8 of the UNDT Statute*
- *Article 7(1) of the UNDT Rules of Procedure*
- *Staff Rule 11.2*
- *Staff Rule 12.3*
- *Secretary-General's Bulletin ST/SGB/2010/9 (Organization of the Department of Management)*

**Legal Principles:** i) Where a response to a management evaluation request is not received, a staff member has 90 days from when the response is due to file an application to UNDT. When a response is received after the deadline for a response to a request for management evaluation has lapsed but before the expiration of the 90-day time limit for filing an application with UNDT, then the receipt of the response resets the clock for filing

an application with UNDT. Whereas, if a response is received after the expiration of that 90-day time limit, the receipt of the response does not reset the clock for filing an application with UNDT.

ii) The MEU is competent only to make recommendations to suspend or extend the relevant deadlines concerning the management evaluation process, whereas the authority to extend a management evaluation deadline is reserved for the Secretary-General.

iii) In cases where a staff member has filed an untimely application to UNDT based on his or her reliance on a misrepresentation on time limits by the MEU, the principles of good faith and of the regularity of administrative proceedings mandate that such reliance may not be held against that staff member. Concomitantly, the Secretary-General is estopped from raising the defense that the application for judicial review is time-barred.

**UNDT judgment:** The staff member filed a request for management evaluation contesting his reassignment to a different office. The MEU confirmed receipt of his request and advised, in writing, that pursuant to Staff Rule 11.2 (d), the management evaluation in his case was to be completed within 45 calendar days of receipt of his request, or no later than 23 July 2018. The MEU further advised that if there was any delay in completing the management evaluation, pursuant to Staff Rule 11.4 (a), the 90-day deadline for filing an application to UNDT would start to run from 23 July 2018, or the date on which the management evaluation was completed, if earlier, unless the deadline had been extended by the Secretary-General to facilitate efforts for informal resolution. Subsequently, the MEU informed the staff member, again in writing, that the contested decision had been upheld and that since its decision had been issued prior to the expiration of UNDT's 90-day deadline, his receipt of the management evaluation resulted in setting a new deadline for submitting his application. The staff member then contested the decision before UNDT. UNDT dismissed the application as time-barred.

**UNAT held:** UNAT recalled its jurisprudence that where a response to a management evaluation request is not received, a staff member has 90 days from when the response is due to file an application to UNDT. If a response is received after the expiration of that 90-day time limit, the receipt of the response does not reset the clock for filing an application with UNDT. Since the MEU's response was received after the expiration of the 90-day period, it did not reset the clock for the staff member to file an application. UNDT therefore initially made no error of law in concluding that the staff member's application was not receivable *ratione temporis* because it was filed outside the regulatory time limit.

However, by applying the principles of good faith and of the regularity of administrative proceedings to the facts of the case, UNAT found that UNDT erred in dismissing the staff member's application as time-barred. It held that the MEU is competent only to make recommendations to suspend or extend the relevant deadlines concerning the management evaluation process, whereas the authority to extend a management evaluation deadline is reserved for the Secretary-General, who has not exercised it in the present case. Though not bound to do so, the MEU advised the staff member that the 90-calendar day deadline for his filing of an application with UNDT started to run from 23 July 2018. Based on that misrepresentation, the staff member filed his application with UNDT untimely. UNAT concluded that, in the circumstances and by applying the principles of good faith and of the regularity of administrative proceedings to the specific facts of the case, UNDT erred in dismissing the staff member's application as time-barred. Moreover, in the circumstances, the Secretary-General was estopped from raising the defense that the application for judicial review was time-barred. UNAT remanded the case to UNDT for a consideration on the merits.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2019-014.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2019-014.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-941.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-941.pdf)

### Judgment 2013-UNAT-368 (Roig)

Management evaluation – request – time limit – notification of administrative decision

**Applicable law:**

- *Article 8(3) of the UNDT Statute*
- *Staff Rule 11.2(a) and (c)*

**Legal principle:** A staff member wishing to formally contest an administrative decision shall, as a first step, submit to the Secretary-General in writing a request for management evaluation. The deadlines for management evaluation cannot be suspended or waived.

**UNDT judgment:** The staff member was not selected for a P-4 level post and contested the selection of a candidate other than her. UNDT found that the application was not receivable since the staff member's request for management evaluation filed on 11 February 2011 was time-barred.

**UNAT held:** UNAT agreed with UNDT that the staff member's request for management evaluation was time-barred and not receivable. UNAT concluded that the 60-day time limit for the purpose of requesting management evaluation of a non-selection decision started on 29 October 2010, when the staff member was informed of her non-selection, and not on 17 December 2010, when she learned of the identity of the selected candidate. There was no second administrative decision which reset the time limit; rather, the staff member learning the identity of the selected candidate was a consequence of the administrative decision not to select her.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2012-146.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2012-146.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-368.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-368.pdf)

**Judgment 2015-UNAT-600 (James)**

Management evaluation – review – failure to request – administrative decision – receivability (UNDT)

**Applicable law:**

- *Article 8(1)(c) of the UNDT Statute*
- *Staff Rules 11.2(a) and 11.2(b)*
- *Appendix D to the Staff Rules*

**Legal principle:** i) UNDT is not competent to hear and pass judgment on a claim that has not been the subject of an administrative decision and thereafter, management evaluation. ii) A claim of gross negligence against the Administration is a separate action which cannot be included in a claim made by a staff member under Appendix D.

**UNDT judgment:** The staff member filed a claim for compensation under Appendix D of the Staff Rules with the ABCC for the loss of vision in one eye. He claimed that the cataract in his right eye was exacerbated by his intensive use of computers for work purposes and that his injury was caused by the UN-referred ophthalmologist during the cataract surgery. The ABCC concluded that the staff member's injury was not service-incurred, and the Controller, on behalf of the Secretary-General, approved the ABCC's recommendation to deny the staff member's request that his illness (bilateral cataracts and loss of vision in one eye) be recognized as service-incurred. The staff member filed an application with UNDT challenging the rejection of his claim for compensation under Appendix D, the Organization's alleged negligence in referring him to a sub-standard medical facility for cataract surgery, and the Organization's failure to separate him in a timely manner on health grounds.

UNDT found that the staff member's negligence claim as well as his claim for separation on health grounds were not receivable under Article 8(1)(c) of the UNDT Statute as the staff member had failed to file a request for management evaluation. UNDT further found that the staff member's Appendix D claim was not receivable because he had not requested reconsideration of the Controller's decision to reject his claim, as required by Article 17(a) of Appendix D.



**UNAT held:** UNAT affirmed UNDT’s finding that the staff member’s claims that the Organization was negligent in carrying out his unsuccessful cataract surgery, owed him compensation of USD 2 million and failed to separate him in a timely manner on health grounds were not receivable because he was required to request management evaluation of these claim under Article 8(1)(c) of the UNDT Statute and Staff Rule 11.2(a) but failed to do so. UNAT rejected his contention that the impugned decisions were based on the advice of technical bodies, namely the ABCC, the Medical Services Division and the Medical Board, and that he was therefore not required to request management evaluation under Staff Rule 11.2(b). UNAT noted that a claim of gross negligence against the Administration is a separate action which cannot be included in a claim made by a staff member under Appendix D. The staff member was therefore required to submit a request for management evaluation of these decisions before proceeding with an application to UNDT.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2014-135.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2014-135.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-600.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-600.pdf)

### **Judgment 2016-UNAT-661 (Kalashnik)**

Management evaluation – review outcome – administrative decision – receivability (UNDT) – *ratione materiae*

**Applicable law:**

- *Article 8(1) of the UNDT Statute*

**Legal principle:** The outcome of the MEU’s review and the Administration’s response to a request for management evaluation are not appealable administrative decisions.

**UNDT judgment:** The staff member submitted requests for management evaluation of the decisions not to roster him for the position of P-4 Resident Investigator and not to select him for the P-4 Investigator positions. The USG/DM responded to the staff member’s requests for management evaluation, upholding the recommendations of the MEU and finding no merit in his claims. The staff member subsequently filed an application with UNDT contesting the decision of the USG/DM. UNDT held that the staff member’s application was not receivable *ratione materiae* because the Administration’s response to a request for management evaluation is not a judicially reviewable administrative decision.

**UNAT held:** UNAT affirmed UNDT’s finding and held that “the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision” all support the conclusion that the Administration’s response to a request for management evaluation is not a reviewable decision. UNAT noted that the response to a request for management evaluation is an opportunity for the Administration to resolve a staff member’s grievance without litigation and not a fresh decision.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2015-087.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2015-087.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-661.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-661.pdf)

## **Misconduct**

### **Judgment 2018-UNAT-811 (Aghadiuno)**

Misconduct – fraud – forgery – special education grant – disciplinary sanction – summary dismissal – standard of proof – proportionality of sanction

**Applicable law:**

- *Staff Regulation 1.2(b)*
- *Administrative Instruction ST/AI/2011/4 (Education grant and special education grant for children with a disability)*

**Legal principle:** Fraud, forgery and uttering falsified documents to the Organization constitute serious misconduct. Dishonesty and impropriety of this kind justifies summary dismissal without any benefits.

**UNDT judgment:** The staff member appealed the decision to summarily dismiss her. UNDT found that there was clear and convincing evidence to substantiate the allegation that the staff member had committed misconduct by submitting requests for special education grants for her children overstating the fees charged by the school and by omitting to declare sibling discounts and scholarships received from the school for three school years. However, UNDT held that the decision to summarily dismiss her from service for fraud was disproportionate, excessive, too severe and therefore unlawful. UNDT consequently upheld the staff member's application in part, ordered partial rescission of the dismissal decision (to be replaced with separation from service with termination indemnity) or six months' net base salary as an alternative compensation in place of the complete rescission of the dismissal decision.

**UNAT held:** The Secretary-General discharged his burden to establish the facts of misconduct by clear and convincing evidence in relation to all the allegations of wrongdoing regarding the special education grants. The evidence proved not only fraud in the form of false accounting, but also the uttering of forged and falsified documents to the Organization. The staff member's behaviour constituted serious misconduct by which she enriched herself by approximately USD 50,000 at the expense of the Organization. UNAT held that dishonesty and impropriety of this kind justified summary dismissal without any benefits. Accordingly, UNAT upheld the Secretary-General's appeal and vacated UNDT's judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-811.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-811.pdf)

**Judgment 2016-UNAT-706 (Gallo)**

Misconduct – non-disciplinary measure – written reprimand – former staff member

**Applicable law:**

- *Staff Rule 10.2(b)*

**Summary:** Imposition of non-disciplinary measure on former staff member is within the Secretary-General's discretion and lawful.

**UNDT judgment:** A former staff member contested the Administration's decision to place a written letter of reprimand in his Official Status File. He requested the rescission of the decision to impose a written reprimand. UNDT found that it was unlawful for the Secretary-General to issue a written reprimand in connection with a former staff member's conduct while employed.

**UNAT held:** There was no provision in the Staff Regulations or Rules requiring that the Secretary-General's discretionary authority to issue a written reprimand as a non-disciplinary measure pursuant to Staff Rule 10.2(b) (i) was predicated upon and limited to the existence of an ongoing employment contract. To hold otherwise would render baseless those standards of conduct that survive active service. In addition, from a practical perspective, it would stymie the Secretary-General's ability and discretionary authority to properly manage investigations and discipline staff. The Secretary-General's authority to administer the Organization's records, including those

of former staff members, and to ensure they reflect the staff member's performance and conduct during his or her period of employment, did not lapse upon the staff member's separation from service. Therefore, UNAT granted the appeal and vacated the UNDT judgment in part with respect to this holding and UNDT's order to remove the reprimand from the former staff member's Official Status File.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-038.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-038.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-706.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-706.pdf)

### **Judgment 2013-UNAT-302 (Applicant)**

Misconduct – sexual harassment – disciplinary sanction – summary dismissal – due process rights – right to confront accusers

#### **Applicable law:**

- *Standards of Conduct for the International Civil Service*
- *Staff Regulation 1.2(b)*
- *Staff Regulation 10.2 (100 Series)*

**Legal principle:** Due process does not always require that a staff member defending a disciplinary action for summary dismissal has the right to confront and cross-examine his/her accusers.

**UNDT judgment:** The UNICEF staff member contested the Administration's decision to summarily dismiss him based on allegations of sexual harassment made by five non-staff members who were employed as waiters and security guards at a residential camp in South Sudan. UNDT concluded that the sanction of summary dismissal was based on unsubstantiated charges and that the staff member's due process rights were violated when he could not cross-examine the complainants, who did not appear at the hearing before UNDT.

**UNAT held:** UNAT vacated the UNDT judgment and affirmed the decision to summarily dismiss the staff member. UNAT found that the weight of the evidence in that case justified the decision taken by UNICEF. While acknowledging the importance of confrontation and cross-examination of witnesses, UNAT considered that due process did not always require that a staff member defending a disciplinary action for summary dismissal had the right to confront and cross-examine his/her accusers. Under certain circumstances, denial of this right did not necessarily fatally flaw the entire process, so long as it was established to UNAT's satisfaction that the accused was afforded fair and legitimate opportunities to defend his/her position. In the instant case, UNAT was satisfied that the key elements of the staff member's rights of due process were met: he was fully informed of the charges against him and the identity of his accusers and their testimony. As such, he was able to mount a defense and to call into question the veracity of their statements.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2012-054.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2012-054.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2013-unat-302.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2013-unat-302.pdf)

### **Judgment 2018-UNAT-819 (Mbaigolmem)**

Misconduct – sexual harassment – investigation – disciplinary sanction – dismissal – appeal – standard of proof – proportionality of sanction

#### **Applicable law:**

- *Articles 2(1)(b), 10(4) and 10(5) of the UNDT Statute*

- *Article 16(2) of the UNDT Rules of Procedure*

**Legal principle:** The appeal in a disciplinary case requires consideration of whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence. A *de novo* hearing into findings on misconduct might not always be necessary. Much will depend on the available evidence and the circumstances of the case.

**UNDT judgment:** The staff member contested the decision to separate him from service. The decision was based on the finding that he had engaged in sexual harassment, specifically, by making unwelcome sexual advances towards a colleague. UNDT held that the Administration had failed to discharge its onus to prove by clear and convincing evidence that the staff member had committed misconduct in the form of sexual harassment. By way of remedy, UNDT ordered rescission of the disciplinary measure and remanded the matter to the Administration to resume the disciplinary procedure and obtain additional evidence. As an alternative, UNDT ordered in-lieu compensation in the amount of six months' emoluments.

**UNAT held:** The undisputed facts, the evidence of a credible report, coherent hearsay evidence pointing to a pattern of behavior, the consistency of the witness statements, the unsatisfactory statement of the staff member and the inherent probabilities of the situation, taken cumulatively, constituted a clear and convincing concatenation of evidence establishing, with a high degree of probability, that the alleged misconduct in fact occurred. UNAT noted that the Organization is entitled to and obliged to pursue a severe approach to sexual harassment and that the message therefore needs to be sent out clearly that staff members who sexually harass their colleagues should expect to lose their employment. Accordingly, it concluded that the sanction imposed by the Administration in this case was proportionate and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-051.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-051.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-819.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-819.pdf)

## Non-renewal

### Judgment 2012-UNAT-201 (Obdeijn)

Non-renewal of appointment – reasons – arbitrary or improper motives – burden of proof – complainant – shift of burden of proof

#### Applicable law:

- *General Assembly resolution 63/253*
- *Article 2(1) of the UNDT Statute*
- *Staff Rule 4.13*

**Legal principle:** As a general principle, a staff member bears the burden of proof of showing that a decision was arbitrary or tainted by improper motives. However, the Administration's refusal to disclose the reasons for the contested decision shifts the burden of proof so that it is for the Administration to establish that its decision was neither arbitrary nor tainted by improper motives.

**UNDT judgment:** The staff member contested the Administration's decision not to renew his fixed-term appointment without disclosing the reasons for the non-renewal. UNDT found that the Administration had breached its obligation to disclose the reasons for the decision not to renew the staff member's appointment, particularly in response to his requests for reasons, in violation of the requirements of good faith and fair dealing.

**UNAT held:** The Administration cannot legally refuse to state the reasons for a decision that creates adverse

effects on the staff member, such as a decision not to renew a fixed-term appointment, where the staff member requests it or the Tribunal orders it. The refusal to disclose the reasons for a contested decision shifts the burden of proof so that it is for the Administration to establish that its decision was neither arbitrary nor tainted by improper motives, and the Tribunal is entitled to draw an adverse inference from the Administration's refusal. UNAT affirmed the UNDT's finding that the contested decision was unlawful and the award of USD 8,000 for moral injury. However, it vacated the award of six months' net base salary for economic loss, finding that the staff member was unable to establish any economic loss.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-032.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-032.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-201.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-201.pdf)

## Performance management

### Judgment 2017-UNAT-757 (Sarwar)

Performance management – performance evaluation – procedural irregularities – poor performance – separation from service – standard of review

#### Applicable law:

- *Staff Regulation 9(3)(ii)*
- *Staff Rule 9.6(c)*
- *Secretary-General's Bulletin ST/SGB/2011/10 (Young professionals programme)*
- *Administrative Instruction ST/AI/2010/5 (Performance Management and Development System)*

**Legal principle:** The standard of review in poor performance cases does not limit the Tribunals to examining the process by which it was determined that the performance was unsatisfactory. Nor is it correct to contend that UNDT may not reach its own conclusions concerning the performance of a staff member and to suggest that such would be “usurping the role” of the rebuttal panel. — Whenever the Secretary-General is called upon to decide if a valid and fair reason exists to terminate an appointment for poor performance, he should consider whether the staff member in fact failed to meet the performance standard and if so whether: i) the staff member was aware, or could reasonably be expected to have been aware, of the required standard; ii) the staff member was given a fair opportunity to meet the required standard; and iii) termination of appointment is an appropriate action for not meeting the standard in the circumstances.

**UNDT judgment:** Before UNDT, the staff member challenged, inter alia, the decision to separate him from service upon the expiration of his extended fixed-term appointment on the grounds of poor performance. With respect to the first performance cycle, UNDT found that the workplan had not been finalized in a timely manner, that it was therefore difficult for the staff member to have clarity about performance expectations and that any rating would be of questionable validity. Moreover, the delay had an effect on the rest of the stages of performance management, with both the midpoint review and the first improvement plan being finalized just before the end of the cycle. The UNDT believed that these delays had a prejudicial effect and rendered the process “materially flawed and prejudicial” and thus unlawful. With respect to the second performance cycle, the UNDT found that the workplan had only been finalized in December 2013, the same month the midpoint review took place and the performance improvement plan was approved in February 2014. The UNDT found that the repeated non-compliance with the various provisions of ST/AI/2010/5 resulted in the management of the staff member's performance being “so procedurally flawed and fraught with irregularities that it tainted and rendered the decision not to renew his fixed-term appointment unlawful”. The UNDT ordered rescission of the separation decision and in-lieu compensation in the amount of twelve months' net base salary and USD 5,000 as compensation for non-pecuniary damages.

**UNAT held:** UNAT found that the UNDT’s determination that the decision to terminate the appointment was unlawful on account of the repeated non-compliance with ST/AI/2010/5 was formalistic. While obviously a workplan should be finalized at the beginning of a cycle, UNDT found that there was nothing in ST/AI/2010/5 that held any failure to generate a workplan at the commencement of a cycle to be a procedural flaw resulting axiomatically in any subsequent decision to terminate an appointment being unlawful. Likewise, there is no such consequence for not holding a midpoint review in a timely manner. UNAT found that the use of the non-remptory words “should” and “usually” confirmed that the provisions of ST/AI/2010/5 in this respect were directory not mandatory. Additionally, ST/AI/2010/5 did not provide for any minimum duration for a performance improvement plan. UNAT found that the question of procedural fairness was whether the staff member had been aware of the required standard and had been given a fair opportunity to meet it. In the present case, UNAT found that the staff member had been acquainted with what was expected of him, was properly assessed in numerous assignments, was afforded an opportunity to improve and failed to do so in key performance areas, thus demonstrating his unsuitability for the position. UNAT concluded that in the premises, there was no basis for finding the separation decision unlawful and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-178.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-178.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-757.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-757.pdf)

## Privileges and immunities

### Judgment 2018-UNAT-843 (Kozul-Wright)

Privileges and immunities – private legal obligations – waiver of official’s immunity – decision to waive immunity – administrative decision – receivability (UNDT)

#### Applicable law:

- *Article 105 of the Charter of the United Nations*
- *Convention on the Privileges and Immunities of the United Nations*
- *Article 2(1)(a) of the UNDT Statute*
- *Staff Regulation 1.1(f)*
- *Staff Rule 1.2(b)*

**Legal principle:** The Secretary-General’s decision to waive a staff member’s immunity does not constitute an administrative decision. Rather, it is an executive or policy decision.

**UNDT judgment:** The staff member contested the Secretary-General’s decision to waive his diplomatic immunity with regard to his dispute over the lease of an apartment at his duty station in Geneva. At the request of the Permanent Mission of Switzerland to the United Nations, the Secretary-General lifted the staff member’s immunity with respect to the execution of a judgment issued by a Geneva court ordering the staff member to pay compensation to the landlord. UNDT found the application to be receivable on the grounds that the decision to waive immunity constituted an administrative decision which had a direct impact on the staff member. It concluded, however, that the Administration had properly exercised its discretion to waive immunity and it had acted reasonably and properly, taking account of all relevant considerations, in lifting the immunity.

**UNAT held:** When responding to requests for the waiver of an official’s immunity, the Organization must comply with its legal obligations to the requesting Member State under the relevant international instruments, which limit immunity to official acts and oblige the Secretary-General to cooperate at all times with the appropriate authorities to facilitate the proper administration of justice and to prevent the occurrence of any abuse in connection with the privileges and immunities. UNAT noted that the Secretary-General is best placed to

appreciate the nature of the Organization's obligations to a Member State, what form of cooperation will be in the interests of the Organization, and whether non-waiver is necessary for the fulfillment of the purposes of the Organization. The factors he will take into consideration often may be political in nature and will involve issues of comity. These considerations imbue a decision of the Secretary-General to waive immunity with an executive or political character, negating the categorization of the decision as one administrative in nature. Accordingly, UNAT held that the staff member's application to UNDT was not receivable *ratione materiae* and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-843.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-843.pdf)

## Procedure (UNDT)

### Judgment 2016-UNAT-618 (Subramanian et al.)

Procedure (UNDT) – due process rights – access to justice – right to file appeal – request for extension of time – summary judgment – procedural error

#### Applicable law:

- *Articles 2(1) and 8(3) of the UNDT Statute*
- *Article 7(5) of the UNDT Rules of Procedure*

**Legal principle:** UNDT has the competence and jurisdiction under Article 8 of its Statute to determine whether an application is receivable. However, it cannot convert a request for an extension of time into an “application” and summarily dismiss it as not receivable. Such act amounts to excess of competence and jurisdiction and a violation of the staff members’ right to due process of law.

**UNDT judgment:** The staff members requested an extension of time before UNDT to file their applications against OHRM’s decision that “the comprehensive salary survey conducted in New Delhi, India, in June 2013 found that the current salaries for locally-recruited staff are above the labour market”. UNDT did not rule on the motion for time extension but proceeded to rule on the merits of the case finding that the staff members’ challenges were not receivable *ratione materiae*.

**UNAT held:** UNDT exceeded its competence and jurisdiction and violated the staff members’ statutory rights to file an application and to have access to justice and made procedural errors when it, on its own motion, converted the staff members’ request for an extension of time into an application and summarily dismissed it as not receivable. Accordingly, UNAT vacated the UNDT judgment and remanded the matter to UNDT with instructions to permit the staff members to file an application.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2015-025.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2015-025.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-618.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-618.pdf)

### Judgment 2011-UNAT-121 (Bertucci)

Procedure (UNDT) – order for production of documents – discretionary authority – interest of justice – failure to execute UNDT order

### Applicable law:

- *Article 9(1) of the UNDT Statute*
- *Articles 18(2) and 19 of the UNDT Rules of Procedure*
- *General Assembly resolution 51/226 (Human resources management)*
- *Administrative Instruction ST/AI/2006/3 (Staff selection system)*

**Legal principle:** UNDT has discretionary authority in conducting the proceedings and ordering the production of evidence in the interest of justice. This power is conferred on the Tribunal so that there may be a fair and expeditious disposal of the case. UNDT is entitled to order the production of any document relevant to that end and may draw inferences from a party's refusal to disclose documents.

**UNDT judgment:** The staff member contested his non-selection for the post of ASG/DESA and UNDT ruled in his favour. UNDT sanctioned the Administration's refusal to produce the documents relating to the appointment process by excluding its counsel from participating in the proceedings and rendered a default judgment.

**UNAT held:** UNDT judge had sufficient grounds to order the production of the documents withheld by the Administration concerning the selection process that led to the contested administrative decision. UNAT stated the principle that UNDT has the right to order the production of any document relevant for the purposes of the fair and expeditious disposal of its proceedings. If the Administration opposes UNDT's order to produce a certain document in its possession, it may, with sufficiently specific and justified reasons, request UNDT to verify the confidentiality of the document in question. Before such verification is completed, the said document may not be transmitted to the other party. If UNDT considers the confidentiality of the document justified, it must remove the document, or part of it, from the case file. UNDT may not subsequently use such a document against a party unless the said party has had an opportunity to examine it. However, UNDT may not exclude a party from its proceedings if that party refuses to execute UNDT's order to produce a document, because to do so would run afoul of the principle of respect for the right to a defence and the right to an effective remedy set forth in the Universal Declaration of Human Rights. When a party refuses to execute UNDT's order to produce a document, UNDT is entitled to draw appropriate conclusions from the refusal in its final judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-080.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-080.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-121e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-121e.pdf)

## Reassignment

### Judgment 2012-UNAT-266 (Rees)

Reassignment – broad discretion – non-renewal – performance evaluation – harassment

### Applicable law:

- *Staff Regulation 1.2(c)*
- *Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)*
- *Administrative Instruction ST/AI/2002/3 (Performance Appraisal System)*

**Legal principle:** The Secretary-General has broad discretion to reassign staff members. However, a decision to reassign a staff member must be properly motivated, and not tainted by improper motives, or taken in violation of mandatory procedures. A reassignment is proper if the new post is at the staff member's grade; if the responsibilities involved correspond to his or her level; if the new functions are commensurate with the staff member's competencies and skills; and, if he or she has substantial professional experience in the field.



**UNDT judgments:** The staff member contested the decisions to reassign her and subsequently not to renew her appointment. The staff member raised allegations of harassment and discrimination against the Deputy High Commissioner throughout the events leading up to these two decisions. From the beginning of her service, the staff member had had no performance evaluations.

UNDT found that the decision to reassign the staff member was not a lawful exercise of the Secretary-General's discretion as the performance evaluation procedures had not been followed. Moreover, the circumstances of the reassignment led to the impression that the reassignment had been based on serious wrongdoing by her and as such, the decision was potentially prejudicial to her. UNDT found that in the absence of a performance appraisal, the non-extension of the appointment based on her performance was equally unlawful. UNDT ordered the rescission of the reassignment and non-renewal decisions and in-lieu compensation, compensation for moral damages, and the removal of a performance evaluation memorandum from the staff member's official status file and placement of copies of its two judgments therein. The Secretary-General appealed.

**UNAT held:** UNAT affirmed UNDT's finding of the unlawfulness of the reassignment decision. UNAT found that while the Secretary-General has broad discretion to reassign staff members, a decision to reassign a staff member must be properly motivated, and not tainted by improper motives, or taken in violation of mandatory procedures. A reassignment is proper if the new post is at the staff member's grade; if the responsibilities involved correspond to his or her level; if the new functions are commensurate with the staff member's competencies and skills; and, if he or she has substantial professional experience in the field. In Ms. Rees' case, none of these factors existed with respect to the position to which the Administration purported to reassign her. Moreover, in the absence of a performance appraisal, Ms. Rees' reassignment was unlawful. UNAT, however, found that the relief granted by UNDT, the rescission of the reassignment decision, was unsuitable and instead enhanced the award of moral damages.

As to the non-renewal, UNAT found that UNDT had erred in finding the decision unlawful. Given Ms. Rees' consistent refusal to take up her new assignment, her refusal to report to her previous supervisor and her refusal to apply to other vacancies, the High Commissioner properly exercised her discretionary authority in deciding not to renew Ms. Rees' appointment. UNAT recalled that Ms. Rees had been advised to submit a formal complaint of harassment under ST/SGB/2008/5, which she had failed to do, and found that therefore her insistence on different reporting lines was without merit. UNAT vacated UNDT's order rescinding the non-renewal decision and the award of in-lieu compensation.

Links to UNDT judgments (merits and compensation):

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-156.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-156.pdf)

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-201.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-201.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-266.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-266.pdf)

### **Judgment 2012-UNAT-236 (Gehr)**

Reassignment – lateral – restructuring – discretion

#### **Applicable Law:**

- *Administrative Instruction ST/AI/2006/3 (Staff selection system)*

**Legal Principles:** i) An international organization necessarily has the power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff. A staff member who has been reassigned is entitled to be informed of the reasons for the reassignment. In addition to ensuring transparency in decision making, providing the reasons for the reassignment permits a staff member to assess the courses of action that may be taken, including the lodging of an appeal, and it also permits a review of the lawfulness of the decision on appeal. ii) The heads of departments/offices retain the authority to transfer staff members within their departments or offices to vacant posts at the same level as a result of the restructuring of the office.

**UNDT judgment:** The staff member contested the decisions to abolish his post of Chief of the Counter-Terrorism

Legal Services Section I, United Nations Office on Drugs and Crime (UNODC) and to laterally reassign him to the position of Senior Legal Adviser within the Office of the Chief of the Terrorism Prevention Branch (TPB). UNDT found that the restructuring of the TPB was a valid exercise of the Secretary-General's discretion. It further found that the staff member's post had not been abolished; rather, the staff member had been reassigned against the same budgeted post and his functional title and responsibilities were eventually changed to those of Senior Legal Adviser. UNDT was satisfied that the reassignment was justified by the restructuring of the TPB which entailed a redistribution of functions. UNDT dismissed the application and the staff member appealed.

**UNAT held:** UNAT recalled the well settled jurisprudence of the ILOAT that "an international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff". UNAT rejected Mr. Gehr's contention that the restructuring, although a legitimate exercise of managerial discretion, had been carried out arbitrarily to marginalize him. In accordance with the report of the JIU on "Review of Management and Administration in ... UNODC", UNODC implemented an organizational restructuring in April 2010 that had been triggered not only by financial difficulties requiring streamlining but also by previous oversight recommendations that pointed out duplications, overlaps/gaps of functions as well as lack of coordination. This legitimate restructuring of a department led in the present case, to the staff member's reassignment. UNAT recalled that the heads of departments/offices retain the authority to transfer staff members within their departments or offices to vacant posts at the same level (see paragraph 2.4 of ST/AI/2006/3 applicable at the time). In accordance with this provision, the JIU, in its report, advised the Executive Director to conduct a functional review of all UNODC divisions, sections and units, and align them to the reconfirmed prioritized framework for action of the Office, including by reorienting human and financial resources if necessary. It further recommended that the Executive Director take measures to improve the gender balance at the senior level and consider more candidates from developing countries. UNAT further recalled the ILOAT's jurisprudence that a staff member who has been reassigned is entitled to be informed of the reasons for the reassignment, both for the sake of transparency and in order to permit the staff member to assess the courses of action that may be taken. UNAT held that in the instant case, the reasons for the reassignment were to be found in the restructuring and the recommendations of the JIU Report which in no way indicated a pattern of harassment or marginalization of the staff member.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-142.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-142.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-236.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-236.pdf)

## Receivability (UNAT)

### Judgment 2010-UNAT-010 (Tadonki)

Receivability (UNAT) – appeal – competence – interpretation of UNDT judgment

#### Applicable law:

- *Article 2(1) of the UNAT Statute*
- *Article 30 of the UNDT Rules of Procedure*

**Legal principle:** An interpretation of a UNDT judgment is not a judgment within the meaning of Article 2(1) of the UNAT Statute. Therefore, an appeal against it is not receivable.

**UNDT judgment:** Upon applications by both parties, the UNDT issued its interpretation of judgment, confirming its interim orders to the Secretary-General to suspend the decision not to renew the staff member's appointment pending the final determination of the substantive case; and to pay half of the staff member's salary from the date of the order until the final determination of the case.

**UNAT held:** The Secretary-General appealed. UNAT dismissed the Secretary-General's appeal against the UNDT's interpretation of judgment. It found that the appeal was not receivable because interpretation of a judgment is

not a fresh decision or judgment within the meaning of Article 2(1) of the UNAT Statute.

Link to UNDT Interpretation of judgments:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2009-058.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2009-058.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-010.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-010.pdf)

### **Judgment 2018-UNAT-826 (Ocokoru)**

Receivability (UNAT) – application for execution of judgment – executable judgment

#### **Applicable law:**

- *Article 11(3) of the UNDT Statute*
- *Article 32 of the UNDT Rules of Procedure*
- *Article 11(4) of the UNAT Statute*
- *Article 27 of the UNAT Rules of Procedure*

**Legal principle:** A UNAT judgment rejecting an appeal against a UNDT judgment as not receivable is not an executable judgment. Therefore, UNAT does not have competence to grant an application for execution of such judgment. UNDT judgment remains in force, and the execution of that judgment remains within the jurisdiction of UNDT.

**UNAT held:** The staff member filed an application for execution of Judgment 2015-UNAT-604 (Ocokoru). UNAT noted that in Judgment 2015-UNAT-604, it did not make any order affecting the UNDT judgment that was appealed but simply decided that the Secretary-General's appeal was not receivable. UNAT held that the execution of the UNDT judgment remained within the jurisdiction of UNDT and, as such, it was not competent to grant the staff member's application. UNAT observed that Article 27 (Execution of judgments) of the UNAT Rules of Procedure, when read together with Article 11(4) of the UNAT Statute, leaves no doubt that the judgment referred to in the legislation is a judgment by UNAT. In this case, an executable judgment by UNAT did not exist and thus Article 27 of the UNAT Rules of Procedure did not apply.

Links to UNDT judgments:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2015-004.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2015-004.pdf)

Links to UNAT judgments:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-604.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-604.pdf)

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-826.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-826.pdf)

### **Judgment 2010-UNAT-032 (Calvani)**

Receivability (UNAT) – interlocutory appeal – UNDT order – discretionary authority – case management – production of documents – interest of justice

#### **Applicable law:**

- *Article 9(1) of the UNDT Statute*
- *Articles 18(2) and 19 of the UNDT Rules of Procedure*
- *Staff Rule 10.4*

**Legal principle:** UNDT has discretionary authority in case management and the production of evidence in the interest of justice. It is not in the interest of the internal system of justice to consider an appeal against a simple measure of inquiry receivable. Any such error may be raised in an appeal against the final judgment.

**UNDT order:** The staff member filed an application for suspension of action of the decision to place him on administrative leave without pay. Following an oral hearing, UNDT ordered the Administration to submit a signed confirmation from the Secretary-General that he made the decision to place the staff member on administrative leave without pay pursuant to Staff Rule 10.4.

**UNAT held:** UNAT rejected the Secretary-General’s interlocutory appeal against the UNDT order as not receivable, finding that UNDT had discretionary authority in case management and the production of evidence in the interest of justice. UNAT found that UNDT had decided on a measure of inquiry, the necessity of which it had sole authority to assess. UNAT held that it was not in the interest of the internal system of justice to consider an appeal against a simple measure of inquiry receivable.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-032e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-032e.pdf)

### **Judgment 2010-UNAT-005 (Tadonki)<sup>10</sup>**

Receivability (UNAT) – interlocutory appeal – UNDT order – excess of jurisdiction – suspension of action – pendency of management evaluation

#### **Applicable law:**

- *Article 2(2) of the UNAT Statute*
- *Articles 2(2) and 10(2) of UNDT Statute*

**Legal principle:** Generally, only appeals against final judgments are receivable. However, when it is clear that UNDT has exceeded its jurisdiction, a preliminary matter may be receivable. Under Article 2(2) of the UNDT Statute, UNDT has competence to order suspension of that decision only during the pendency of the management evaluation.

**UNDT order:** The staff member filed an application for suspension of action of the decision not to renew his contract. UNDT ordered that the contested decision be suspended pending the final determination of the substantive appeal and that the staff member’s salary be paid from the date of the order until the final determination of the case.

**UNAT held:** UNAT considered the Secretary-General’s appeals against UNDT decisions ordering the suspension of the contested decisions beyond the deadline for management evaluation. UNAT clarified that, generally, only appeals against final judgments would be receivable, because otherwise, cases would seldom proceed if either party was dissatisfied with a procedural ruling. Article 2(2) of the UNDT Statute authorizes UNDT to order suspension of a contested decision only “during the pendency of the management evaluation”. UNAT found that UNDT exceeded its jurisdiction in ordering suspension of the contested decision not to renew the staff member’s contract beyond the deadline for management evaluation. UNDT also exceeded its jurisdiction under Article 10(2) of the UNDT Statute by ordering suspension of the contested decision not to renew the staff member’s contract pending the final determination of the case. UNAT emphasized that almost no preliminary matters would be receivable, for instance, matters of evidence, procedure, and trial conduct. Only when it is clear that UNDT has exceeded its jurisdiction will a preliminary matter be receivable.

Link to UNDT order:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2009-016.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2009-016.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-005.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-005.pdf)

### **Judgment 2012-UNAT-256 (Benchebbak)**

Receivability (UNAT) – interlocutory appeal – UNDT order – excess of jurisdiction – suspension of action – administrative decision – non-renewal — management evaluation

#### **Applicable law:**

- *Articles 2(2) and 10(2) of the UNDT Statute*
- *Articles 13 and 14 of the UNDT Rules of Procedure*

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<sup>10</sup> See also Judgment 2010-UNAT-008 (Onana) at [www.un.org/en/internaljustice/files/unat/judgments/2010-unat-008.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-008.pdf) and Judgment 2010-UNAT-011 (Kasmani) at [www.un.org/en/internaljustice/files/unat/judgments/2010-unat-011e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-011e.pdf).

**Legal principle:** At any time during the proceedings, UNDT may order a suspension of action of a contested administrative decision, except in cases of appointment, promotion or termination. Where the contested decision concerns appointment, promotion or termination, UNDT cannot order a suspension of action of a contested decision beyond the deadline for the completion of management evaluation.

**UNDT order:** UNDT ordered suspension of the contested decision not to extend the staff member's appointment pending the determination of the case on the merits.

**UNAT held:** UNDT violated Article 2(2) of the UNDT Statute, which provides for suspension of the implementation of a contested decision only "during the pendency of the management evaluation", and Article 10(2) of the UNDT Statute, which prohibits the suspension of the implementation of an administrative decision in cases of appointment, promotion, or termination. Accordingly, UNAT granted the Secretary-General's appeals against UNDT orders.

Link to UNDT order:

[www.un.org/en/internaljustice/files/undt/orders/nbi-2011-142.pdf](http://www.un.org/en/internaljustice/files/undt/orders/nbi-2011-142.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-256.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-256.pdf)

### **Judgment 2016-UNAT-641 (Chemingui)**

Receivability (UNAT) – interlocutory appeal – UNDT order – interim relief – suspension of action – lateral reassignment

#### **Applicable law:**

- *Article 10(2) of the UNDT Statute*
- *Article 2(1) of the UNAT Statute*

**Legal principle:** A lateral reassignment decision does not constitute a case of "appointment, promotion, or termination". Therefore, it is subject to interim relief under Article 10(2) of the UNDT Statute.

**UNDT judgment:** The staff member filed an application before UNDT challenging the decision to laterally reassign him and requested a suspension of action. UNDT issued an order granting the staff member's request for suspension of action pending resolution of the matter.

**UNAT held:** UNAT found that UNDT did not "clearly exceed its competence or jurisdiction" when it temporarily suspended the administrative decision to laterally reassign the staff member as that decision did not constitute a case of "appointment, promotion, or termination" excluded from interim relief under Article 10(2) of the UNDT Statute. Accordingly, UNAT dismissed the interlocutory appeal as not receivable.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/orders/nbi-2015-245.pdf](http://www.un.org/en/internaljustice/files/undt/orders/nbi-2015-245.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-641.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-641.pdf)

### **Judgment 2011-UNAT-160 (Villamorán)**

Receivability (UNAT) – interlocutory appeal – UNDT order – preliminary suspension of action – discretion

#### **Applicable law:**

- *Article 2(2) of the UNDT Statute*
- *Articles 8(6), 13 and 19 of UNDT Rules of Procedure*

**Legal principle:** Where the implementation of an administrative decision is imminent and takes place before

the five-day period provided for under Article 13 of the UNDT Rules of Procedure has elapsed, UNDT has the discretion to grant a preliminary suspension of action pending its consideration of the application for suspension of action. Such an order rendered by UNDT requires execution even in cases where the order is being appealed.

**UNDT order:** The staff member requested the suspension of two administrative decisions: (i) the decision to place her on a temporary appointment after the expiration of her fixed-term contract; and (ii) the decision to require her to take a break in service of 31 days prior to her placement on a temporary appointment. UNDT noted that under Article 13 of the UNDT Rules of Procedure, it had five days from the service of an application of suspension of action on the respondent to consider the application; and that in this case, the contested administrative decision was due to be implemented before the five-day period. UNDT determined that further submissions were required for the fair and expeditious disposal of the application and to do justice to the parties. Therefore, it ordered a preliminary suspension of the implementation of the contested decisions pending the final determination of the application for suspension of action.

**UNAT held:** The Secretary-General appealed the UNDT order. UNAT held that, where the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of the UNDT Rules of Procedure have elapsed, and where UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules of Procedure meaningless in cases where the implementation of the contested administrative decision is imminent. UNAT concluded that UNDT did not exceed its jurisdiction in rendering the impugned order and the Secretary-General's interlocutory appeal was therefore not receivable. UNAT further held that Article 8(6) of the UNAT Rules of Procedure, which provides that "[t]he filing of an appeal shall suspend the execution of the judgment contested", does not apply to appeals of interlocutory orders rendered by UNDT and that any orders rendered by UNDT require execution even in cases where the order is being appealed. It falls to UNAT to decide whether UNDT exceeded its jurisdiction in rendering an interlocutory order and the Administration cannot refrain from executing an order by filing an appeal against it on the basis that UNDT exceeded its jurisdiction.

Link to UNDT order:

[www.un.org/en/internaljustice/files/undt/orders/Order%202011-NY-171.pdf](http://www.un.org/en/internaljustice/files/undt/orders/Order%202011-NY-171.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-160.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-160.pdf)

### Judgment 2012-UNAT-243 (Hersh)<sup>11</sup>

Receivability (UNAT) – interlocutory appeal – UNDT order – exceptional circumstances – manifest excess of jurisdiction

#### Applicable law:

- *Articles 2(2) and 10(2) of the UNDT Statute*
- *Article 13 of the UNDT Rules of Procedure*

**Legal principle:** In general, only appeals against judgments on the merits are receivable. Appeals against decisions taken during proceedings are receivable only in exceptional cases where UNDT has manifestly exceeded its jurisdictional powers. UNDT has jurisdiction to order a suspension of action on an application filed by an individual requesting it to suspend, during the pendency of the management evaluation that is the subject of an ongoing management evaluation, the implementation of a contested administrative decision, where the decision appears i) *prima facie* to be unlawful, ii) in cases of particular urgency and iii) where its implementation would cause irreparable damage.

**UNDT order:** The staff member requested suspension of the administrative decision not to transfer her to UNMISS when the UNMIS mandate expired. UNDT held that her application for a suspension of action order should be refused on the grounds that the application did not satisfy one of the three conditions required for

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<sup>11</sup> See also Judgment 2012-UNAT-244 (Bali) at [www.un.org/en/internaljustice/files/unat/judgments/2012-unat-244e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-244e.pdf).

granting it. Nonetheless, having judged that the impugned decision not to transfer the staff member to UNMISS was unlawful, it ordered her application for suspension of action to be transferred to the “general cause list” for a hearing on the merits.

**UNAT held:** UNAT granted the Secretary-General’s appeal on the basis that UNDT manifestly exceeded its jurisdictional powers by converting an application for suspension of action into an application on merits and inviting the parties to make submissions on the merits. UNDT took an *ultra petita* decision by ordering measures for which no claim had been made.

Link to UNDT order:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-154.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-154.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-243e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-243e.pdf)

### **Judgment 2012-UNAT-252 (Khambatta)**

Receivability (UNAT) – interlocutory appeal – UNDT order – suspension of action – exceptional circumstances – manifest excess of jurisdiction

#### **Applicable law:**

- *Articles 2(2) and 10(2) of the UNDT Statute*

**Legal principle:** Appeals to UNAT against decisions taken during proceedings before UNDT are receivable only in exceptional circumstances where UNDT has manifestly exceeded its jurisdiction.

**UNAT held:** The Secretary-General appealed UNDT’s suspension of action order on the basis that UNDT had failed to accord him the right to be heard. UNAT rejected the appeal, holding that appeals against decisions taken during proceedings are receivable only in exceptional circumstances where UNDT has manifestly exceeded its jurisdiction. UNAT found that even though UNDT may have committed a procedural error, it had not exceeded its jurisdiction.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-252e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-252e.pdf)

### **Judgment 2010-UNAT-062 (Bertucci)**

Receivability (UNAT) – jurisdiction – competence – UNDT interlocutory order – interlocutory appeals – exceptional circumstances

#### **Applicable law:**

- *Articles 2(1) and 7 of the UNAT Statute*

**Legal principle:** UNAT generally has no jurisdiction to receive interlocutory appeals (i.e. appeals against rulings made during the course of trial before a final judgment is rendered). Interlocutory appeals are only receivable where UNDT has clearly exceeded its jurisdiction or competence.

**UNDT orders:** The staff member contested his non-selection for the post of ASG/DESA. Before and during the course of the hearing of the case, UNDT issued a series of Orders (i.e. Order Nos. 40, 42, 43, 44 and 46 (NY/2010)).

**UNAT held:** The Secretary-General filed appeals against UNDT Orders. UNAT determined that, generally, only appeals against final judgments are receivable. It observed that an interlocutory appeal is receivable exceptionally in cases where UNDT has clearly exceeded its jurisdiction or competence, citing Judgment 2010-UNAT-005 (Tadonki), Judgment 2010-UNAT-008 (Onana), and Judgment 2010-UNAT-011 (Kasmani). UNAT held that it would not interfere lightly with the broad discretion of UNDT in the management of cases. Further, it noted that one of the goals of the new system of administration of justice is rendering timely judgments; cases before

UNDT could seldom proceed if either party were able to appeal interlocutory decisions. UNAT held that in this case, it saw no reason to depart from the general rule that only appeals against final judgments are receivable. UNAT dismissed the Secretary-General's interlocutory appeals as not receivable.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-062.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-062.pdf)

### **Judgment 2012-UNAT-231 (Ortiz)**

Receivability (UNAT) – jurisdiction – ICAO Secretary General – AJAB recommendation – administrative decision

#### **Applicable law:**

- *Article 2(10) of the UNAT Statute*
- *Article XI of the ICAO Service Code*

**Legal principle:** UNAT examines an appeal against the final decision taken by the ICAO Secretary General, and it takes into account the conclusions and recommendations of the ICAO AJAB and the reasons for which the ICAO Secretary General departed from/accepted them.

**UNAT held:** UNAT noted that, in considering an appeal filed by a former ICAO staff member, it was reviewing a decision taken by an executive authority (i.e. ICAO Secretary General) on the basis of the conclusions and recommendations of the AJAB, and not a judgment delivered by a professional, independent court of first instance determining the issue itself through its decision, i.e., UNDT. UNAT held that to that extent, “[the UNAT Statute] is only applicable to such an appeal insofar as, and on condition that, its provisions are compatible with the judgment of an appeal directed against a decision taken by an executive authority.”

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-231e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-231e.pdf)

### **Judgment 2015-UNAT-607 (Zakharov)**

Receivability (UNAT) – jurisdiction – Standing Committee of UNJSPB – Standing Committee decision – appeal

#### **Applicable law:**

- *Article 2(9) of the UNAT Statute*
- *Section K and Article 48 of the UNJSPF Regulations*

**Legal principle:** UNAT's jurisdiction over the UNJSPF is limited to hearing appeals of decisions of the Standing Committee of the UNJSPB.

**UNJSPB Decision:** The staff member challenged the UNJSPB's refusal to submit his case to the Standing Committee. He claimed that the decision violated the “international civil servants' right of appeal” and applied the UNJSPF Regulations in an “arbitrary, unfair or prejudicial manner”.

**UNAT held:** UNAT found that the decision of the UNJSPB not to submit the staff member's appeal to the Standing Committee contravened his rights under the UNJSPF Regulations by depriving him of access to the appeals process and was a serious violation of his due process rights. Noting that UNAT's jurisdiction was limited to hearing appeals of decisions of the Standing Committee and that the staff member's case had not been reviewed by the Standing Committee, UNAT found that it had no jurisdiction to hear the appeal and remanded it to the Standing Committee.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-607.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-607.pdf)



### Judgment 2011-UNAT-165 (Cherif)

Receivability (UNAT) – *ratione materiae* – ICAO Council decision – administrative decision

#### Applicable law:

- *Article 58 (Chapter XI) of Convention on International Civil Aviation, Chicago, 4 April 1947*

**Legal principle:** The decisions of the governing body of ICAO are not, within the mandate of UNAT, administrative decisions. These decisions are regulatory decisions that are not subject to judicial review by UNAT.

**UNAT held:** The ICAO Secretary General contested two decisions taken by the ICAO Council, the governing body that employed him. In those decisions, the Council required that the ICAO Secretary General obtain the written approval of the President of the Council for any hiring, appointment, promotion, extension and termination of P-4 employees and above. UNAT held that the contested decisions of the ICAO Council are not, within the mandate of UNAT, administrative decisions. These decisions are regulatory decisions that are not subject to review by UNAT.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-165.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-165.pdf)

### Judgment 2015-UNAT-576 (Harrich)

Receivability (UNAT) – *ratione temporis* – application for correction of UNDT judgment – appeal – judgment on merits – time limit

#### Applicable law:

- *Article 7(1) of the UNAT Statute*

**Legal principle:** An application for correction of a UNDT judgment (or other post-judgment motions) does not extend the time limit for filing an appeal against the UNDT judgment on the merits.

**Facts:** The staff member filed a motion for correction of Judgment UNDT/2014/109 (UNDT judgment), which UNDT denied. The staff member filed a second motion for correction of the UNDT judgment, arguing that UNDT made erroneous factual findings in the judgment. UNDT denied the second motion. The staff member subsequently filed an appeal against the UNDT judgment more than a month after the expiration of the 60-day time limit for filing an appeal. The staff member argued that the 60-day deadline ran from the date that his second motion for correction of judgment was denied on 4 September 2014 and that his appeal was therefore timely.

**UNAT held:** A staff member cannot extend the statutory deadline to appeal by filing post-judgment motions. To hold otherwise would allow the parties to set their own deadlines for appeal of a UNDT judgment and undermine the mandatory nature of the statutory deadline in Article 7(1)(c) of the UNAT Statute. UNAT rejected the appeal as time-barred.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2014-109.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2014-109.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-576.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-576.pdf)

### Judgment 2015-UNAT-604 (Ookoru)

Receivability (UNAT) – *ratione temporis* – time limit – date of service of UNDT judgment

### Applicable law:

- *Articles 7(1) and 7(3) of the UNAT Statute*
- *Article 7(1) and 7(2) of the UNAT Rules of Procedure*

**Legal principle:** The relevant date for the filing of the Secretary-General's appeal of a UNDT judgment runs from the date the judgment was received by the Secretary-General, no matter whether the judgment was received by ALS (as counsel for the Secretary-General before UNDT) or OLA (as counsel for the Secretary-General before UNAT).

**UNAT held:** The issue for determination by UNAT was whether the relevant date for the filing of the Secretary-General's appeal ran from the date on which the ALS received the UNDT judgment in its capacity as counsel of record for the Secretary-General before UNDT or the date on which the judgment was received by the OLA, the Secretary-General's counsel of record before UNAT. UNAT found that in the absence of any published UNDT rule or practice direction which decreed that transmission of UNDT judgments be made to OLA, it was not permissible for the Secretary-General to seek to rely on the date when the judgment was received by OLA. Consequently, the appeal was found to be time-barred and the UNDT judgment was not disturbed.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2015-004.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2015-004.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-604.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-604.pdf)

### Judgment 2014-UNAT-466 (Saffir and Ginivan)

Receivability (UNAT) – right to appeal – prevailing party

### Applicable law:

- *Articles 2(1) and 7(1) of the UNAT Statute*

**Legal principle:** A party may not appeal against a judgment in which it has prevailed. Where there is no negative impact, there is no right to appeal even if the judgment contained errors of law or fact, including with respect to its jurisdiction or competence.

**UNDT judgment:** The staff members contested the Secretary-General's refusal to conduct an investigation into the irregularities surrounding the June 2011 UNSU elections, in light of the failure of the UNSU Arbitration Committee to adequately address the matter. UNDT found, inter alia, that the refusal to carry out the requested investigation was an administrative decision subject to review. Nonetheless, it held that such decision was lawful since neither the UNSU statute nor the jurisprudence indicated that the Secretary-General was obligated to intervene in the conduct of UNSU elections.

**UNAT held:** The Secretary-General appealed UNDT's determination that the decision not to investigate UNSU election matters was receivable. UNAT found by majority that the appeal was not receivable, based on jurisprudence that a party may not appeal against a judgment in which it has prevailed.

UNAT noted that although UNDT reviewed the merits of the decision despite the Secretary-General's argument that the decision was not receivable *ratione materiae*, UNDT held in favour of the Secretary-General. As there was no negative impact to the Secretary-General, there was no right to appeal even if the judgment contained errors of law or fact, including with respect to its jurisdiction or competence.

Links to UNDT judgments:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2013-109.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2013-109.pdf)

[www.un.org/en/internaljustice/files/undt/judgments/undt-2013-110.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2013-110.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-466.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-466.pdf)

## Receivability (UNDT)

### Judgment 2017-UNAT-750 (Kagizi et al.)

Receivability (UNDT) – abolition of posts – General Assembly decision – restructuring – non-renewal of contract

#### Applicable law:

- *Staff Rule 4.13*
- *Section 3.7(b) of Administrative Instruction ST/AI/2013/4 (Consultants and individual contractors)*

**Legal principle:** The General Assembly is the ultimate decision-making organ in the Organization and its decisions are not subject to challenge in the internal justice system. Generally speaking, applications against non-renewal decisions are receivable. However, where the challenge of a non-renewal of appointment has been intertwined with a challenge of a decision of the General Assembly to abolish posts, the application is not receivable.

**UNDT judgment:** The fixed-term appointments of 51 applicants, all former Language Assistants at the General Service level with MONUSCO, expired on 30 June 2015 and were not renewed because the posts encumbered had been abolished by a decision of the General Assembly with effect from 1 July 2015. The applicants challenged the non-renewal of their appointments and several ancillary matters before UNDT. UNDT issued 51 individual judgments, dismissing the applications. UNDT found that: (i) the Appellants' challenges to the abolition of their posts were not receivable on the grounds that staff members lacked standing to challenge a decision taken by the General Assembly; (ii) their challenges to the non-renewal of their appointments were not receivable "in so far as [the non-renewal decisions were] properly implemented in consequence of the General Assembly's decision to abolish [the posts they encumbered]"; (iii) the contested administrative decisions taken as a result of the decisions of the General Assembly were lawful; (iv) the provisions of Section 3.7(b) of Administrative Instruction ST/AI/2013/4 (Consultants and individual contractors) were not contravened by their subsequent recruitment under IC contracts; and, (v) no unequal treatment occurred in the implementation of the Mission's restructuring.

**UNAT held:** UNAT consolidated the 51 appeals into seven groups heard by seven judicial panels, the first group (*Kagizi et al.*) being heard by the full bench. UNAT dismissed the appeals. It confirmed UNDT's finding that the appellants lacked standing to challenge the non-renewal of their appointments in so far as they were deemed to be a direct challenge against the General Assembly's decision to abolish the posts. While in other aspects, UNDT regarded the applications as receivable and dealt with the merits of the case, those findings were not substantially challenged on appeal. "In order to give guidance", UNAT pointed out that UNDT had no authority to review the re-engaging of the appellants by UNOPS as individual contractors as this was not an administrative decision subject to judicial review.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-131.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-131.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-750.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-750.pdf)<sup>12</sup>

### Judgment 2018-UNAT-843 (Kozul-Wright)

Receivability (UNDT) – administrative decision – decision to waive immunity – waiver of official's immunity – private legal obligations

#### Applicable law:

- *Article 105 of the Charter of the United Nations*
- *Convention on the Privileges and Immunities of the United Nations*
- *Article 2(1)(a) of the UNDT Statute*
- *Staff Regulation 1.1(f)*
- *Staff Rule 1.2(b)*

**Legal principle:** The Secretary-General's decision to waive a staff member's immunity does not constitute an administrative decision. Rather, it is an executive or policy decision.

**UNDT judgment:** The staff member contested the Secretary-General's decision to waive his diplomatic immunity with regard to his dispute over the lease of an apartment at his duty station in Geneva. At the request of the Permanent Mission of Switzerland to the United Nations, the Secretary-General lifted the staff member's immunity with respect to the execution of a judgment issued by a Geneva court ordering the staff member to pay compensation to the landlord. UNDT found the application to be receivable on the grounds that the decision to waive immunity constituted an administrative decision which had a direct impact on the staff member. It concluded, however, that the Administration had properly exercised its discretion to waive immunity and it had acted reasonably and properly, taking account of all relevant considerations, in lifting the immunity.

**UNAT held:** When responding to requests for the waiver of an official's immunity, the Organization must comply with its legal obligations to the requesting Member State under the relevant international instruments, which limit immunity to official acts and oblige the Secretary-General to cooperate at all times with the appropriate authorities to facilitate the proper administration of justice and to prevent the occurrence of any abuse in connection with the privileges and immunities. UNAT noted that the Secretary-General is best placed to appreciate the nature of the Organization's obligations to a Member State, what form of cooperation will be in the interests of the Organization, and whether non-waiver is necessary for the fulfillment of the purposes of the Organization. The factors he will take into consideration often may be political in nature and will involve issues of comity. These considerations imbue a decision of the Secretary-General to waive immunity with an executive or political character, negating the categorization of the decision as one administrative in nature. Accordingly, UNAT held that the staff member's application to UNDT was not receivable *ratione materiae* and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-843.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-843.pdf)

### Judgment 2015-UNAT-555 (Pedicelli)

Receivability (UNDT) – ICSC decision – impact – terms of appointment – administrative decision

#### Applicable law:

- *Article 2(1) of the UNDT Statute*

**Legal principle:** Decision implementing an ICSC decision is of general application and therefore not reviewable. However, where a decision of general application negatively affects the terms of appointment of a staff member, such decision shall be treated as an “appealable administrative decision”.

**UNDT judgment:** The staff member contested the Administration's decision implementing an ICSC decision which, by lowering the number of GS-levels from nine to seven, had reclassified her post from G-7 to G-6. The staff member claimed that the downgrading had negative practical effects on her career, one of which “would be to deprive her of possible future entitlements that would only be granted to staff members at the higher level”. UNDT found the staff member's application not receivable since she had failed to challenge an “appealable administrative decision” in that the contested decision was made by the ICSC and the Secretary-General had no discretionary authority in proceeding with implementation of the ICSC's decision. UNDT further found that the contested decision was not taken solely with respect to the staff member, and that she did not establish that the renumbering exercise gave rise to legal consequences that adversely affected her.

**UNAT held:** The Secretary-General was duty bound to implement decisions by the ICSC as directed by the General Assembly and that for the most part, such decisions are of general application and therefore not reviewable. UNAT found, however, that where a decision of general application negatively affects the terms of appointment of a staff member, such decision shall be treated as an “administrative decision” within the scope

of Article 2(1) of the UNDT Statute. Based on the staff member's Personnel Action Forms, before and after implementation of the ICSC's renumbering exercise, UNAT found that the exercise had a direct adverse impact on her salary. UNDT failed to give any consideration to the staff member's Personnel Action Forms and thus erred in law and fact in concluding that her application was not receivable. UNAT vacated the judgment and remanded the matter back to UNDT.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2014-087.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2014-087.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-555.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-555.pdf)

### **Judgment 2018-UNAT-840 (Lloret-Alcañiz et al.)**

Receivability (UNDT) – General Assembly resolution – Unified Salary Scale – administrative decision

#### **Applicable law:**

- *General Assembly resolution 13(I)*
- *General Assembly resolution 70/244*
- *General Assembly resolution 71/263*
- *Article 2(1) of the UNDT Statute*
- *Staff Regulation 12.1*

**Legal principle:** The Secretary-General's decisions implementing the binding decisions of the General Assembly are administrative decisions that may adversely affect the terms of employment. The power the Secretary-General exercises is a purely mechanical power, more in the nature of a duty. However, such exercises of power are administrative in nature and involve a basic decision to implement a regulatory decision imposing the terms and conditions mandated by it. Therefore, while such decisions are reviewable administrative decisions, the scope of review is limited to grounds of legality.

**UNDT judgment:** Prior to 1 January 2017, staff members of the Organization in professional and higher categories were paid their net salary at either a single or a dependency rate, depending on their family status. In 2015, the General Assembly adopted the introduction of the Unified Salary Scale, providing one net salary for all staff members without regard to family status. In 2016, the General Assembly acceded to the Secretary-General's request to amend the Staff Regulations for the implementation of the approved changes. As the gross and net base salaries of the staff members who were previously paid at the dependency rate would be reduced, they would receive a progressively depreciating transitional allowance of six per cent of net remuneration for a six-year period.

Five staff members claimed that these unilateral variations of their remuneration were illegal and in breach of their contracts of employment and their acquired rights. UNDT held that the decisions implementing the Unified Salary Scale constituted administrative decisions in terms of Article 2 of the UNDT Statute since they negatively impacted the staff members' terms and conditions of appointment. UNDT accordingly held that the applications challenging these decisions were receivable. It held further that there was a normative conflict between General Assembly resolutions 70/244 and 71/263, adopting the Unified Salary Scale, and preceding General Assembly resolutions still in force protecting staff members' acquired rights. UNDT concluded that the Secretary-General's implementation of the Unified Salary Scale for the staff members, which resulted in their being paid reduced gross and net base salaries, violated their acquired rights and was thus unlawful. By way of remedy, UNDT rescinded the contested decisions and ordered that the six-per cent reduction be reintegrated as part of their salary. In regard to the staff members' claim that the transitional allowance has a discriminatory effect on them, UNDT found that it lacked jurisdiction to examine whether the decision of the General Assembly to provide for the transitional allowance was illegal and discriminatory because the claims concerned a legislative or regulatory decision and not an administrative decision.

**UNAT held:** UNAT recalled that an administrative decision is a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences. A decision of an administrative nature is distinguished from other governmental action of a regulatory, legislative or executive nature. The majority of the judges held that the Secretary-General's implementation of the resolutions involved an administrative decision with an adverse impact.<sup>13</sup> These judges accepted that the Secretary-General had little or no choice in the implementation of the General Assembly resolutions; the power he exercised was a purely mechanical power, more in the nature of a duty. However, they found that such exercises of power were administrative in nature and involved a basic decision to implement a regulatory decision imposing the terms and conditions mandated by it. They were thus administrative decisions that may adversely affect the terms of employment and were reviewable on narrow grounds of legality. Having found that the contested decisions constituted administrative decisions, UNAT examined whether there is indeed a normative conflict or an irreconcilable inconsistency between Resolution 13(I) of 1946, which provides that the Staff Regulations may only be supplemented or amended by the General Assembly without prejudice to the acquired rights of staff members, and Resolutions 70/244 and 71/263, which introduced the Unified Salary Scale. UNAT noted that the purpose of introducing Staff Regulation 12.1 was to afford staff members some degree of protection from subsequent amendments to the Staff Regulations prejudicing their acquired rights. In UNAT's view, an acquired right means a vested right and employees only acquire a vested right to their salary for services rendered. UNAT held that the limited purpose of Regulation 12.1 is to ensure that staff members are not retrospectively deprived of a benefit once the legal requirements for claiming the benefit have been fulfilled. UNAT concluded that the contested decisions did not violate the staff members' acquired rights as the General Assembly resolutions altered the staff members' future salaries. UNAT held that there was no normative conflict between the resolution 13(I) of 1946 and resolutions 70/244 and 71/263. Absent any normative conflict, the Secretary-General did not act illegally in implementing Resolutions 70/244 and 71/263. UNAT further held that the fact that the staff members' letters of appointment stated that their initial salary "may rise" did not constitute an express promise by the Organization to continue to increase their rate of pay and never to reduce it. The salary entitlements of staff members may be unilaterally amended by the General Assembly.

As for the staff members' cross-appeal claiming that UNDT erred in finding that it lacked jurisdiction to examine whether the decision of the General Assembly to provide for the transitional allowance was illegal, discriminatory and in violation of Article 8 of the Charter of the United Nations, UNAT held that UNDT was correct to decline jurisdiction on the basis that only appeals in relation to administrative decisions are receivable by it.

UNAT upheld the Secretary-General's appeal, dismissed the staff members' cross-appeal, and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-097.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-097.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-840.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-840.pdf)

### **Judgment 2013-UNAT-368 (Roig)**

Receivability (UNDT) – management evaluation – time limit – notification of administrative decision

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<sup>13</sup> A minority of the judges accepted the submission of the Secretary-General that UNDT erred and exceeded its jurisdiction by accepting the staff members' applications as receivable. In their opinion, the Secretary-General was not vested with any discretionary authority with respect to the implementation of the General Assembly resolutions and thus the actions of the Secretary-General in implementing them were not administrative decisions affecting the terms of appointment or contracts of employment of the staff members, as required by Article 2(1) of the UNDT Statute. The General Assembly's decisions regarding the specific amounts of salary and allowances to be paid to staff members are unambiguous and leave no room for interpretation or variation by the Secretary-General. The minority of the judges therefore held that the claim that the Unified Salary Scale violated the staff members' acquired rights was indeed a challenge to the validity of the General Assembly's legislative or regulatory power, and not to any discretion exercised by the Secretary-General.

**Applicable law:**

- *Article 8(3) of the UNDT Statute*
- *Staff Rule 11.2(a) and (c)*

**Legal principle:** A staff member wishing to formally contest an administrative decision shall, as a first step, submit to the Secretary-General in writing a request for management evaluation. The deadlines for management evaluation cannot be suspended or waived.

**UNDT judgment:** The staff member was not selected for a P-4 level post and contested the selection of a candidate other than her. UNDT found that the application was not receivable since the staff member's request for management evaluation filed on 11 February 2011 was time-barred.

**UNAT held:** UNAT agreed with UNDT that the staff member's request for management evaluation was time-barred and not receivable. UNAT concluded that the 60-day time limit for the purpose of requesting management evaluation of a non-selection decision started on 29 October 2010, when the staff member was informed of her non-selection, and not on 17 December 2010, when she learned of the identity of the selected candidate. There was no second administrative decision which reset the time limit; rather, the staff member learning the identity of the selected candidate was a consequence of the administrative decision not to select her.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2012-146.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2012-146.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-368.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-368.pdf)

**Judgment 2015-UNAT-600 (James)**

Receivability (UNDT) – *ratione materiae* – administrative decision – failure to request management evaluation

**Applicable law:**

- *Article 8(1)(c) of the UNDT Statute*
- *Staff Rules 11.2(a) and 11.2(b)*
- *Appendix D to the Staff Rules*

**Legal principle:** UNDT is not competent to hear and pass judgment on a claim that has not been the subject of an administrative decision and thereafter, management evaluation.

**UNDT judgment:** The staff member filed a claim for compensation under Appendix D of the Staff Rules with the ABCC for the loss of vision in one eye. He claimed that the cataract in his right eye was exacerbated by his intensive use of computers for work purposes and that his injury was caused by the UN-referred ophthalmologist during the cataract surgery. The ABCC concluded that the staff member's injury was not service-incurred, and the Controller, on behalf of the Secretary-General, approved the ABCC's recommendation to deny the staff member's request that his illness (bilateral cataracts and loss of vision in one eye) be recognized as service-incurred. The staff member filed an application with UNDT challenging the rejection of his claim for compensation under Appendix D, the Organization's alleged negligence in referring him to a sub-standard medical facility for cataract surgery, and the Organization's failure to separate him in a timely manner on health grounds.

UNDT found that the staff member's negligence claim as well as his claim for separation on health grounds were not receivable under Article 8(1)(c) of the UNDT Statute as the staff member had failed to file a request for management evaluation. UNDT further found that the staff member's Appendix D claim was not receivable because he had not requested reconsideration of the Controller's decision to reject his claim, as required by Article 17(a) of Appendix D.

**UNAT held:** UNAT affirmed UNDT's finding that the staff member's claims that the Organization was negligent in carrying out his unsuccessful cataract surgery, owed him well over USD 2 million of compensation and failed to separate him in a timely manner on health grounds were not receivable because he was required to request

management evaluation of these claim under Article 8(1)(c) of the UNDT Statute and Staff Rule 11.2(a) but failed to do so. UNAT rejected his contention that the impugned decisions were based on the advice of technical bodies, namely the ABCC, the Medical Services Division and the Medical Board, and that he was therefore not required to request management evaluation under Staff Rule 11.2(b). UNAT noted that a claim of gross negligence against the Administration is a separate action which cannot be included in a claim made by a staff member under Appendix D. The staff member was therefore required to submit a request for management evaluation of these decisions before proceeding with an application to UNDT.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2014-135.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2014-135.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-600.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-600.pdf)

### **Judgment UNDT/2019/004 (Younis)**

Receivability (UNDT) – *ratione materiae* – administrative decision – learning and development opportunities – terms and conditions of employment

#### **Applicable law:**

- *Article 2(1) of the UNDT Statute*
- *Staff Rule 1.3(b)*
- *Secretary-General's Bulletin ST/SGB/2009/9 (Learning and development policy)*

**Legal principle:** Learning and development opportunities are for the benefit of staff members under the Staff Regulations and Rules, which form the terms and conditions of employment. Therefore, a decision relating to learning opportunities is an administrative decision subject to judicial review.

**UNDT's Holding:** The staff member was on a temporary appointment at the D-1 level from mid-November 2016 until about 2 May 2017. During this temporary assignment, the staff member received an SPA to the D-1 level. In March 2017, OHRM announced that it was receiving nominations for the UN Leaders Programme designed for staff members at the Director level. In particular, the announcement stated that “staff members serving on D1 post on temporary assignment for at least 3 months or more” were eligible to apply. On 2 August 2017, the staff member received an e-mail from OHRM confirming his nomination for the UN Leaders Programme; however, on 21 August 2017, OHRM informed that the staff member was no longer eligible to attend the UN Leaders Programme as, according to the standard operating procedures, the end of the temporary D-1 level assignment “should be beyond the selected course date”. The staff member contested the decision finding him ineligible to attend the UN Leaders Programme. He alleged that he had been discriminated against as two other staff members in like situations were allowed to attend. As relief, he sought an apology, an official investigation to determine accountability, a reinstatement of his nomination to the UN Leaders Programme, and financial remedy for stress.

First, UNDT found that the staff member's application was receivable on the grounds that learning and development opportunities are for the benefit of the staff members, which form the terms and conditions of their employment and, as such, the decision relating to learning and development opportunities was an administrative decision subject to judicial review. On the merits, UNDT concluded that a strong expectation of the training benefit was created for the staff member in this case and that at the very least OHRM had a discretion to reconsider the staff member's situation in light of the particular circumstances being, inter alia, that another ineligible staff member had been accorded the benefit to participate, that the staff member had already been nominated, approved and endorsed, and in light of the last-minute and late notification of refusal. UNDT granted the staff member's application and directed the parties to attempt to resolve the issue of appropriate relief.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2019-004.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2019-004.pdf)



### Judgment 2016-UNAT-661 (Kalashnik)

Receivability (UNDT) – *ratione materiae* – management evaluation outcome – administrative decision

#### Applicable law:

- *Article 8(1) of the UNDT Statute*

**Legal principle:** The outcome of the MEU’s review and the Administration’s response to a request for management evaluation are not appealable administrative decisions.

**UNDT judgment:** The staff member submitted requests for management evaluation of the decisions not to roster him for the position of P-4 Resident Investigator and not to select him for the P-4 Investigator positions. The USG/DM responded to the staff member’s requests for management evaluation, upholding the recommendations of the MEU and finding no merit in his claims. The staff member subsequently filed an application with UNDT contesting the decision of the USG/DM. UNDT held that the staff member’s application was not receivable *ratione materiae* because the Administration’s response to a request for management evaluation is not a judicially reviewable administrative decision.

**UNAT held:** UNAT affirmed UNDT’s finding and held that “the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision” all support the conclusion that the Administration’s response to a request for management evaluation is not a reviewable decision. UNAT noted that the response to a request for management evaluation is an opportunity for the Administration to resolve a staff member’s grievance without litigation and not a fresh decision.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2015-087.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2015-087.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-661.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-661.pdf)

### Judgment 2011-UNAT-130 (Koda)

Receivability (UNDT) – *ratione materiae* – OIOS reports – administrative decision

#### Applicable law:

- *Article 97 of the Charter of the United Nations*

**Legal principle:** While reports and recommendations made by OIOS do not constitute administrative decisions, an administrative decision that is taken on the basis of an OIOS report or recommendation may be impugned.

**UNDT judgment:** The applicant contested the decision to constructively dismiss her. UNDT found that she was not constructively dismissed and held that OIOS’ decision, regarding the content of its audit report, was not within its jurisdiction.

**UNAT held:** UNAT affirmed the UNDT judgment. UNAT held that OIOS operates under the “authority” of the Secretary-General, but has “operational independence”. It further noted that, insofar as the contents and procedures of an individual report are concerned, the Secretary-General has no power to influence or interfere with OIOS. Thus, UNDT also has no jurisdiction to do so, as it can only review the Secretary-General’s administrative decisions. UNAT however noted that to the extent that any OIOS decisions are used to affect an employee’s terms or contract of employment, OIOS’ report may be impugned. For example, an OIOS report might be found to be so flawed that the Administration’s taking disciplinary action based thereon must be set aside. UNAT noted that though UNDT found flaws in the OIOS’ report, no disciplinary action was based upon it since the Administration disregarded OIOS’ recommendation.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-110.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-110.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-130.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-130.pdf)

### Judgment 2011-UNAT-135 (Larkin)

Receivability (UNDT) – *ratione materiae* – OSLA – legal services – administrative decision

#### Applicable law:

- *Article 2(1) of the UNDT Statute*
- *Secretary-General's Bulletin ST/SGB/2010/3 (Organization and terms of reference of the Office of Administration of Justice)*
- *Guiding principles of conduct for OSLA affiliated counsel*

**Legal principle:** The services provided by OSLA and the way the representation is implemented can have an impact on a staff member's terms of employment and therefore constitute an administrative decision subject to review by UNDT.

**UNDT judgment:** The staff member contested the decision taken by the former Chief of OSLA not to disclose a potential conflict of interest in his case. UNDT rejected the staff member's application, holding that the alleged omission was not an administrative decision subject to review by UNDT.

**UNAT held:** The services provided by OSLA and the way the representation is implemented can have an impact on a staff member's terms of employment and can therefore fall within the jurisdiction of UNDT, without interfering with the professional independence of counsel. UNAT found that the decision taken by the former Chief of OSLA not to disclose a potential conflict of interest in the staff member's case could have an impact on his terms of employment and therefore constituted an administrative decision subject to review by UNDT. UNAT reversed UNDT judgment and remanded the case to UNDT for a trial on the merits.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-028.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-028.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-135.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-135.pdf)

### Judgment 2011-UNAT-139 (Basenko)

Receivability (UNDT) – *ratione personae* – intern – offer of internship – offer withdrawn – appeal – internal justice system – access

#### Applicable law:

- *General Assembly resolution 63/253*
- *Articles 2(1) and 3(1) of the UNDT Statute*

**Legal principle:** Interns have no standing before UNDT or UNAT as they are neither current nor former staff members of the United Nations.

**UNDT judgment:** A former intern with the Division of Management of the United Nations Office at Vienna contested the decision to withdraw the offer of a new internship with the International Trade Law Division. UNDT held that she was neither a current nor a former staff member of the UN and that, pursuant to the provisions of Article 3(1) of its Statute, it was not competent to hear her application.

**UNAT held:** UNAT recalled that access to the new system of administration of justice can be extended to persons who are not formally staff members but who can legitimately be entitled to rights similar to those of a staff member. This exception must be understood in a restrictive sense. UNAT held that interns have no access to the new system of administration of justice.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-145f.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-145f.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-139e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-139e.pdf)

### Judgment 2011-UNAT-120 (Gabaldon)

Receivability (UNDT) – *ratione personae* – status of complainant – letter of appointment – offer of employment – acceptance – offer withdrawn – appeal – internal justice system – access

#### Applicable law:

- *Article 101(1) of the Charter of the United Nations*
- *Articles 2(1) and 3(1) of the UNDT Statute*
- *Staff Regulation 4.1*
- *Former Staff Rule 304.1 (300 series)*

**Legal principle:** A person who has not yet been issued a letter of appointment should be regarded as a staff member for the limited purpose of seeking recourse within the internal justice system, provided that he/she has accepted unconditionally the terms and conditions of an offer of employment.

**UNDT judgment:** The staff member contested the decision to withdraw his offer of employment on the basis that he had not been declared physically fit. UNDT rejected his application on the ground that it lacked jurisdiction *ratione personae*. UNDT found that a person could not obtain the status of a staff member of the United Nations before receiving a letter of appointment signed by a duly authorized official of the Organization.

**UNAT held:** UNAT recalled that an employment contract of a staff member subject to the internal laws of the Organization is not the same as a contract between private parties, and that the issuance of a letter of appointment by the Administration cannot be regarded as a mere formality. The issue before UNAT was whether the staff member, who had received an offer of employment, but not a letter of appointment, from the Organization, should be regarded as a staff member and thus should have access to the internal justice system to contest the legality of the Administration's withdrawal of the offer of employment. UNAT held that an offer of employment, though it does not constitute a valid employment contract, may produce legal effects, if all the conditions set forth in the offer of employment were unconditionally accepted and fulfilled by the offeree in good faith. In such a situation the offeree should be regarded as a staff member for the limited purpose of seeking recourse within the internal justice system. UNAT overturned UNDT's judgment and remanded the case to UNDT for examination of facts of the case in light of its holding.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-098.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-098.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-120e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-120e.pdf)

### Judgment 2013-UNAT-345 (Neault)

Receivability (UNDT) – *ratione temporis* – delayed management evaluation response

#### Applicable law:

- *Article 8(1) of the UNDT Statute*
- *Article 7 of the UNDT Rules of Procedure*
- *Staff Rule 11.2(d)*

**Legal principle:** When the management evaluation is received after the deadline of 45 calendar days but before the expiration of 90 days for applying to UNDT, the receipt of the management evaluation response will result in setting a new deadline for seeking judicial review before UNDT. Therefore, an application which has been filed within 90 calendars of a delayed MEU response is timely and receivable.

**UNDT judgment:** The staff member contested the decision not to select her for a G-5 post. UNDT found, *inter alia*, that the staff member's application was receivable, *ratione temporis*, as it had been filed within 90 calendar days of the tardy MEU response.

**UNAT held:** UNAT considered it both reasonable and practical to provide for two different dates from which the time limit commenced to run. When the management evaluation is received within the deadline of 45 days, an application must be filed with UNDT within 90 calendar days of an applicant's receipt of the management evaluation response. However, when the management evaluation is received after the deadline of 45 calendar days but before the expiration of 90 days for applying to UNDT, the receipt of the management evaluation will result in setting a new deadline for seeking judicial review before UNDT. UNAT dismissed the Secretary-General's appeal and affirmed the UNDT decision that the application was filed within the time limit and was thus receivable.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2012-123.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2012-123.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-345.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-345.pdf)

### Judgment 2019-UNAT-941 (Dieng)

Receivability (UNDT) – *ratione temporis* – management evaluation – extension of time – good faith – estoppel

#### Applicable law:

- *Article 8 of the UNDT Statute*
- *Article 7(1) of the UNDT Rules of Procedure*
- *Staff Rule 11.2*
- *Staff Rule 12.3*
- *Secretary-General's Bulletin ST/SGB/2010/9 (Organization of the Department of Management)*

**Legal Principles:** i) Where a response to a management evaluation request is not received, a staff member has 90 days from when the response is due to file an application to UNDT. When a response is received after the deadline for a response to a request for management evaluation has lapsed but before the expiration of the 90-day time limit for filing an application with UNDT, then the receipt of the response resets the clock for filing an application with UNDT. Whereas, if a response is received after the expiration of that 90-day time limit, the receipt of the response does not reset the clock for filing an application with UNDT.

ii) In cases where a staff member has filed an untimely application to UNDT based on his or her reliance on a misrepresentation on time limits by the MEU, the principles of good faith and of the regularity of administrative proceedings mandate that such reliance may not be held against that staff member. Concomitantly, the Secretary-General is estopped from raising the defense that the application for judicial review is time-barred.

**UNDT judgment:** The staff member filed a request for management evaluation contesting his reassignment to a different office. The MEU confirmed receipt of his request and advised, in writing, that pursuant to Staff Rule 11.2 (d), the management evaluation in his case was to be completed within 45 calendar days of receipt of his request, or no later than 23 July 2018. The MEU further advised that if there was any delay in completing the management evaluation, pursuant to Staff Rule 11.4 (a), the 90-day deadline for filing an application to UNDT would start to run from 23 July 2018, or the date on which the management evaluation was completed, if earlier, unless the deadline had been extended by the Secretary-General to facilitate efforts for informal resolution. Subsequently, the MEU informed the staff member, again in writing, that the contested decision had been upheld and that since its decision had been issued prior to the expiration of UNDT's 90-day deadline, his receipt of the management evaluation resulted in setting a new deadline for submitting his application. The staff member then contested the decision before UNDT. UNDT dismissed the application as time-barred.

**UNAT held:** UNAT recalled its jurisprudence that where a response to a management evaluation request is not received, a staff member has 90 days from when the response is due to file an application to UNDT. If a response is received after the expiration of that 90-day time limit, the receipt of the response does not reset the clock

for filing an application with UNDT. Since the MEU's response was received after the expiration of the 90-day period, it did not reset the clock for the staff member to file an application. UNDT therefore initially made no error of law in concluding that the staff member's application was not receivable *ratione temporis* because it was filed outside the regulatory time limit.

However, by applying the principles of good faith and of the regularity of administrative proceedings to the facts of the case, UNAT found that UNDT erred in dismissing the staff member's application as time-barred. It held that the MEU is competent only to make recommendations to suspend or extend the relevant deadlines concerning the management evaluation process, whereas the authority to extend a management evaluation deadline is reserved for the Secretary-General, who has not exercised it in the present case. Though not bound to do so, the MEU advised the staff member that the 90-calendar day deadline for his filing of an application with UNDT started to run from 23 July 2018. Based on that misrepresentation, the staff member filed his application with UNDT untimely. UNAT concluded that, in the circumstances and by applying the principles of good faith and of the regularity of administrative proceedings to the specific facts of the case, UNDT erred in dismissing the staff member's application as time-barred. Moreover, in the circumstances, the Secretary-General was estopped from raising the defense that the application for judicial review was time-barred. UNAT remanded the case to UNDT for a consideration on the merits.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2019-014.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2019-014.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-941.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-941.pdf)

## Reclassification

### Judgment 2016-UNAT-622 (Aly et al.)

Reclassification of posts – increase in duties and responsibilities – substantial change – classification review – harm – compensation – maximum amount – higher compensation – exceptional circumstances – egregious circumstances

#### Applicable law:

- *Article 10(5) of the UNDT Statute*
- *Article 9(1) of the UNAT Statute*
- *Universal Declaration of Human Rights*
- *Administrative Instruction ST/AI/1998/9 (System for the classification of posts)*

**Legal principle:** Compensation for harm may exceed two years' net base salary in exceptional cases, such as particularly egregious circumstances of a case and aggravating factors. Staff members have the right to request reclassification when the duties and responsibilities of their posts changed substantially.

**UNDT judgment:** A group of staff members claimed that the reorganization of their section had led to an increase in their functions and responsibilities, without commensurate reclassification of their posts. They filed an application with UNDT contesting the post reclassification decisions made by the ASG/OHRM which had not resulted in reclassification of their posts. UNDT rescinded ASG/OHRM's decision and remanded the case to the Administration for classification decisions.

**UNAT held:** UNAT affirmed UNDT's rescission of the decision to maintain the classification, reaffirming the right of staff members to request reclassification when the duties and responsibilities of their posts changed substantially as a result of a restructuring within their office. However, UNAT reversed UNDT's order to remand the case to the Administration, stating that a second remand was unviable and unfair having regard to the fact that the protracted classification review process was mainly due to the reluctance and failure of management to follow their own rules, regulations and administrative instructions. Furthermore, the majority of the applicants had already retired so a remand could not offer an effective remedy. Instead, UNAT awarded each appellant compensation equivalent to

three years' net base salary. In light of the particularly egregious circumstances of the case and the accumulation of aggravating factors, UNAT found that the increased award, exceptionally exceeding the equivalent of two years' net base salary pursuant to Article 9(1)(b) of UNAT's Statute, was justified.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2015-031.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2015-031.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-622.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-622.pdf)<sup>14</sup>

## Revision of judgment

### Judgment 2011-UNAT-145 (Eid)

Revision of judgment – discovery of decisive new fact – new jurisprudence

**Applicable law:**

- *Article 12(1) of the UNDT Statute*
- *Article 29 of the UNDT Rules of Procedure*

**Legal principle:** The issuance of new jurisprudence by UNAT is an issue of law and does not constitute a new fact.

**UNDT judgment:** The Secretary-General submitted an application with UNDT for revision of its judgment, under Article 29 of the UNDT Rules of Procedure. The Secretary-General considered the new decision of UNAT to fix the interest rate applicable to pre-judgment compensation at the US prime rate to be a “decisive fact” which was unknown at the time of the UNDT judgment. The Secretary-General maintained that UNDT's award of eight per cent rate on the pre-judgment compensation was contrary to the new jurisprudence of UNAT and should therefore be revised. UNDT rejected the application for revision, holding that the issuance of new jurisprudence by UNAT did not constitute a new fact.

**UNDT's Holding:** UNDT affirmed the UNDT order denying revision. UNAT held that a change in law is not a “fact” contemplated by Article 12(1) of the UNDT Statute. The issuance of new jurisprudence by UNAT is an issue of law, not of fact.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-106e.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-106e.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-145.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-145.pdf)

### Judgment UNDT/2019/016 (Nikolarakis)

Revision of judgment – receivability (UNDT) – discovery of decisive fact – unknown fact – definition of party – applicant and respondent – counsel – legal representative

**Applicable law:**

- *Article 12(1) of the UNDT Statute*
- *Articles 12(1), 29(1) and 29(2) of the UNDT Rules of Procedure*
- *Article 7(5) of the UNAT Statute*

**Legal principle:** Either party may apply to UNDT for a revision of an executable judgment on the basis of the discovery of a decisive fact which was, at the time of the judgment was rendered, unknown to UNDT and to

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<sup>14</sup> See also Judgment 2016-UNAT-615 (*Ejaz et al.*) at [www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-615.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2016-UNAT-615.pdf).

the party applying for revision. A “party” in this context is to be understood as the staff member and/or the Secretary-General (or the Administration at large) and does not include their counsel. Therefore, a counsel’s discovery of a decisive new fact does not constitute a ground for revision of judgment, provided that the decisive fact was known to the party they represent.

**UNDT’s Holding:** In August 2017, UNDT rendered Judgment UNDT/2017/068 (Judgment), ordering rescission of the contested “decision to exclude [the staff member] from the recruitment exercise” for an S-3 level position, or alternatively, payment of USD 20,000 as compensation in-lieu of rescission, together with USD 5,000 for loss of opportunity for career advancement and for loss of job security. One of the main factors in UNDT’s assessment of compensation was its assumption that the staff member had been deprived of an opportunity to compete for an S-3 level appointment for a significant period of time. In October 2017, ALS, the Secretary-General’s Counsel, filed an application for revision of the judgment, contending that certain decisive facts were unknown to UNDT and ALS at the time the judgment was rendered. Specifically, ALS requested UNDT to take note of the new DSS JO that was issued in April 2017 for thirteen S-3 level vacancies, for which the staff member was invited to interview (and following which he was appointed to an S-3 level position in March 2018). UNDT noted that ALS had not been informed of developments regarding the staff member’s application for the said S-3 level position and considered whether a “party”, within the meaning of the UNDT Statute and Rules of Procedure, is to be understood as solely an applicant and/or a respondent or also to include their counsel.

UNDT found that Article 12(1) of its Rules of Procedure, which states that “a party may present his or her case to the [UNDT] in person, or may designate counsel from [OSLA] or counsel authorized to practice law in a national jurisdiction”, makes a clear distinction between a “party” and his or her “counsel”. Consequently, UNDT concluded that one of the fundamental conditions for granting a revision of judgment was not present in this case since the party applying for revision, meaning the Secretary-General or the Administration at large, had known about the ongoing recruitment exercise for the S-3 level position (even though it was unknown to ALS at the time the judgment was rendered) and, on a strictly technical basis, on this ground alone, the application for revision of the judgment was not receivable. To do justice to the parties, particularly as the staff member had been appointed to the S-3 level position, UNDT granted the parties the possibility to settle the matter informally, failing which UNDT would make a final determination on the matter on the papers before it.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2019-016.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2019-016.pdf)

## Staff selection

### Judgment 2011-UNAT-172 (Vangelova)

Staff selection – non-promotion – procedural irregularity – significant chance for promotion – rescission

**Applicable law:**

- *Article 10(5) of the UNDT Statute*

**Legal principle:** An irregularity in promotion procedures will only result in the rescission of the decision not to promote a staff member when he or she would have had a significant chance for promotion.

**UNDT judgment:** The staff member contested the decision not to promote her. UNDT found that, by promoting a staff member who was not eligible and whose candidacy had not been examined by the Appointments Postings and Promotions Board, the High Commissioner had committed an irregularity which vitiated the legality of the decision to deny the staff member a promotion. UNDT ordered the rescission of the contested decision or, in lieu thereof, the payment of CHF 8,000 as compensation for the loss of salary due to the denial of promotion. UNDT rejected the staff member’s claim for moral damages, noting that her chances for promotion were “close to zero”, even if no procedural irregularities had occurred.

**UNAT held:** UNAT reversed the UNDT judgment. UNAT held that an irregularity in promotion procedures will only result in the rescission of the decision not to promote a staff member when he or she would have

had a significant chance for promotion. There must be a link between the irregularity and the non-promotion decision. Thus, where the irregularity has no impact on the status of a staff member, because he or she had no foreseeable chance for promotion, he or she is not entitled to rescission or compensation.<sup>15</sup>

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-179e.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-179e.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-172.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-172.pdf)

### **Judgment 2017-UNAT-802 (Riecan)**

Staff selection – non-selection – interview panel obligation – performance – e-PAS

#### **Applicable law:**

- *Article 101(1) of the Charter of the United Nations*
- *Staff Regulation 4.1*
- *Administrative Instruction ST/AI/2010/3 (Staff selection system)*

**Legal principle:** An assessment panel is not required to consider performance documents/e-PAS of candidates and reflect that consideration in its assessment of the candidates.

**UNDT judgment:** A staff member challenged before UNDT the decision not to recommend him for the position he applied for on the ground that he was not given a full and fair assessment by the assessment/interview panel. UNDT found that there was a material failure by the interview panel to consider the applicant's e-PAS reports which were relevant material, especially in the context of the disparity between its ratings and those of his reporting officers on the same competencies and within the same organization. UNDT held that where performance records of a staff member were available to an assessment panel, the panel had a duty to consider them and reflect that consideration in its own assessment report. UNDT concluded that the staff member's application was not given full and fair consideration and awarded compensation.

**UNAT held:** UNAT vacated the UNDT judgment, finding that it erred in law and exceeded its competence by ruling that the interview panel was under a duty to consider the staff member's e-PAS reports and reflect that consideration in its own assessment report, even after the staff member had failed the interview. In finding so, UNDT improperly assumed the role of deciding which evaluation method should have been used and adopted an approach which is not provided for in the existing staff selection system.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-029.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-029.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-802.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-802.pdf)

### **Judgment 2015-UNAT-496 (Asariotis)**

Staff selection – non-selection – selection process – disclosure of composition of interview panel

#### **Applicable law:**

- *Administrative Instruction ST/AI/2010/3 (Staff selection system)*

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<sup>15</sup> See also Judgment 2011-UNAT-174 (Bofill) at [www.un.org/en/internaljustice/files/unat/judgments/2011-unat-174.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-174.pdf) and Judgment 2011-UNAT-175 (Dualeh) at [www.un.org/en/internaljustice/files/unat/judgments/2011-unat-175.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-175.pdf).



**Legal principle:** Rules, policies or procedures intended for general application may only be established by duly promulgated Secretary-General's bulletins and administrative issuances. The "Instruction Manual for the Hiring Manager on the Staff Selection System" (Instruction Manual), at most, provides guidance on the responsibilities of the hiring manager and does not have the legal force. A candidate is not entitled by virtue of the Instruction Manual to be apprised of the composition of the interview panel prior to the interview.

**UNDT judgment:** The staff member contested her non-selection, in particular the Administration's failure to notify her of the composition of the interview panel, and the non-selection decision. UNDT held that, in failing to notify the staff member of the composition of the interview panel, she was deprived of a fundamental right, namely the possibility to contest the composition of the interview panel. UNDT rescinded the non-selection decision and awarded the staff member USD 8,000 as material damages for lack of full and fair consideration and USD 6,000 as moral damages for the distress she suffered due to the irregularities.

**UNAT held:** The ST/AI/2010/3 did not impose an obligation on the Administration to inform a staff member of the composition of an interview panel and that UNDT erred in law in finding that, pursuant to the Instruction Manual, a candidate for an advertised post was entitled to be apprised of the composition of the interview panel prior to the interview. UNAT noted, however, that by pointing out that she had been previously interviewed for the post and that there were ongoing proceedings before UNDT with regard to her challenge to a prior selection exercise, the staff member had put the Administration on notice of the importance she attached to the panel's composition. In the specific circumstances of the case, UNDT did not err in concluding that had the staff member been informed of the composition of the panel, she would have requested the replacement of the panel members and the Administration's failures with regard to the notice of composition of the panel vitiated the entire process. UNAT therefore confirmed UNDT's award of material and moral damages.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2013-144e.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2013-144e.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-496.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-496.pdf)

### **Judgment 2014-UNAT-416 (Charles)**

Staff selection – non-selection – selection process – rostered candidates – selection from roster

#### **Applicable law:**

- *Article 101(3) of the Charter of the United Nations*
- *Staff Regulation 4.2*
- *Administrative Instruction ST/AI/2010/3 (Staff selection system)*

**Legal principle:** Under Section 9.4 of ST/AI/2010/3, the head of department/office has the discretion to select a rostered candidate and there is no requirement for the head of department to first review all the non-rostered candidates.

**UNDT judgment:** The staff member contested two non-selection decisions. In both selection exercises, the hiring manager selected a candidate from the pre-approved roster and did not give consideration to the staff member's candidacy as he was not on the roster. UNDT held that the selection of a rostered candidate without consideration of other candidates was contrary to the requirements of Article 101(3) of the Charter of the United Nations and Staff Regulation 4.2. UNDT considered that Staff Regulation 4.2 did not provide for priority consideration of rostered candidates, but only exempted them from referral to the central review bodies for approval. However, given that the staff member was only one of 153 and one of 128 candidates applying for the respective posts, UNDT considered it speculative to estimate his chances of success. Nonetheless, UNDT, for each of the selection exercises, awarded the staff member USD 1,000 as compensation for the breach of his right to receive full and fair consideration and for the resultant harm. UNDT dismissed the staff member's claims of bias and discrimination or harm due to the late response to his request for management evaluation.

**UNAT held:** The plain wording of Section 9.4 of ST/AI/2010/3 made it clear that the head of department/office had the discretion to select a rostered candidate. It considered that there was no requirement in Section 9.4 for the head of department to first review all the non-rostered candidates, noting that Section 9.4 had been amended to specifically remove such a requirement. UNAT held that UNDT erred in law in deciding that the selection of a rostered candidate prior to reviewing all non-rostered candidates was contrary to ST/AI/2010/3 and vacated the award of damages in favour of the staff member.

Links to UNDT judgments:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2013-040.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2013-040.pdf)

[www.un.org/en/internaljustice/files/undt/judgments/undt-2013-041.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2013-041.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-416.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-416.pdf)

### **Judgment 2017-UNAT-785 (Smith)**

Staff selection – temporary appointment – eligibility – candidates based at duty station

**Applicable law:**

- *Article 101(3) of the Charter of the United Nations*
- *General Assembly resolution 63/250 (24 December 2008)*
- *Staff Rule 4.12*
- *Administrative Instruction ST/AI/2010/4/Rev.1 (Administration of temporary appointments)*

**Legal principle:** Temporary job opening limiting recruitment to staff members at a particular duty station or mission may be lawful.

**UNDT judgment:** The staff member, who at the relevant time worked with DFS in New York challenged before UNDT the Administration's decision that he was not eligible for the TJO he applied for, since the TJO was advertised internally within UNMISS and was therefore only open to UNMISS staff. UNDT found that the decision to consider the staff member ineligible for the TJO was unlawful and breached his right to be fully and fairly considered. Since the TJO stated that it was open to internal candidates, it was open to all internal candidates (not only UNMISS staff members), including the staff member. UNDT awarded moral damages, finding that the staff member's prospects for career development and opportunities for professional growth were reduced by the restriction.

**UNAT held:** UNAT found that the Secretary-General had the lawful authority to impose such a restriction, which objectively furthered the operational purposes of efficiency and short-term convenience and was proportional in its effects. It found that the decision of the Administration to limit the appointment to UNMISS staff members was reasonable and that there was insufficient evidence to support a finding of discrimination or improper motive. Accordingly, UNAT vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-003.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-003.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-785.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-785.pdf)

## **Standard of proof**

### **Judgment 2012-UNAT-200 (Majbri)**

Standard of proof – administrative decision – promotion – preponderance of evidence – full and fair consideration

**Legal principle:** All candidates that appear before an interview panel have the right to full and fair consideration. A candidate challenging the denial of a promotion must prove through a preponderance of the evidence any

of the following grounds: that the interview and selection procedures were violated; that the members of the panel were biased; that the panel discriminated against an interviewee; that relevant material was ignored or that irrelevant material was considered; or potentially other grounds depending on the unique facts of each case.

**UNDT judgment:** The staff member applied for the position of Chief, Arabic Translation Services (ATS) and was short-listed for an interview. Following the recommendation of the Interview Panel, the Programme Case Officer submitted his recommendation for the appointment to the position. However, as a result of the staff member's complaint alleging harassment and favouritism by the Chief of ATS, and also following up on a complaint filed with the Office of the Ombudsman, the selection of the replacement for the departing Chief of ATS was delayed pending further investigation by a fact-finding panel. In October 2006, the fact-finding panel concluded that the staff member had been treated unfairly. In November 2006, the Rebuttal Panel concluded that as a result of improper motives by the graders, the staff member's 2004–2005 e-PAS rating should be upgraded. In November 2006, the Interview Panel reviewed its assessment of the candidates in light of the Investigation and Rebuttal Panels' findings and concluded that the findings and recommendations of the two panels had no bearing on the evaluation of the candidates. In January 2007, the staff member was informed that he had not been selected for the post of Chief of ATS. The staff member filed an application before UNDT contesting his non-selection. UNDT found that there was no cogent evidence that the staff member's interview performance had been adversely affected by the manner in which he had been treated by the Chief of ATS or evidence that the Chief of ATS had influenced the outcome. UNDT concluded that all relevant procedures and guidelines had been followed, that the staff member had been afforded full and fair consideration and that he had not suffered any unfair and discriminatory treatment. UNDT dismissed the application.

**UNAT Holding:** On appeal, the staff member alleged that UNDT erroneously limited its analysis to the interview process when the rebuttal report confirmed a pattern of discriminatory treatment that denied him proper professional development and a proper e-PAS for the period that immediately preceded the selection process; and it further erred in finding that he had been afforded full and fair consideration and had not suffered unfair and discriminatory treatment. UNAT recalled that in reviewing administrative decisions regarding appointments and promotions, UNDT had to examine whether the procedure as laid down in the Staff Regulations and Rules had been followed; and whether the staff member had been given fair and adequate consideration. UNAT found that there was no valid claim of unfair treatment and discrimination by the staff member against the former Chief of ATS and UNDT therefore correctly limited its consideration to the interview process. UNAT dismissed the appeal finding no reasons to reverse the UNDT judgment as there was no evidence that would call into question the fairness and objectivity of the selection process.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-026.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-026.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-200.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-200.pdf)

### **Judgment 2011-UNAT-164 (Molari)**

Standard of proof – disciplinary cases – misconduct – disciplinary sanction – dismissal

**Applicable law:**

- *Chapter X of the Staff Rules*
- *Administrative Instruction ST/AI/371 (Revised disciplinary measures and procedures)*

**Legal principle:** When termination of appointment is a possible outcome of disciplinary proceedings, misconduct must be established by clear and convincing evidence. Clear and convincing proof means that the truth of the facts asserted is highly probable.

**UNDT judgment:** The staff member contested the decision to separate her from service. UNDT rejected the staff member's contention that the Administration was under an obligation to prove her guilt beyond a reasonable doubt. UNDT concluded that the staff member's behaviour amounted to professional misconduct, and that the penalty of termination was not disproportionate to the gravity of the offence.

**UNAT held:** UNAT recalled that when a disciplinary sanction is imposed by the Administration, the role of the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence. It ruled that, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof means that the truth of the facts asserted is highly probable. It requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. UNAT found that in this case, the facts were so clear as to be irrefutable; no matter what the standard, the Administration met its burden of proof. UNAT affirmed the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-058.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-058.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-164.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-164.pdf)

## Standard of review

### Judgment 2011-UNAT-110 (Abbassi)

Standard of review – administrative decision – staff selection – appointment – promotion – fair and adequate consideration – Secretary-General's broad discretion

#### Applicable Law:

- *Article 2(1)(e) of the UNAT Statute*
- *Administrative Instruction ST/AI/2006/3 (Staff selection system)*

**Legal principle:** In reviewing administrative decisions regarding appointments and promotions, UNDT examines the following: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration. The Secretary-General has broad discretion in making decisions regarding promotions and appointments. In reviewing such decisions, it is not the role of UNDT or the Appeals Tribunal to substitute its own decision for that of the Secretary-General regarding the outcome of the selection process.

**UNDT judgment:** The staff member challenged the decision not to select her for the post of P-4 Arabic Reviser on the ground that the selection procedure for the consideration of 15-day and 30-day candidates was not followed. UNDT found that the selection procedure was followed and that the staff member, a 15-day candidate, was considered and found unsuitable for the post before the 30-day candidates were considered. Having found that the staff member's right to be assessed fairly and adequately had been satisfied, and because she had not been found suitable for the post, UNDT concluded that there was no error in not selecting her and in interviewing the 30-day candidates. UNDT dismissed her application.

**UNAT held:** The staff member appealed on the ground that UNDT made errors of fact in the judgment. UNAT recalled that in order to overturn a finding of fact, the Appeals Tribunal must be satisfied that the finding is not supported by the evidence or that it is unreasonable. Some degree of deference should be given to the factual findings by UNDT as the court of first instance, particularly where oral evidence is heard. UNAT dismissed the appeal finding that there were no grounds for overturning the Dispute Tribunal's findings of fact and that no other reversible errors were made.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-086.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-086.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-110.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-110.pdf)

## Judgment 2010-UNAT-022 (Abu Hamda)

Standard of review – disciplinary cases – misconduct – disciplinary sanction – demotion – demotion with loss of salary – proportionality of sanction – mitigating factors

### Applicable law:

- *UNRWA Area Staff Regulation 10.2*
- *UNRWA Area Staff Rule 110.1*

**Legal principle:** When reviewing a sanction imposed by the Administration, UNDT and UNAT need to examine whether the facts on which the sanction is based are established; whether the established facts legally amount to misconduct; and whether the disciplinary measure applied is disproportionate to the offence.

**UNRWA Commissioner-General’s Decision:** The staff member was demoted from grade 12 to grade 10 with loss of salary, for misconduct. He appealed the demotion decision to the former JAB which found that there was “sufficient and cogent evidence” to support the decision to demote him. The Commissioner-General approved the former JAB’s findings.

**UNAT held:** UNAT noted that, when reviewing a sanction imposed by the Administration, it needed to examine whether the facts on which the sanction is based are established; whether the established facts legally amount to misconduct; and whether the disciplinary measure applied is disproportionate to the offence. UNAT affirmed the Commissioner-General’s decision to discipline the staff member for misconduct. However, in light of the mitigating factors, it found that the disciplinary measure was disproportionate to the offence and substituted the disciplinary measure of demotion with that of a written censure.<sup>16</sup>

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-022.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-022.pdf)

## Judgment 2010-UNAT-024 (Haniya)

Standard of review – disciplinary cases – misconduct – disciplinary sanction – dismissal – termination of appointment – proportionality of sanction – due process rights

### Applicable law:

- *UNRWA Area Staff Regulation 9.1*

**Legal principle:** When reviewing a disciplinary sanction imposed by the Administration, the Tribunal will examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence. The Tribunal may consider the nature of the position held by the individual and the assigned responsibilities in determining whether the sanction imposed is proportionate to the offence.

**UNRWA Commissioner-General’s Decision:** The staff member contested the decision to terminate his appointment “in the interest of the Agency”, under UNRWA Area Staff Regulation 9.1. The former JAB concluded that the UNRWA Administration had dealt with the matter within the framework of the standing rules, regulations and directives and recommended that the Commissioner-General dismiss the appeal. The Commissioner-General approved the former JAB’s recommendation.

**UNAT held:** UNAT affirmed the Commissioner-General’s decision to terminate the staff member for misconduct.<sup>17</sup> It emphasized the fact that the staff member, as a guard, held a position of trust that he had failed to respect. UNAT further considered that where a termination of service is connected to any type of investigation of a

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<sup>16</sup> Similarly, in Judgment 2010-UNAT-025 (Doleh), UNAT found that the staff member’s termination was disproportionate and ordered her re-instatement.

<sup>17</sup> See also Judgment 2010-UNAT-018 (Mahdi) at [www.un.org/en/internaljustice/files/unat/judgments/2010-unat-018.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-018.pdf) and Judgment 2010-UNAT-028 (Maslamani) at [www.un.org/en/internaljustice/files/unat/judgments/2010-unat-028.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-028.pdf)

staff member's possible misconduct, it must be reviewed as a disciplinary measure. The imposed sanction of separation was not disproportionate to the offense.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-024.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-024.pdf)

### **Judgment 2014-UNAT-436 (Walden)**

Standard of review – disciplinary cases – misconduct – misrepresentation of academic credentials – disciplinary sanction – termination of appointment – proportionality of sanction

**Applicable law:**

- *Article 101(3) of the Charter of the United Nations*
- *Standards of Conduct for the International Civil Service*
- *Regulation 10.2 of UNRWA International Staff Regulations*

**Legal principle:** When reviewing a disciplinary sanction imposed by the Administration, the role of UNDT and UNAT is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence.

**UNRWA DT judgment:** The staff member appealed the decision to terminate his employment for knowingly misrepresenting his academic qualifications. The UNRWA DT reversed the decision, finding that there was no clear and convincing evidence that the staff member had knowingly misrepresented his academic qualifications; that the facts did not establish misconduct; and therefore, the sanction was disproportionate. The UNRWA DT also found that the decision was tainted and prejudiced and that the staff member was denied due process. It ordered re-instatement of the staff member or in the alternative, bearing in mind the exceptional circumstances of the case, an amount of compensation of two years and six months' net base salary.

**UNAT held:** UNAT found it was undisputed that the staff member knowingly presented non-existent credentials. UNAT found that the facts established that the staff member failed to meet the high standard of integrity required for an international civil servant as set forth in the Charter of the United Nations. UNAT noted that UNRWA International Staff Regulation 10.2 provided that "the Commissioner-General may impose disciplinary measures on staff members whose conduct is unsatisfactory" and further, that he "may summarily dismiss a staff member for serious misconduct." UNAT found that termination was not disproportionate to the offence. Accordingly, UNAT granted the Commissioner-General's appeal and vacated the UNRWA DT judgment.

Link to UNRWA DT judgments:

[www.unrwa.org/userfiles/file/Tribunals/2013/011%20\\_Walden\\_%2018%20April%20.pdf](http://www.unrwa.org/userfiles/file/Tribunals/2013/011%20_Walden_%2018%20April%20.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-436.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-436.pdf)

### **Judgment 2018-UNAT-819 (Mbaigolmem)**

Standard of review – disciplinary cases – misconduct – sexual harassment – disciplinary sanction – dismissal – standard of proof – proportionality of sanction

**Applicable law:**

- *Articles 2(1)(b), 10(4) and 10(5) of the UNDT Statute*
- *Article 16(2) of the UNDT Rules of Procedure*

**Legal principle:** The appeal in a disciplinary case requires consideration of whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence. A *de novo* hearing into findings on misconduct might not always be

necessary. Much will depend on the available evidence and the circumstances of the case.

**UNDT judgment:** The staff member contested the decision to separate him from service. The decision was based on the finding that he had engaged in sexual harassment, specifically, by making unwelcome sexual advances towards a colleague. UNDT held that the Administration had failed to discharge its onus to prove by clear and convincing evidence that the staff member had committed misconduct in the form of sexual harassment. By way of remedy, UNDT ordered rescission of the disciplinary measure and remanded the matter to the Administration to resume the disciplinary procedure and obtain additional evidence. As an alternative, UNDT ordered in-lieu compensation in the amount of six months' emoluments.

**UNAT held:** The undisputed facts, the evidence of a credible report, coherent hearsay evidence pointing to a pattern of behavior, the consistency of the witness statements, the unsatisfactory statement of the staff member and the inherent probabilities of the situation, taken cumulatively, constituted a clear and convincing concatenation of evidence establishing, with a high degree of probability, that the alleged misconduct in fact occurred. UNAT noted that the Organization is entitled to and obliged to pursue a severe approach to sexual harassment and that the message therefore needs to be sent out clearly that staff members who sexually harass their colleagues should expect to lose their employment. Accordingly, it concluded that the sanction imposed by the Administration in this case was proportionate and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-051.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-051.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-819.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-819.pdf)

### **Judgment 2019-UNAT-918 (Nadasan)**

Standard of review – disciplinary sanction – misconduct – sexual harassment – separation from service – standard of proof – proportionality of sanction – procedural errors – investigation – witnesses

#### **Applicable law:**

- *Article 2(1)(b) of the UNDT Statute*
- *Article 16 of the UNDT Rules of Procedure*
- *Staff Rules 1.2(f) and 10.2(a)*
- *Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)*

**Legal principle:** In disciplinary cases under Article 2(1)(b) of the UNDT Statute, UNDT will examine the following: i) whether the facts on which the disciplinary measure is based have been established (by a preponderance of evidence, but where termination is a possible sanction, the facts must be established by clear and convincing evidence); ii) whether the established facts amount to misconduct; iii) whether the sanction is proportionate to the offence; and iv) whether the staff member's due process rights were respected. UNAT clarified that where UNDT concludes that the facts on which the disciplinary measure was based have been established, where necessary by clear and convincing evidence, during the investigation proceedings, it will normally undertake an oral hearing as provided for in disciplinary cases under Article 16 of the UNDT Rules of Procedure, but the Tribunal may decide not to (re)hear witnesses or gather additional evidence. If, on the other hand, UNDT does not find the evidence established during the disciplinary proceedings is sufficient, it will undertake a "fresh" or "de novo" investigation meaning that UNDT will (re)hear witnesses and/or gather other evidence to examine and assess whether the above-mentioned standard of proof has been met. UNDT is not allowed to investigate facts on which the disciplinary sanction has not been based and may not substitute its own judgment for that of the Secretary-General. It will only examine whether there is sufficient evidence for the facts on which the disciplinary sanction was based.

**UNDT judgment:** A former staff member contested the Administration's decision to separate him from service

with compensation in lieu of notice and with termination indemnity. The decision was based on the finding that he had engaged in sexual harassment. UNDT dismissed his application in its entirety, finding that the material facts on which the disciplinary measure was based had been sufficiently established by documentary evidence and that the disciplinary sanction imposed was proportionate. In reaching this conclusion, UNDT found, inter alia, that the former staff member had repeatedly contacted the complainant via telephone, email and Facebook, despite her repeated clear demands that he stop contacting her, and the evidence was clear that his conduct was continuous, sexual in nature, and not welcomed. UNDT further found that the former staff member's due process rights were respected.

**UNAT held:** UNDT did not err in finding that the documentary evidence of the case was sufficient to conclude that the former staff member had engaged in sexual harassment which amounted to serious misconduct and that the sanction of separation from service with compensation in lieu of notice and with termination indemnity was proportionate and lawful. UNAT further found that the main requirements of due process had been met. UNAT dismissed the appeal.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2018-095.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2018-095.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-918.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-918.pdf)

### **Judgment 2017-UNAT-757 (Sarwar)**

Standard of review – separation from service – poor performance – performance management – performance evaluation – procedural irregularities

#### **Applicable law:**

- *Staff Regulation 9(3)(ii)*
- *Staff Rule 9.6(c)*
- *Secretary-General's Bulletin ST/SGB/2011/10 (Young professionals programme)*
- *Administrative Instruction ST/AI/2010/5 (Performance management and development system)*

**Legal principle:** The standard of review in poor performance cases does not limit the Tribunals to examining the process by which it was determined that the performance was unsatisfactory. Nor is it correct to contend that UNDT may not reach its own conclusions concerning the performance of a staff member and to suggest that such would be “usurping the role” of the rebuttal panel.

**UNDT judgment:** Before UNDT, the staff member challenged, inter alia, the decision to separate him from service upon the expiration of his extended fixed-term appointment on the grounds of poor performance. With respect to the first performance cycle, UNDT found that the workplan had not been finalized in a timely manner, that it was therefore difficult for the staff member to have clarity about performance expectations and that any rating would be of questionable validity. Moreover, the delay had an effect on the rest of the stages of performance management, with both the midpoint review and the first improvement plan being finalized just before the end of the cycle. UNDT believed that these delays had a prejudicial effect and rendered the process “materially flawed and prejudicial” and thus unlawful. With respect to the second performance cycle, UNDT found that the workplan had only been finalized in December 2013, the same month the midpoint review took place and the performance improvement plan was approved in February 2014. UNDT found that the repeated non-compliance with the various provisions of ST/AI/2010/5 resulted in the management of the staff member's performance being “so procedurally flawed and fraught with irregularities that it tainted and rendered the decision not to renew his fixed-term appointment unlawful”. UNDT ordered rescission of the separation decision and in-lieu compensation in the amount of twelve months' net base salary and USD 5,000 as compensation for non-pecuniary damages.

**UNAT held:** UNAT found that UNDT's determination that the decision to terminate the appointment was unlawful on account of the repeated non-compliance with ST/AI/2010/5 was formalistic. While obviously a workplan should be finalized at the beginning of a cycle, UNDT found that there was nothing in ST/AI/2010/5 that held any failure to generate a workplan at the commencement of a cycle to be a procedural flaw resulting



axiomatically in any subsequent decision to terminate an appointment being unlawful. Likewise, there is no such consequence for not holding a midpoint review in a timely manner. UNAT found that the use of the non-peremptory words “should” and “usually” confirmed that the provisions of ST/AI/2010/5 in this respect were directory not mandatory. Additionally, ST/AI/2010/5 did not provide for any minimum duration for a performance improvement plan. UNAT found that the question of procedural fairness was whether the staff member had been aware of the required standard and had been given a fair opportunity to meet it. In the present case, UNAT found that the staff member had been acquainted with what was expected of him, was properly assessed in numerous assignments, was afforded an opportunity to improve and failed to do so in key performance areas, thus demonstrating his unsuitability for the position. UNAT concluded that in the premises, there was no basis for finding the separation decision unlawful and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-178.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-178.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-757.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-757.pdf)

## **Stare decisis (binding precedent)**

### **Judgment 2014-UNAT-410 (Igbinedion)**

*Stare decisis* – interlocutory appeal – UNDT interlocutory order – obligation to obey – suspension of action – administrative decision – management evaluation – appeal – receivability (UNAT) – excess of jurisdiction

#### **Applicable law:**

- *Articles 2(2), 10(2) and 10(8) of the UNDT Statute*
- *Articles 9(5) and 10(2) of the UNAT Statute*

**Legal Principles:** i) The Appeals Tribunal sets precedent, to be followed in like cases by the Dispute Tribunal (principle of *stare decisis*). ii) An interlocutory order by UNDT remains legally valid until such time as it has been vacated by UNAT. Parties before UNDT must obey its binding decisions. iii) The absence of compliance may merit contempt proceedings.

**UNDT judgment:** A UN-Habitat staff member contested the decision not to extend his appointment. UNDT issued Order No. 30, granting his request for suspension of action of the contested decision pending management evaluation. The Secretary-General filed an appeal to vacate the order following the MEU’s determination that the staff member’s request for management evaluation was time-barred. UNDT issued Order No. 33 granting suspension of action until the case was reviewed on the merits. In Order No. 110, UNDT reiterated the suspension of the non-extension decision pending the determination of the merits. UNAT vacated Orders No. 30 and No. 33. In respect of Order No. 30, UNAT concluded that UNDT had exceeded its jurisdiction and committed an error of law, as it had extended the suspension of action beyond the date of completion of management evaluation. Regarding Order No. 33, UNAT concluded that UNDT had exceeded its jurisdiction by extending the suspension of action until the final determination of the case on its merits, in contravention of Article 10(2) of the UNDT Statute, which excludes such a possibility in cases of appointment, promotion or termination. UN-Habitat did not extend the staff member’s appointment, in contravention of that order, and in Judgment No. UNDT/2013/024, the Dispute Tribunal held that there was an obligation to execute UNDT Order No. 33, which had not been met. UNDT found, inter alia, that three UN-Habitat officials and OLA were in contempt of its authority and made referrals for accountability. The Secretary-General appealed the judgment.

**UNAT held:** UNDT did not act lawfully in issuing an order in direct contravention of the established UNAT jurisprudence. However, UNAT also held that parties before UNDT must obey its binding decisions and that a decision by UNDT remained legally valid until such time as UNAT vacated it. Noting that its jurisprudence was clear on this point, UNAT found the Secretary-General’s refusal to comply with UNDT’s order to be vexatious. UNAT reiterated its jurisprudence that the absence of compliance may merit contempt proceedings.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2013-024.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2013-024.pdf)  
Link to UNAT judgment:  
[www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-410.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-410.pdf)

## Taxation

### Judgment 2012-UNAT-240 (Johnson)

Taxation – staff member’s income tax liability – reimbursement of income tax – foreign tax credits

#### Applicable law:

- *General Assembly resolution 973(X)*
- *Section 18 (Article V) of the Convention on the Privileges and Immunities of the United Nations*
- *Staff Regulation 3.3(f)(i) (amended following this judgment)*
- *Administrative Instruction ST/AI/1998/1 (Payment of income taxes to United States tax authorities)*

**Legal principle:** A staff member (who is a United States taxpayer) can discharge his/her United States income tax liability on United Nations salary and emoluments by utilizing foreign tax credits. Accordingly, the Organization must grant a refund of the United States income tax on his/her United Nations salary and emoluments.

**UNDT judgment:** The staff member contested the decision not to reimburse her for the staff assessment on her salary and emoluments. UNDT considered that the utilization of foreign tax credits by United States taxpayers constitutes “a payment method” to settle tax obligations and that the staff member, having discharged her tax obligation on income she earned by means of a foreign tax credit, “must be regarded both as having been subject to United States taxation on income received from the Organization, and as having discharged that tax obligation”. UNDT ordered the Secretary-General to refund the staff member the amount of the staff assessment on her salaries and emoluments.

**UNAT held:** UNAT agreed with UNDT’s analysis and held that the decision to deny the staff member a refund of the United States income tax on her salary and emoluments was unlawful. UNAT recalled that the United States grants foreign tax credits in respect of income tax paid by one of its nationals or permanent residents to another State in order to relieve the effects of double taxation. It held that the exclusion of such credits as payment would “not only contravene the principle of equality of treatment among staff members if staff members from the United States were deprived of the benefit of reimbursement for using such tax credits ..., but also the principle of equity among Member States irrespective of whether they choose to grant, or not to grant, an income tax exemption to their nationals, as these two principles form the basis for the staff assessment system in respect of taxation”.

Link to UNDT judgment:  
[www.un.org/en/internaljustice/files/undt/judgments/undt-2011-144.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2011-144.pdf)  
Link to UNAT judgment:  
[www.un.org/en/internaljustice/files/unat/judgments/2012-unat-240e.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2012-unat-240e.pdf)

## Termination

### Judgment 2017-UNAT-759 (Hassanin)

Termination – abolition of posts – permanent appointments – alternative employment – priority consideration

#### Applicable law:

- *Article 101(3) of the Charter of the United Nations*
- *Staff Regulation 9.3*

- *Staff Rules 9.6 and 13.1*

**Legal principle:** The Organization has the obligation to give priority consideration to permanent staff members facing termination due to abolition of post. Staff members, on the other hand, have the obligation to timely submit completed applications for positions for which they are suitable and qualified.

**UNDT judgment:** Several former staff members in the Publishing Division of the DGACM filed applications before UNDT challenging the decision to terminate their permanent appointments following the abolition of posts in DGACM. UNDT found that the Administration had failed to act fully in compliance with Staff Rules 13.1 and 9.6 by subjecting permanent staff members to the requirement of competing for available posts against other non-permanent staff members and by failing to reassign permanent staff members as a matter of priority to another post matching their abilities and grade. UNDT ordered, in all cases in which staff members had not secured another position with the Organization at the time of their application with UNDT, rescission of the termination decision or, in lieu of rescission, two years' net base salary minus any termination indemnity paid to him or her. In addition, UNDT awarded compensation for emotional distress.<sup>18</sup>

**UNAT held:** UNAT vacated UNDT's compensation orders in the cases in which staff members had secured alternative employment, finding that the applications had become moot. In the remaining cases, UNAT considered that any permanent staff member facing termination due to abolition of post must show an interest in a new position (for which he or she is suitable and qualified) by timely and completely applying for that position. However, once the application process is completed, the Administration is required by Staff Rule 13.1(d) to consider the permanent staff member on a preferred or non-competitive basis for the position in an effort to retain the permanent staff member, which the Administration failed to do in this case.

Accordingly, UNAT upheld UNDT's findings that the termination decisions were unlawful in cases in which the respective staff members had complied with the aforementioned requirement to apply for alternative positions and vacated UNDT's findings in cases where the staff members had failed to submit timely and complete applications for positions for which they were suitable and qualified. In the former cases, UNAT upheld the award of in-lieu compensation, albeit, unlike UNDT, not reducing the total amount by the termination indemnity paid but vacated the award of moral damages for lack of evidence of harm; in the latter cases, UNAT vacated UNDT's order of in-lieu compensation and moral damages.<sup>19</sup>

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-181.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-181.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-759.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-759.pdf)

### **Judgment 2011-UNAT-164 (Molari)**

Termination – disciplinary sanction – misconduct – standard of proof

**Applicable law:**

- *Chapter X of the Staff Rules*

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<sup>18</sup> See related UNDT judgments:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-190.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-190.pdf);

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-195.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-195.pdf);

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-193.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-193.pdf);

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-191.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-191.pdf);

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-192.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-192.pdf);

[www.un.org/en/internaljustice/files/undt/judgments/undt-2016-194.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2016-194.pdf).

<sup>19</sup> See related UNAT judgments:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-763.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-763.pdf);

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-764.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-764.pdf);

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-765.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-765.pdf);

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-766.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-766.pdf);

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-767.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-767.pdf);

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-768.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-768.pdf).

- *Administrative Instruction ST/AI/371 (Revised disciplinary measures and procedures)*

**Legal principle:** When termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof means that the truth of the facts asserted is highly probable.

**UNDT judgment:** The staff member contested the decision to separate her from service. UNDT rejected the staff member's contention that the Administration was under an obligation to prove her guilt beyond a reasonable doubt. UNDT concluded that the staff member's behaviour amounted to professional misconduct, and that the penalty of termination was not disproportionate to the gravity of the offence.

**UNAT held:** UNAT recalled that when a disciplinary sanction is imposed by the Administration, the role of the Tribunal is to examine whether the facts on which the sanction is based have been established, whether the established facts qualify as misconduct, and whether the sanction is proportionate to the offence. It ruled that, when termination is a possible outcome, misconduct must be established by clear and convincing evidence. Clear and convincing proof means that the truth of the facts asserted is highly probable. It requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt. UNAT found that in this case, the facts were so clear as to be irrefutable; no matter what the standard, the Administration met its burden of proof. UNAT affirmed the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2010-058.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2010-058.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2011-unat-164.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2011-unat-164.pdf)

### **Judgment 2018-UNAT-811 (Aghadiuno)**

Termination – summary dismissal – misconduct – disciplinary sanction – proportionality of sanction – fraud – forgery – special education grant

#### **Applicable law:**

- *Staff Regulation 1.2(b)*
- *Administrative Instruction ST/AI/2011/4 (Education grant and special education grant for children with a disability)*

**Legal principle:** Fraud, forgery and uttering falsified documents to the Organization constitute serious misconduct. Dishonesty and impropriety of this kind justifies summary dismissal without any benefits.

**UNDT judgment:** The staff member appealed the decision to summarily dismiss her. UNDT found that there was clear and convincing evidence to substantiate the allegation that the staff member had committed misconduct by submitting requests for special education grants for her children overstating the fees charged by the school and by omitting to declare sibling discounts and scholarships received from the school for three school years. However, UNDT held that the decision to summarily dismiss her from service for fraud was disproportionate, excessive, too severe and therefore unlawful. UNDT consequently upheld the staff member's application in part, ordered partial rescission of the dismissal decision (to be replaced with separation from service with termination indemnity) or six months' net base salary as an alternative compensation in place of the complete rescission of the dismissal decision.

**UNAT held:** The Secretary-General discharged his burden to establish the facts of misconduct by clear and convincing evidence in relation to all the allegations of wrongdoing regarding the special education grants. The evidence proved not only fraud in the form of false accounting, but also the uttering of forged and falsified documents to the Organization. The staff member's behaviour constituted serious misconduct by which she enriched herself by approximately USD 50,000 at the expense of the Organization. UNAT held that dishonesty and impropriety of this kind justified summary dismissal without any benefits. Accordingly, UNAT upheld the Secretary-General's appeal and vacated the UNDT's judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-076.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-811.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-811.pdf)

## Unified salary scale

### Judgment 2018-UNAT-840 (Lloret-Alcañiz et al.)

Unified Salary Scale – transitional allowance – General Assembly resolution —administrative decision – acquired rights

#### Applicable law:

- *General Assembly resolution 13(I)*
- *General Assembly resolution 70/244*
- *General Assembly resolution 71/263*
- *Article 2(1) of the UNDT Statute*
- *Staff Regulation 12.1*

**Legal principle:** The Secretary-General's decisions implementing the binding decisions of the General Assembly are administrative decisions that may adversely affect the terms of employment. The power the Secretary-General exercises is a purely mechanical power, more in the nature of a duty. However, such exercises of power are administrative in nature and involve a basic decision to implement a regulatory decision imposing the terms and conditions mandated by it. Therefore, while such decisions are reviewable administrative decisions, the scope of review is limited to grounds of legality.

**UNDT judgment:** Prior to 1 January 2017, staff members of the Organization in professional and higher categories were paid their net salary at either a single or a dependency rate, depending on their family status. In 2015, the General Assembly adopted the introduction of the Unified Salary Scale, providing one net salary for all staff members without regard to family status. In 2016, the General Assembly acceded to the Secretary-General's request to amend the Staff Regulations for the implementation of the approved changes. As the gross and net base salaries of the staff members who were previously paid at the dependency rate would be reduced, they would receive a progressively depreciating transitional allowance of six per cent of net remuneration for a six-year period.

Five staff members claimed that these unilateral variations of their remuneration were illegal and in breach of their contracts of employment and their acquired rights. UNDT held that the decisions implementing the Unified Salary Scale constituted administrative decisions in terms of Article 2 of the UNDT Statute since they negatively impacted the staff members' terms and conditions of appointment. UNDT accordingly held that the applications challenging these decisions were receivable. It held further that there was a normative conflict between General Assembly resolutions 70/244 and 71/263, adopting the Unified Salary Scale, and preceding General Assembly resolutions still in force protecting staff members' acquired rights. UNDT concluded that the Secretary-General's implementation of the Unified Salary Scale for the staff members, which resulted in their being paid reduced gross and net base salaries, violated their acquired rights and was thus unlawful. By way of remedy, UNDT rescinded the contested decisions and ordered that the six-per cent reduction be reintegrated as part of their salary. In regard to the staff members' claim that the transitional allowance has a discriminatory effect on them, UNDT found that it lacked jurisdiction to examine whether the decision of the General Assembly to provide for the transitional allowance was illegal and discriminatory because the claims concerned a legislative or regulatory decision and not an administrative decision.

**UNAT held:** UNAT recalled that an administrative decision is a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences. A decision of an administrative nature is distinguished from other governmental action of a regulatory, legislative or executive nature. The majority of the judges held that the Secretary-General's implementation of the resolutions involved an administrative decision with an adverse impact.<sup>20</sup> These judges accepted that the Secretary-General had little or no

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<sup>20</sup> A minority of the judges accepted the submission of the Secretary-General that UNDT erred and exceeded its jurisdiction by accept-

choice in the implementation of the General Assembly resolutions; the power he exercised was a purely mechanical power, more in the nature of a duty. However, they found that such exercises of power were administrative in nature and involved a basic decision to implement a regulatory decision imposing the terms and conditions mandated by it. They were thus administrative decisions that may adversely affect the terms of employment and were reviewable on narrow grounds of legality. Having found that the contested decisions constituted administrative decisions, UNAT examined whether there is indeed a normative conflict or an irreconcilable inconsistency between Resolution 13(I) of 1946, which provides that the Staff Regulations may only be supplemented or amended by the General Assembly without prejudice to the acquired rights of staff members, and Resolutions 70/244 and 71/263, which introduced the Unified Salary Scale. UNAT noted that the purpose of introducing Staff Regulation 12.1 was to afford staff members some degree of protection from subsequent amendments to the Staff Regulations prejudicing their acquired rights. In UNAT's view, an acquired right means a vested right and employees only acquire a vested right to their salary for services rendered. UNAT held that the limited purpose of Regulation 12.1 is to ensure that staff members are not retrospectively deprived of a benefit once the legal requirements for claiming the benefit have been fulfilled. UNAT concluded that the contested decisions did not violate the staff members' acquired rights as the General Assembly resolutions altered the staff members' future salaries. UNAT held that there was no normative conflict between the resolution 13(I) of 1946 and resolutions 70/244 and 71/263. Absent any normative conflict, the Secretary-General did not act illegally in implementing Resolutions 70/244 and 71/263. UNAT further held that the fact that the staff members' letters of appointment stated that their initial salary "may rise" did not constitute an express promise by the Organization to continue to increase their rate of pay and never to reduce it. The salary entitlements of staff members may be unilaterally amended by the General Assembly.

As for the staff members' cross-appeal claiming that UNDT erred in finding that it lacked jurisdiction to examine whether the decision of the General Assembly to provide for the transitional allowance was illegal, discriminatory and in violation of Article 8 of the Charter of the United Nations, UNAT held that UNDT was correct to decline jurisdiction on the basis that only appeals in relation to administrative decisions are receivable by it.

UNAT upheld the Secretary-General's appeal, dismissed the staff members' cross-appeal, and vacated the UNDT judgment.

Link to UNDT judgment:

[www.un.org/en/internaljustice/files/undt/judgments/undt-2017-097.pdf](http://www.un.org/en/internaljustice/files/undt/judgments/undt-2017-097.pdf)

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-840.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2018-UNAT-840.pdf)

## United Nations Joint Staff Pension Fund (UNJSPF)

### Judgment 2013-UNAT-343 (Larghi)

UNJSPF – CPI data – local track currency

#### Applicable law:

- *Article 2(9) of the UNAT Statute*
- *Article 48 of the UNJSPF Regulations*
- *Paragraphs 26 and 38 of the Pension Adjustment System (PAS)*

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ing the staff members' applications as receivable. In their opinion, the Secretary-General was not vested with any discretionary authority with respect to the implementation of the General Assembly resolutions and thus the actions of the Secretary-General in implementing them were not administrative decisions affecting the terms of appointment or contracts of employment of the staff members, as required by Article 2(1) of the UNDT Statute. The General Assembly's decisions regarding the specific amounts of salary and allowances to be paid to staff members are unambiguous and leave no room for interpretation or variation by the Secretary-General. The minority of the judges therefore held that the claim that the Unified Salary Scale violated the staff members' acquired rights was indeed a challenge to the validity of the General Assembly's legislative or regulatory power, and not to any discretion exercised by the Secretary-General.

**Legal principle:** The Pension Fund has the statutory jurisdiction, pursuant to paragraph 26 of the PAS, to discontinue or suspend the “local track” currency for a particular country when it would lead to aberrant results.

**UNAT held:** UNAT vacated the decision of the Standing Committee of the UNJSPB to reject the staff member’s request that the UNJSPF discontinue the local track in application of paragraph 26 of the PAS and remanded the case to the Standing Committee. UNAT determined that by refusing to review the staff member’s request, the UNJSPB had failed to properly exercise its jurisdiction pursuant to paragraph 26 of the PAS, whose very purpose “is to address the issue of whether the application of official CPI data results in ‘aberrant results’ or the situation where no up-to-date CPI data is available”.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-343.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2013-UNAT-343.pdf)

### **Judgment 2010-UNAT-023 (Nock)**

UNJSPF – participant – re-entering – prior contributory service – prior participation period – restoration

#### **Applicable law:**

- *Article 24 of the UNJSPF Regulations (as amended, 1 April 2007)*

**Legal principle:** Amended Article 24 of the UNJSPF Regulations provides for a participant’s option to restore his/her prior contributory service. However, it only allows for restoration of most recent period of contributory service.

**UNJSPB Decision:** The staff member (who re-entered the UNJSPF for the third time) requested the restoration of her first participation period. The UNJSPF Secretariat informed her that her request would not be entertained because her first participation period was not her “most recent period of contributory service”.

**UNAT held:** UNAT affirmed the UNJSPB’s decision denying the staff member’s request for restoration of her first participation period. UNAT found that the amended Article 24 of the UNJSPF’s Regulations only allows for restoration of a participant’s most recent period of contributory service and that the staff member had requested restoration of a participation period which was not the most recent one.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-023.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-023.pdf)

### **Judgment 2010-UNAT-019 (Carranza)**

UNJSPF – participant – re-entering – prior contributory service – prior participation period – restoration – right to restore – eligibility

#### **Applicable law:**

- *Article 24 of the UNJSPF Regulations (as amended, 1 April 2007)*

**Legal principle:** Amended Article 24 of the UNJSPF Regulations, which governs the restoration of prior contributory service, only applies to staff members who, prior to 2007, had been ineligible to restore previous contributory service.

**UNJSPB Decision:** The staff member sought to restore his prior period of contributory service following the amendment to Article 24 of the UNJSPF Regulations. The UNJSPB rejected his request on the grounds that the amended Article 24 concerned only “participants who previously were unable to restore prior contributory service because the length of such service was more than five years”.

**UNAT held:** UNAT confirmed the UNJSPB’s interpretation of Article 24 of the Regulations to the effect that the 2007 amendment to Article 24 of the UNJSPF Regulations only applies to staff members who prior to 2007 had

been ineligible to restore previous contributory service. Therefore, amended Article 24 did not apply to the staff member as he had been eligible to restore previous contributory service but had failed to do so in a timely manner.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2010-unat-019.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2010-unat-019.pdf)

### **Judgment 2015-UNAT-575 (Gomez)**

UNJSPF – pension benefits – statutory deduction – taxation – ASHI premium – net base pension

#### **Applicable law:**

- *Article 45 of the UNJSPF Regulations*

**Legal principle:** Net base pension benefit is the sum which is left after compulsory/statutory deductions. Where a staff member's pension benefit from the UNJSPF is not subject to taxation and/or payment of statutory deductions, there is no "net base" to be considered.

**UNJSPB Decision:** The staff member and his former spouse signed a divorce notary deed in Austria, in which it was agreed that he would pay to his former spouse 50 per cent of his net base pension once retired from active service. He subsequently appealed a decision of the Standing Committee of the UNJSPB to deny his request under Article 45 of the UNJSPF Regulations that his former spouse be paid 50 per cent of his monthly periodic pension benefit *after* the deduction of his ASHI premium. The staff member asserted that the Standing Committee erred in law in its interpretation of the phrase "net base pension", thereby derogating from the ordinary definition of that phrase.

**UNAT held:** UNAT noted that the staff member's retirement benefit from the UNJSPF including the monthly periodic pension benefit was not subject to taxation and/or payment of statutory deductions and that therefore, any challenge with respect to the application and meaning of the words "gross" and "net" was merely semantic. The ASHI premium was a voluntary payment which was deducted by the UNJSPF at the behest of a beneficiary and therefore cannot be treated as or deemed to be a statutory deduction. UNAT rejected the appeal.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-575.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-575.pdf)

### **Judgment 2014-UNAT-465 (Gonzalez-Hernandez)**

UNJSPF – Standing Committee of UNJSPB – Standing Committee decision – national court order – spousal support – child support – appeal – UNJSPF Regulations – non-observance

#### **Applicable law:**

- *Article 2(9) of the UNAT Statute*
- *Article 45 of the UNJSPF Regulations*

**Legal principle:** An appeal before UNAT against a decision adopted by the Standing Committee of the UNJSPB can only succeed if it is found that the UNJSPF Regulations were not observed, in accordance with Article 2(9) of the UNAT Statute. The appellant bears the burden of satisfying UNAT that the impugned decision was defective.

**UNAT held:** The staff member appealed against the decision of the Standing Committee to uphold the decision of the Chief Executive Officer of the UNJSPF to deduct 50 per cent of his monthly pension benefit for payment directly to his former spouse, in accordance with Article 45 of the UNJSPF Regulations.

UNAT noted that in accordance with Article 2(9) of its Statute, an appeal before it submitted against a decision adopted by the Standing Committee could only succeed if it was found that the Regulations of the UNJSPF were not observed. UNAT stated that the staff member bore the burden of satisfying the Tribunal that the impugned



decision was defective.

UNAT held that the UNJSPF correctly applied Article 45 of its Regulations and relied on an internationally binding judgment about spousal and child support, issued by an Austrian court, which was not contradicted by the divorce decree issued by the Portuguese court. UNAT found that there was no basis for the staff member to question the validity of the Austrian court judgment or the binding obligations imposed on him by order of the Austrian court. UNAT considered that the UNJSPF acted properly and within its statutory remit after obtaining the necessary information and adopted a reasoned and well-founded decision. UNAT dismissed the staff member's appeal, finding that he had failed to discharge the burden of proving that the impugned decision was defective.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-465.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2014-UNAT-465.pdf)

### Judgment 2015-UNAT-607 (Zakharov)

UNJSPF – Standing Committee of UNJSPB – Standing Committee decision – appeal – receivability (UNAT) – jurisdiction – competence

#### Applicable law:

- *Article 2(9) of the UNAT Statute*
- *Section K and Article 48 of the UNJSPF Regulations*

**Legal principle:** UNAT's jurisdiction over the UNJSPF is limited to hearing appeals of decisions of the Standing Committee of the UNJSPB.

**UNJSPB Decision:** The staff member challenged the UNJSPB's refusal to submit his case to the Standing Committee. He claimed that the decision violated the "international civil servants' right of appeal" and the UNJSPF Regulations were applied in an "arbitrary, unfair or prejudicial manner".

**UNAT held:** UNAT found that the decision of the UNJSPB not to submit the staff member's appeal to the Standing Committee contravened his rights under the UNJSPF Regulations by depriving him of access to the appeals process and was a serious violation of his due process rights. Noting that UNAT's jurisdiction was limited to hearing appeals of decisions of the Standing Committee and that the staff member's case had not been reviewed by the Standing Committee, UNAT found that it had no jurisdiction to hear the appeal and remanded it to the Standing Committee.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-607.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2015-UNAT-607.pdf)

### Judgment 2019-UNAT-912 (Clemente)

UNJSPF – surviving spouse – widow's benefit – previous marriage – validity of marriage – null and void marriage – marital status – interpretation of marriage – domestic law – private international law – common law marriage

#### Applicable law:

- *Article 34 of the UNJSPF Regulations*

**Legal principle:** A widow's benefit is payable to the surviving spouse of a participant who was entitled to a retirement benefit at the date of his death, if she was married to the deceased at the date of his separation from service and remained married to him until his death. In accordance with general principles of private international law, the validity of a marriage must be assessed and determined in accordance with the law of the place where the marriage was celebrated.

**UNJSPB Decision:** A staff member employed with UNOG married her late husband in the Philippines in March

1995 and remained married to him for 20 years until his death. Her late husband participated in the Fund from October 1999 to November 2015 as a staff member of WIPO, and he had listed her as his spouse throughout his participation in the Fund. Both WIPO and the UN reported their marital status to the Fund, and Switzerland issued them residential status as spouses. However, his previous marriage was not annulled until August 1996, about a year after his marriage to the staff member. Divorce is not legal in the Philippines. The only manner in which a marriage can end, other than through death of a spouse, is by annulment. The Fund informed the staff member that based on its review of Philippine law, her marriage to her late husband appeared to be void as bigamous and her marriage was not legal because it pre-dated the annulment of her late husband's first marriage. Accordingly, the Fund rejected the staff member's request for a widow's benefit under Article 34 of its Regulations. The staff member appealed, claiming that her marital relationship with her late husband constituted a common law marriage and that under Philippine law a void or voidable marriage is deemed to be valid until declared otherwise in judicial proceedings and her marriage has not been the subject of any legal proceedings for a declaration of nullity.

**UNAT held:** UNAT considered Article 34 of the UNJSPF Regulations which provides that a widow's benefit will be payable to the surviving spouse of a participant who was entitled to a retirement benefit at the date of his death, if she was married to the deceased at the date of his separation from service and remained married to him until his death. In accordance with general principles of private international law, the validity of a marriage must be assessed and determined in accordance with the law of the place where the marriage was celebrated, being the law of the Philippines. The Supreme Court of the Philippines has ruled on various occasions that although a second marriage might be presumed to be legally void if it was celebrated while a first marriage was still subsisting, it will be presumptively valid until declared a nullity by a court. Illegal juridical acts are often deemed to exist in municipal legal systems until they are set aside by a court in appropriate proceedings because they have legal consequences that cannot be overlooked. A marriage may be hypothetically a nullity, but remains effective and is, in reality, valid until a judicial declaration to the contrary.

UNAT found that there was no evidence that the staff member's marriage had been the subject of any legal proceedings for a declaration of nullity in the Philippines. The marriage is accordingly recognized by the competent authorities of the Philippines. Her presumptively valid marriage was extant at the date her late husband separated from service and she remained so married to him until his death. Accordingly, UNAT set aside the decision of the Standing Committee of the UNJSPB and ordered that the staff member be paid a widow's benefit under Article 34.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-912.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-912.pdf)

#### **Judgment 2019-UNAT-914 (Oglesby)**

UNJSPF – survivor's benefits – prospective survivor – widow/widower's benefit – scope of coverage – marital status – marriage after separation from service – interpretation of marriage – domestic law – unions/registered partnerships – same-sex marriage – annuity – equal treatment – sexual orientation – sex discrimination – competence of tribunal – power to grant relief

#### **Applicable law:**

- *Article 2(9) of the UNAT Statute*
- *Article 8 of the Charter of the United Nations*
- *Universal Declaration of Human Rights*
- *Articles 34, 35 and 35ter of the UNJSPF Regulations*

**Legal principle:** The Appeals Tribunal does not have the prerogative to apply the Charter or the Universal Declaration of Human Rights directly, nor the power to strike down internal or subsidiary legislative provisions conflicting with the norms they enact. The Appeals Tribunal is not akin to a constitutional court and, thus, has no jurisdiction to declare the UNJSPF Regulations constitutionally incompatible or to strike them down as invalid. The jurisdiction of the Appeals Tribunal is clearly circumscribed by Article 2(9) of the Appeals Tribunal's Statute. It may only determine if there has been "non observance" of the Regulations.

**UNJSPB Decision:** A former staff member married his same-sex partner of 36 years in New York in April 2018, 20 years after his separation from service in December 1998. At the time of his separation from service, same-sex marriage was not legal in any country and therefore he could not marry his same-sex partner. The day after the marriage, he visited the Fund's New York office to inquire whether he could include his husband as his surviving spouse. He was advised that, since he had not been married to his husband at the time of his separation from service in 1998, his husband did not meet one of the fundamental requirements for eligibility for a widower's benefit under Articles 34 and 35 of the UNJSPF Regulations and accordingly, his husband would not be recognized as his surviving spouse. The Fund advised that in 2016 the Pension Board had extended the interpretation of marriage to include unions and registered partnerships that are legally entered into in the jurisdiction where the status is established and that confer similar rights as marriage, including pension rights. However, the application of the guidelines was not retroactive and moreover, under the expanded recognition of unions and registered partnerships, *de facto* unions and registered partnerships in New York were not accepted as being equivalent to marriage because they did not confer the same rights and obligations as marriage, including pension rights. The Fund advised of the option to purchase an annuity (i.e. a periodic benefit for life in a specified amount that is payable to a spouse married after separation from service) in his husband's favour under Article 35*ter* of the Regulations, which would take effect 18 months after the date of marriage.

The former staff member requested the Fund to interpret the Articles in a constructive and humane manner taking into consideration that he had served the Organization for approximately 25 years, was 79 years old and was being treated for a serious heart condition, thus rendering the annuity a non-viable alternative since it would lapse if he did not live until its effective 18 months after the date of marriage. The Standing Committee of the UNJSPB upheld the decision to refuse to recognize his husband as a prospective survivor. The former staff member appealed against that decision, contending that the provisions of Articles 34 and 35 unfairly discriminate against persons in same-sex relationships and they are inconsistent with Article 8 of the Charter of the United Nations and Article 7 of the Universal Declaration of Human Rights, which prohibit unfair discrimination on illegitimate grounds including sexual orientation and marital status, and that he should be afforded relief on that basis.

**UNAT held:** UNAT found that at the time of his separation from service, the former staff member was not married to his husband; their same-sex relationship did not enjoy similar status to marriage under the law of the United States; the Regulations did not afford retrospective recognition of their marriage in 2018; and the Regulations specifically regulated the situation of the former staff member by providing for an annuity under Article 35*ter*. Therefore, UNAT concluded that under the express terms of Articles 34 and 35, the former staff member's spouse was not entitled to a survivor's benefit.

Nonetheless, UNAT found that “[t]here was (...) merit in [the appellant's] line of argument” that the differentiation between spouses in heterosexual marriages and homosexual persons in same-sex relationships was unfair and discriminatory. UNAT, however, held that unfortunately it had no remedial power to grant the relief sought. UNAT emphasized that it did not have the prerogative to apply the Charter of the United Nations or the Universal Declaration of Human Rights directly, nor the power to strike down internal or subsidiary legislative provisions inconsistent with the norms it enacts. UNAT further held that it was not akin to a constitutional court and its jurisdiction was restricted by Article 2(9) of its Statute to determining whether there had been “non-observance” of the UNJSPF Regulations. UNAT concluded that in this case, UNJSPF acted in keeping with its Regulations and if there was indeed any enduring discrimination on the grounds of sexual orientation inconsistent with the Charter, that was a matter for the Secretary-General or the General Assembly. Accordingly, UNAT concluded that the appeal “regrettably” had to fail.

Link to UNAT judgment:

[www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-914.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2019-UNAT-914.pdf)

**Judgment 2017-UNAT-801 (Faye) and Judgment 2017-UNAT-807 (Rockcliffe)**

UNJSPF – UNSPC – elected members – rights and privileges

**Applicable law:**

- *Article 2(9) of the UNAT Statute*
- *Articles 6(a) and 48 of the UNJSPF Regulations*

**Legal principle:** Staff members of the UNJSPF duly elected to the UNSPC have the same rights/privileges as other elected members.

**Facts:** Two staff members of the UNJSPF were elected to the UNSPC. Following the elections, they were given two options: i) to remain on the UNSPC and accept to be moved to an appropriate post elsewhere in the Secretariat outside the UNJSPF; or (ii) to continue to work in the UNJSPF's Secretariat and resign from the UNSPC and the Pension Board. The staff members rejected both options.

**UNJSPB Decision:** The staff members were subsequently informed that the Pension Board had discussed the conflict of interest arising from the fact that they had been elected to the UNSPC while serving as staff members of the UNJSPF and that it had decided that they would not be given access to the Pension Board documents nor could they participate in any formal preparations for the Pension Board session and meetings until such time the conflict of interest had been resolved.

**UNAT held:** UNAT considered that at the time of the elections, there was no law which prevented the staff members from being elected to the UNSPC once they met the prerequisites for election, which they did. UNAT held that both staff members were duly elected members of the UNSPC and that as a direct consequence of their election, they had the same rights and privileges as other elected members and which could not be restricted or denied. UNAT granted the appeals and ordered that the staff members be given access to all relevant Pension Board documents and be allowed to participate and function as elected member in all relevant areas including the preparations for the Pension Board sessions, meetings of the Pension Board and of its constituent groups, committees and working groups.

Links to UNAT judgments:

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-801.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-801.pdf)

[www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-807.pdf](http://www.un.org/en/internaljustice/files/unat/judgments/2017-UNAT-807.pdf)



# Glossary

The definitions used in the glossary are not legal definitions and are not to be relied upon in submissions to the Tribunals.

## **Abuse of process**

A perversion of a lawfully issued process that arises when a person deliberately misuses a court process that is not justified by the underlying legal action.

## **Accountability referral**

UNDT and UNAT have statutory authority under Article 10(8) and Article 9(5) of their respective Statutes to refer cases to the Secretary-General or to the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability. In the event that the Secretary-General decides to take action against an official further to such a referral, his action could constitute an appealable administrative decision by that official.

## **Agency, entity, organization**

UNAT is competent to consider and decide an application filed against a specialized agency brought into relationship with the United Nations in accordance with Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the United Nations to accept the terms of UNAT's jurisdiction consonant with the UNAT Statute. See Article 2(10) of the UNAT Statute.

## ***Amicus curiae* (friend-of-the-court) brief**

A person or organization for whom recourse to UNDT and/or UNAT is available and staff associations may submit an application to file a friend-of-the-court brief. A friend-of-the-court brief is a brief on a point of law or some other aspect of a case under review that is filed by a non-party to assist the Tribunal in deciding a matter before it. The Tribunal may grant the application, if it considers that the filing of the brief would assist in its deliberations.

## **Appeal**

Request by a party (see Appellant) to affirm, reverse, modify or remand a UNDT or UNRWA DT judgment, a decision of the Standing Committee acting on behalf of UNJSPB, or an agency or entity that has accepted UNAT's jurisdiction. Appeals may only be filed on specific grounds set out in Article 2 of the UNAT Statute.

## **Appellant**

A party (either a staff member or the Administration) that appeals a judgment of UNDT or UNRWA DT; or a participant or beneficiary or staff member appealing a decision of the Standing Committee acting on behalf of UNJSPB or a decision taken by an agency or entity that has accepted UNAT's jurisdiction.

## **Applicant**

An individual contesting an administrative decision before UNDT is called applicant. An applicant can also refer to a party before UNAT who has filed an application seeking revision, correction, interpretation or execution of a UNAT judgment already issued. A party filing a procedural motion before UNAT is also called an applicant for the purpose of the motion.

## **Application**

An application filed before UNDT or UNRWA DT generally refers to the filing submitted to contest an administrative decision. Applications before UNAT, however, refer to those filings submitted after an appeal judgment has been rendered, such as applications for revision, correction, interpretation or execution of a UNAT judgment.

**Answer**

Respondents may file an answer to an appeal filed before UNAT. Answers set forth arguments in rebuttal to those arguments set forth in the appeal.

**Award**

Award is usually used in the context of an “award of compensation” or other relief ordered by a Tribunal, e.g. “the Tribunal awards the staff member monetary compensation”.

**Case management discussion**

A discussion held in preparation of a UNDT case before it is ready for judgment. The discussion is held between the judge, applicant, respondent and their legal representatives.

**Compensation**

Compensation may be in the form of an order by UNDT and UNAT that an injured party be compensated for their harm by way of money or by other benefits of value that make a party whole again after having suffered unlawful harm.

**Contempt**

Term that describes the offence of being disobedient to or discourteous towards a Tribunal and its officers in the form of behaviour that opposes or defies the authority, justice and dignity of the Tribunal. This also includes non-compliance with an order or instruction of the Tribunal.

**Correction**

Correction by the relevant Tribunal of a clerical or arithmetical mistake, or of an error arising from an accidental slip or omission, either upon an application made by either party, or on the Tribunal’s own initiative.

**Costs**

The expenses incurred in relation to the legal process before the Tribunals. UNDT and UNAT have authority to order one party to reimburse the costs incurred by the other party. Where UNDT or UNAT determine that a party has manifestly abused the process, they may, under Article 10(6) and Article 9(2) of their respective Statutes, award costs against that party. Also see Abuse of process.

**Counsel**

In the United Nations internal justice system, it is a representative of a party in a matter before a Tribunal. Counsel for a staff member (or former staff member or affected dependent of a staff member) is often a legal officer from the Office of Staff Legal Assistance (OSLA), or in the context of UNRWA, a legal officer from the Legal Office of Staff Assistance (LOSA) but may also be an outside attorney who is paid by the party or a current or former staff member who volunteers. Counsel for the Secretary-General of the United Nations or Head of an agency, fund or programme (Administration) is normally a lawyer and staff member of the Appeals and Accountability Section (AAS) or Office of Legal Affairs (OLA) in the United Nations Secretariat, or of the respective legal office of an agency, fund or programme.

**Cross-appeal**

When an appeal against a UNDT or UNRWA DT judgment has been filed by one of the parties before UNAT (see **Appellant**), within the 60-day time limit to appeal, the party answering the appeal (respondent) may file a cross-appeal on the same claims within 60 calendar days of notification of the appeal. The cross-appeal must be accompanied by a brief stating the relief sought and the grounds of the cross-appeal. The cross-appeal may not add new claims. The appeal and cross-appeal are disposed of in the same judgment. A cross-appeal is different from a situation where both parties appeal the same judgment within the same 60-day time limit to appeal.

**Docket**

A formal record in which the Registry enters proceedings, filings and rulings in cases before the Tribunal.

**Evidence**

Typically referred as the documentation and/or oral testimony submitted by a party in the course of the proceedings to corroborate its submissions to the Tribunal.

**Execution**

Implementation of a judgment, usually within a specific time limit.

**Extension of time limits**

Before a time limit for a filing fixed by the Statute or Rules of Procedure has lapsed, UNAT may, in exceptional circumstances or when the interests of justice so require, order an extension of the time limit, either on motion by a party or *proprio motu*. The party will thereby be given additional time or a new time limit to submit the filing. UNDT may extend deadlines for the submission of applications under Article 8(3) of its Statute and for other filings under Article 35 of its Rules of Procedure.

**Friend-of-the-court brief**

See *Amicus curiae* brief.

**Hearing**

A meeting/session that is convened by a judge or a judicial panel to provide parties to an appeal with an opportunity to state their case.

**Interim measure**

A staff member or entity may, at any time, file a motion for interim measures, including before an appeal is filed, seeking temporary relief. Article 9(4) of the UNAT Statute provides that “[a]t any time during the proceedings, [UNAT] may order an interim measure to provide temporary relief to either party to prevent irreparable harm and to maintain consistency with the judgment of the Dispute Tribunal”.

UNDT may, pursuant to Article 10(2) of its Statute, order interim measures “[a]t any time during the proceedings (...) to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination. the Dispute Tribunal may order an interim measure, which is without appeal

**Interlocutory order**

Interlocutory orders are orders which are rendered during an intermediate stage of the trial or appeal proceedings before UNDT or UNRWA DT or UNAT, after the commencement of the case but prior to the rendering of a case’s final judgment. While generally only final judgments may be appealed, UNAT has allowed appeals against certain interlocutory orders rendered by UNDT and UNRWA DT.

**Interlocutory appeal**

An interlocutory appeal is an appeal to UNAT against an interlocutory order rendered by UNDT or UNRWA DT.

**Interpretation**

Explanation made by the relevant Tribunal as to the meaning or scope of all, or part of a judgment.

**Intervention**

An application filed by any person not party to a case who may appear before the relevant Tribunal to join in a case before or during consideration by that Tribunal if the judgment to be issued by the Tribunal may affect his or her rights.

**Judgment**

The final decision of the judge(s) who disposes of a case.

**Jurisdiction**

A tribunal’s power to consider and decide a case.



**Jurisdiction *ratione materiae***

Subject-matter jurisdiction: Jurisdiction over the nature of the case and the type of relief sought. UNAT's subject-matter jurisdiction is set out in Article 2 of the UNAT Statute. UNDT's subject-matter jurisdiction is set out in Article 2 of its Statute.

**Jurisdiction *ratione personae***

Personal jurisdiction: Jurisdiction over a person. UNAT's personal jurisdiction is set out in Article 2 of the UNAT Statute. UNDT's personal jurisdiction is set out in Article 3 of its Statute.

**Jurisdiction *ratione temporis***

Temporal jurisdiction: Jurisdiction based on the court's having authority to adjudicate a matter when the event occurred. UNAT's temporal jurisdiction is set out in Article 7 of the UNAT Statute. UNDT's jurisdiction is set out in Article 8 of its Statute.

**Jurisprudence**

Jurisprudence refers to the entire body of law resulting from a tribunal's judgments and orders.

**Legal representation before UNDT and UNAT**

Representation of an individual by the Office of Staff Legal Assistance or an outside private counsel who is authorized to practice law in a national jurisdiction.

**Legal Office of Staff Assistance (LOSA)**

The Legal Office of Staff Assistance (LOSA) provides independent and professional legal advice to UNRWA staff members who may wish to appeal an administrative decision. LOSA is staffed by full-time legal officers in Amman, Jordan. At any stage of a dispute, or even in anticipation of a dispute, a staff member may seek advice and assistance from LOSA legal officers. They can advise on the legal merits of a case and what options the staff member might have. If a staff member chooses to proceed with a case in the formal system, LOSA may assist with representation throughout the formal process.

**Management evaluation**

The Administration's evaluation of whether an administrative decision has been taken in conformity with the Staff Regulations and Rules of the United Nations, administrative issuances, and relevant jurisprudence. The purpose of this step is to give the Administration a chance to correct itself and/or provide acceptable remedies, where appropriate, and to reduce the number of cases that proceed to formal litigation.

**Moot**

An issue, case, or action that has been resolved leaving no live dispute for a tribunal to consider is said to be "moot" and cannot be brought or continued thereafter.

**Motion**

A written or oral request asking a tribunal to make a specified ruling.

**Non-legal representation before UNAT**

Representation of an individual before UNAT by a current or former staff member, including by a member of a staff union. This representative is not required to be authorized to practice law in a national jurisdiction, as is required for outside private counsel, nor required to have legal training or background.

**Office of Administration of Justice (OAJ)**

The Office of Administration of Justice (OAJ) is responsible for coordinating the functioning of the formal parts of the internal justice system. It is headed by an Executive Director appointed by the Secretary-General. OAJ was established at the outset of the system with the rationale that "a separate Office of Administration of Justice, with operational and budgetary autonomy, would ensure the institutional independence of the system of internal justice". The Office of Staff Legal Assistance (OSLA) and the registries for the Dispute Tribunal and

the Appeals Tribunal are part of OAJ. Without prejudice to the authority of the judges in judicial matters, the registries report to a Principal Registrar. With its headquarters in New York, OAJ also has a presence—through UNDT registries and the branch offices of OSLA—in Geneva, Nairobi, Addis Ababa and Beirut.

### **Office of Staff Legal Assistance (OSLA)**

The Office of Staff Legal Assistance (OSLA) provides independent and professional legal advice to staff members who may wish to appeal an administrative decision, or who are subject to disciplinary action. OSLA is staffed by full-time legal officers at Headquarters, as well as in Geneva, Nairobi, Addis Ababa and Beirut. At any stage of a dispute, or even in anticipation of a dispute, a staff member may seek advice and assistance from OSLA legal officers. They can advise on the legal merits of a case and what options the staff member might have. If a staff member chooses to proceed with a case in the formal system, OSLA may assist with representation throughout the formal process.

### **Oral pronouncement**

At the conclusion of a session, UNAT judges orally pronounce the outcome of all cases decided during that session.

### **Order**

Any direction or command of a judge or judicial panel which is taken in the course of the proceedings of the case, and which is not a final disposition of a substantive issue of a case delivered by the Judge or judicial panel.

### **Presiding judge**

A case before UNAT is normally decided by a panel of three judges. Each panel is presided over by a presiding judge who prepares the judgment.

### ***Proprio motu***

On its own motion. UNDT and UNAT may make certain rulings on their own motion, without prior motion by the parties.

### **Receivability**

Fit for acceptance by the Tribunals for being under its jurisdiction. Examples of cases that are not receivable include those not submitted within relevant time limits where no exceptional circumstances for the late submission exist, or cases that are not within the jurisdiction of the relevant Tribunal to consider.

### **Rescission**

The Tribunals may order that an administrative decision be rescinded, which means the decision is to be undone, removed, or cancelled as if it never happened.

### **Recusal**

Article 23 of the UNAT Rules of Procedure permits a party to make a reasoned request for the recusal of a judge on the grounds of conflict of interest to the President or to UNAT, which, after seeking comments from the judge, shall decide on the request and shall inform the party of the decision in writing. Under Article 22(1) of the UNAT Rules of Procedure, the term “conflict of interest” means any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her.

Under Article 4(9) of the UNDT Statute, a party may request the recusal of a UNDT judge. The decision shall be taken by the President of UNDT.

### **Registrar**

A staff member of the Office of Administration of Justice assigned to head one of the registries. See **Registry**.

### **Registry**

Staff members of the Office of Administration of Justice assigned to provide support to the Tribunal at one of its locations. There is a registry in New York, Geneva and Nairobi, respectively. The UNAT registry is located in New York. The registries provide substantive, technical and administrative support to the Tribunals in the adjudication of cases and serve as records custodian of case files and materials forming the official record of a case.

**Remand**

Sending back a case for further consideration on the merits or for the purpose of initiating or correcting a required procedure, often within a specific time limit.

**Remedy (relief)**

The way a right is enforced by a Tribunal when injury, harm, or a wrongful act has been imposed upon an individual. Remedies are ordered by the Tribunal to correct an injury, enforce a legal right or entitlement, provide monetary compensation, or order a specific performance to take place as means to provide relief to an injured party.

**Respondent**

The party in a matter before a Tribunal who responds to an application or appeal initiated by the opposing party. Before UNDT, the Respondent is the Secretary-General of the United Nations. Before UNAT, the Respondent is either the Administration or the staff member, depending on which party initiates the appeal.

**Revision**

Review by the relevant Tribunal of a judgment, to take into account a decisive new fact that was discovered after the judgment was rendered and that was not known to the Tribunal or to the party requesting revision.

**Session**

A meeting of UNAT judges to consider and decide cases. UNAT judges usually hold three two-week sessions a year, in spring, summer and fall.

**Self-representation before UNAT**

Individuals may represent themselves before UNAT, regardless of whether they were self-represented or had legal or non-legal representation prior to UNAT proceedings.

***Sua sponte***

Of its own accord. UNAT may make certain rulings of its own accord, without prior motion by the parties.

**Summary judgment**

A party may file a motion requesting a summary judgment. In accordance with Article 19(2) of UNAT's Rules of Procedure, a summary judgment may be issued at any time, even when UNAT is not in session. It shall be adopted by panels of three judges designated by the President.

Motions for summary judgment before UNDT are governed by Article 9 of the UNDT Rules of Procedure.

**Suspension of action**

A UNDT or UNRWA DT proceeding initiated by a staff member who is contesting an administrative decision, and who, by filing a suspension of action request, seeks a temporary suspension of the contested administrative decision while the case is awaiting the outcome of a management evaluation or a judgment of UNDT or UNRWA DT. A suspension of action is only granted if certain criteria are satisfied, namely, if: (1) the contested decision appears to be unlawful; (2) in case of particular urgency; and (3) where implementing the decision would cause irreparable harm. In cases of appointment, promotion or termination, the implementation of the contested administrative decision may not be suspended during UNDT or UNRWA DT proceedings.

**Suspension of time limits**

Before the time limit for a filing fixed by the Statute or Rules of Procedure has lapsed, UNAT may, in exceptional circumstances or when the interests of justice so require, order a suspension of the time limit, either on motion by a party or *proprio motu*. The time limit will thereby be temporarily tolled until the occurrence of a specific event, as determined by UNAT. UNDT may suspend the deadline for the submission of applications under Article 8(3) of its Statute.

**Testimony**

Form of evidence whereby an individual provides written or oral statements usually while under oath or penalty of perjury to a Tribunal recounting facts and/or other information of which the individual has knowledge.

**Time limit**

The date set as the deadline by which a filing must be submitted before UNDT or UNAT. Time limits differ depending on the type of filing. Time limits are set by the Tribunals' Statutes and/or Rules of Procedure or are ordered by the Tribunals.

**United Nations Appeals Tribunal (UNAT)**

The United Nations Appeals Tribunal (UNAT) is the appellate court of the internal justice system at the United Nations and is composed of seven judges, with a registry in New York. Decisions of UNDT or UNRWA DT may be appealed to UNAT either by the staff member concerned or by the Administration. The UNAT Statute allows for appeals of decisions of those bodies only in cases where it is alleged that UNDT or UNRWA DT has exceeded its jurisdiction or failed to exercise it; or that it has erred on a question of fact or law or procedure. UNAT can also hear appeals of decisions taken by the Standing Committee acting on behalf of the United Nations Joint Staff Pension Fund (UNJSPF), (if the appeal alleges non-observance of the regulations of the Pension Fund), and administrative decisions taken by the heads of some other agencies and entities.

**United Nations Dispute Tribunal (UNDT)**

The United Nations Dispute Tribunal (UNDT) is the first instance Tribunal in the formal two-tier system in which a United Nations system staff member can formally dispute an administrative decision taken against him or her. UNDT examines the facts of the case, and conducts, where necessary, oral proceedings, which are normally held in public. judgments of UNDT are binding. However, both the staff member and the Administration have the right to appeal a judgment rendered by UNDT to UNAT.

**United Nations Relief and Works Agency for Palestine Refugees in the Near East Dispute Tribunal (UNRWA DT)**

The United Nations Relief and Works Agency for Palestine Refugees in the Near East has its own Dispute Tribunal serving as the first instance tribunal whereby current or former UNRWA staff members may formally dispute an administrative decision taken by the Commissioner-General of UNRWA. Both UNRWA staff members and the Commissioner-General may appeal a judgment of UNRWA DT to UNAT.

**Waiver of time limits**

When a filing is late, UNAT may, in exceptional circumstances or when the interests of justice so require, order a waiver of the time limit fixed by the Statute or Rules of Procedure and receive the filing as timely. UNAT may do so either on motion by a party or *proprio motu*. UNDT may waive deadlines for the submission of applications under Article 8(3) of its Statute and for other filings under Article 35 of its Rules of Procedure.

**Witness**

In the context of legal proceedings before the United Nations internal justice system, a witness is someone who, being sworn or affirmed, according to law, deposes as to his or her knowledge of facts in issue between the parties in a case.



## Legal references and reports<sup>21</sup>

### Administrative Instructions

- ST/AI/371 (Revised disciplinary measures and procedures)
- ST/AI/1998/1 (Payment of income taxes to United States tax authorities)
- ST/AI/1998/9 (System for the classification of posts)
- ST/AI/1999/9 (Special measures for the achievement of gender equality)
- ST/AI/2002/3 (Performance appraisal system)
- ST/AI/2006/3 (Staff selection system)
- ST/AI/2006/4 (Official travel)
- ST/AI/2010/3 (Staff selection system)
- ST/AI/2010/4/Rev.1 (Administration of temporary appointments)
- ST/AI/2010/5 (Performance management and development system)
- ST/AI/2011/4 (Education grant and special education grant for children with a disability)
- ST/AI/2013/4 (Consultants and individual contractors)

### Charter of the United Nations

- Article 2(7)
- Article 97
- Article 101(1)
- Article 101(3)
- Article 105

### Chicago Convention on International Civil Aviation of 4 April 1947

### Code of Conduct for Legal Representatives and Litigants in Person

### Convention on the Privileges and Immunities of the United Nations

### Former 100-series of the Staff Rules (see ST/SGB/2018/1, Staff Rule 13.4)

- Rule 101.2(a)
- Rule 104.12(b)
- Rule 104.13
- Rule 105
- Rule 107
- Rule 110.2
- Rule 112.2(a)
- Rule 112.2(b)

### Former 300-series of the Staff Rules (see ST/SGB/2018/1, Staff Rule 13.6)

- Rule 304.1

### General Assembly resolution 13(I) (Organization of the Secretariat) of 13 February 1946

### General Assembly resolution 973(X) (Use of income derived from the Staff Assessment Plan) of 15 December 1955

### General Assembly resolution 51/226 (Human resources management) of 3 April 1997

### General Assembly resolution 63/250 (Human resources management) of 24 December 2008

### General Assembly resolution 63/253 (Administration of justice at the United Nations) of 24 December 2008

### General Assembly resolution 70/244 (United Nations common system: report of the International Civil Service Commission) of 23 December 2015

### General Assembly resolution 71/263 (Human resources management) of 23 December 2016

### Guiding principles of code of conduct for OSLA-affiliated counsel in the United Nations

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<sup>21</sup> Legal instruments and reports have been listed in alphabetical and chronological order. Some of the legal instruments have been abolished and replaced since their application by the Tribunals. The legal instruments governing the United Nations Secretariat are available at <https://hr.un.org/handbook/source>.

## International Civil Aviation Organization (ICAO) Service Code

- Article XI

Report of the Advisory Committee on Administrative and Budgetary Questions (A/65/537) of 22 October 2010

Report of the Fifth Committee (A/2615) of 7 December 1953

## Secretary-General's Bulletins

- ST/SGB/1999/4 (Family and child support obligations of staff members)
- ST/SGB/2002/13 (Status, basic rights and duties of United Nations staff members)
- ST/SGB/2003/13 (Special measures for protection from sexual exploitation and sexual abuse)
- ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations)
- ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority)
- ST/SGB/2009/9 (Learning and development policy)
- ST/SGB/2009/10 (Consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 June 2009)
- ST/SGB/2010/3 (Organization and terms of reference of the Office of Administration of Justice)
- ST/SGB/2010/9 (Organization of the Department of Management)
- ST/SGB/2011/10 (Young professionals programme)

## Staff Regulations and Rules of the United Nations (ST/SGB/2018/1)

- Regulation 1.1(f)
- Regulation 1.2(b)
- Regulation 3.3(f)(i)
- Regulation 4.1
- Regulation 4.2
- Regulation 9.3
- Rule 1.2(b)
- Rule 1.3(b)
- Rule 3.18(c)
- Rule 4.3
- Rule 4.9(a)
- Rule 4.12
- Rule 4.13
- Rule 4.17
- Rule 9.6
- Rule 10.2(b)
- Rule 10.4
- Rule 11.2(a)
- Rule 11.2(b)
- Rule 11.2(c)
- Rule 11.2(d)
- Rule 11.4(d)
- Rule 11.5(d)
- Rule 12.3
- Rule 13.1
- Chapter X
- Annex D

## Standards of Conduct for the International Civil Service

### Statute of the former United Nations Administrative Tribunal

- Article 7

### United Nations Appeals Tribunal (UNAT) Rules of Procedure

- Article 7(1)
- Article 7(2)
- Article 13
- Article 22
- Article 23
- Article 27

### United Nations Appeals Tribunal (UNAT) Statute

- Article 2(1)
- Article 2(9)
- Article 2(10)
- Article 3(1)
- Article 3(2)
- Article 7(1)
- Article 7(3)
- Article 7(5)

- Article 9(1)
- Article 9(2)
- Article 9(3)
- Article 9(5)
- Article 10(2)
- Article 11(4)
- Article 22
- Article 23

#### United Nations Dispute Tribunal (UNDT) Rules of Procedure

- Article 7
- Article 8(6)
- Article 12
- Article 13
- Article 14
- Article 16(2)
- Article 18(2)
- Article 19
- Article 27
- Article 28
- Article 29
- Article 30
- Article 32

#### United Nations Dispute Tribunal (UNDT) Statute

- Article 2(1)
- Article 2(2)
- Article 2(7)
- Article 2(9)
- Article 3(1)
- Article 4(2)
- Article 8(1)
- Article 8(3)
- Article 9(1)
- Article 10(2)
- Article 10(4)
- Article 10(5)
- Article 10(6)
- Article 10(7)
- Article 10(8)
- Article 11(3)
- Article 12(1)

#### United Nations Joint Staff Pension Fund (UNJSPF) Regulations, Rules and Pension Adjustment System

- Article 6(a)
- Article 24 (as amended, 1 April 2007)
- Article 45
- Article 48
- Annex I, Section K
- Annex IV, paragraph 26

#### United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Area Personnel Directive A/9/Rev.10

#### United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Area Staff Regulations

- Regulation 9.1
- Regulation 10.2

#### United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) Area Staff Rules

- Rule 109.4
- Rule 110.1

#### United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) International Staff Regulations

- Regulation 10.2

#### Universal Declaration of Human Rights



