



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2024-UNAT-1499

**Philippe Schifferling
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Katharine Mary Savage Judge Leslie F. Forbang
Case Nos.:	2023-1874 & 2024-1894
Date of Decision:	25 October 2024
Date of Publication:	11 December 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant: Cristián Gimenez Corte

Counsel for Respondent: Angélique Trouche

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Mr. Philippe Schifferling, a former staff member of the United Nations Office for Project Services (UNOPS), contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the decision to charge him with misconduct during the disciplinary process (the contested decision).

2. He subsequently filed a motion seeking to “join [to his case] the Secretariat” which he considered to be “a necessary party” to the proceeding (the Motion). By Order No. 118 (NY/2023) dated 26 October 2023 (impugned Order), the UNDT dismissed Mr. Schifferling’s Motion for lack of merit. Mr. Schifferling filed an interlocutory appeal against the impugned Order (Case No. 2023-1874).

3. On 4 December 2023, the Dispute Tribunal issued Judgment No. UNDT/2023/134 (impugned Judgment), by which it dismissed Mr. Schifferling’s application contesting the Administration’s decision to charge him with misconduct as not receivable *ratione materiae* as the decision to charge for misconduct was an interim step in the disciplinary process and lacked direct legal effect. Mr. Schifferling also appeals this impugned Judgment (Case No. 2024-1894).

4. By Order No. 573 (2024) dated 25 July 2024, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) ordered that “the appeals filed in Case Nos. 2023-1874 and 2024-1894 be consolidated for all purposes”.

5. For reasons that follow, we dismiss the appeals, and affirm the impugned Order and Judgment.

Facts and Procedure

6. By letter dated 22 June 2022 from a UNOPS legal advisor, Mr. Schifferling was charged with misconduct for certain allegations of wrongdoing.¹

7. On 27 July 2022, Mr. Schifferling filed a reply to the Charge Letter in which he requested UNOPS to dismiss all charges against him.²

¹ Impugned Judgment, para. 7.

² *Ibid.*, para. 8.

8. On 20 August 2022, Mr. Schifferling requested management evaluation of the UNOPS decision dated 22 June 2022 to charge him with three cases of misconduct.³
9. At the end of August 2022, Mr. Schifferling separated from the Organization upon the expiration and non-renewal of his appointment.⁴
10. On 15 December 2022, Mr. Schifferling filed an application before the UNDT contesting the decision to charge him with misconduct.⁵
11. On 20 December 2022, Mr. Schifferling received notification that his request for management evaluation was not receivable because the decision to charge him was not an administrative decision.⁶
12. On 9 January 2023, Mr. Schifferling was informed that the UNOPS Executive Director determined that his misconduct warranted the measure of dismissal and that, pursuant to a UNOPS policy provision, his UNOPS records would be changed to state the reason for his separation was dismissal.⁷
13. On 16 January 2023, the Secretary-General filed his reply to Mr. Schifferling's application, arguing that the application was not receivable as the contested decision was an intermediate, and not a final, decision.⁸
14. On 26 October 2023, following a Case Management Discussion, the UNDT issued Order No. 118 (NY/2023) ordering the parties to file their respective closing statements on receivability of the application by 9 November 2023.⁹
15. On 9 November 2023, both parties filed their closing statements.¹⁰
16. On 24 November 2023, Mr. Schifferling filed an interlocutory appeal of Order No. 118 (NY/2023), and the Secretary-General filed his answer on 18 December 2023.

³ *Ibid.*, para. 9.

⁴ *Ibid.*, para. 10.

⁵ *Ibid.*, para. 1.

⁶ *Ibid.*, para. 11.

⁷ *Ibid.*, para. 12.

⁸ *Ibid.*, para. 2.

⁹ *Ibid.*, para. 4.

¹⁰ *Ibid.*, para. 5.

17. On 4 December 2023, the Dispute Tribunal issued Judgment No. UNDT/2023/134 by which it dismissed Mr. Schifferling's application contesting the Administration's decision to charge him with misconduct as not receivable *ratione materiae*. The Dispute Tribunal held that the decision to charge a staff member with misconduct is not reviewable as it is an internal managerial intermediary step taken in a disciplinary process and as such did not have direct legal effects.

18. On 5 February 2024, Mr. Schifferling filed an appeal of the impugned Judgment. The Secretary-General filed his answer on 22 March 2024.

19. By Order No. 573 (2024) dated 25 July 2024, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) ordered that "the appeals filed in Case Nos. 2023-1874 and 2024-1894 be consolidated for all purposes".

20. On 7 October 2024, Mr. Schifferling filed a Motion to Stay the Proceedings (Motion to Stay). The Secretary-General filed his response on 11 October 2024. The Appeals Tribunal denied the Motion to Stay for the reasons set out below.

Submissions

Mr. Schifferling's Appeals

Order No. 118 (NY/2023)

21. Mr. Schifferling contends that the UNDT erred in law in denying his Motion to join the United Nations Secretariat (Secretariat) to his application. He asks that the Secretariat should be requested to join since the Secretariat "has a legitimate interest in the outcome of this proceeding" in accordance with Article 11 of the Rules of Procedure of the Dispute Tribunal (UNDT Rules). The legitimate interests of the Secretariat in the outcome are "the contended application of the 'Memorandum between France and the UN,' to which the Secretariat and France are parties[;] the UNOPS accusations of espionage and corruption against France, a UN Member State[; and] the authority of UNOPS to punish a national French delegate".

22. Mr. Schifferling submits that Judgment No. UNDT/2009/10 in the case of *Campos v. Secretary-General of the United Nations* is a comparable precedent which is applicable to the instant case. In that case, one of the original parties to the dispute claimed that a third party was involved in irregular activities that damaged or had an influence over the original

party. Consequently, the UNDT decided to offer that third party the possibility to join the proceedings, as it may have a legitimate interest in the outcome of the proceedings.

23. Mr. Schifferling requests that the Appeals Tribunal reverse the impugned Order and request the Secretariat to join the proceedings.

Judgment No. UNDT/2023/134

24. Mr. Schifferling argues that the UNDT erred in procedure, such as to affect the decision of the case by ruling on receivability when, in his view, the issue of receivability was moot as the case had already moved to the trial stage/discussion on the merits. By Order No. 53 (NY/2023), the UNDT gave him an opportunity to produce additional evidence, which he then produced. On 15 August 2023, he filed his submission, strictly following the UNDT's Order requesting the production of new evidence, the testimony of a number of witnesses, and his personal appearance at the hearing. Order No. 53 (NY/2023) already produced substantive legal effects, and the UNDT had no authority under its Statute to revoke *proprio motu* its own Order to the detriment of Mr. Schifferling's acquired rights.

25. Mr. Schifferling further submits that the Dispute Tribunal erred in law in considering that the decision to charge him was not an administrative decision. According to him, the Charge Letter had already produced legal effect, given that UNOPS had purportedly maintained him in an indefinite status of a "charged person" leaving him indeterminately prosecuted, since, at the time of the application, he had not been sanctioned, but also never absolved. He avers that he had been placed on administrative leave for more than nine months which, he claims, was a breach of his due process rights.

26. Furthermore, Mr. Schifferling was eventually separated from service at the end of August 2022, imposing on him another *de facto* sanction, without any decision taken from a competent authority, following a due process of law. It was only after he had submitted his case before the UNDT in December 2022 that the Secretary-General decided to finally formally sanction him in January 2023. It is clear, therefore, that as a last-minute reaction to Mr. Schifferling's application, UNOPS needed to rush and issue the official decision, which merely formalized a *de facto* sanction that had already been imposed on Mr. Schifferling much earlier. UNOPS's decision to charge him has thus produced multiple harmful effects, directly affecting Mr. Schifferling rights under the Staff Regulations and Rules.

27. Finally, the Dispute Tribunal committed an error in procedure, such as to affect the decision of the case in disregarding his motion to join the Secretariat to the judicial process.

28. Mr. Schifferling requests an oral hearing before the UNAT. Since the UNDT application was dismissed based on non-receivability, Mr. Schifferling was deprived of his right to produce evidence, despite the fact that the UNDT had already issued an order instructing the parties to produce evidence and to call witnesses.

29. Mr. Schifferling requests that the Appeals Tribunal reverse the impugned Judgment, rescind the contested administrative decision, order the restoration of all the corresponding entitlements established in the Staff Regulations and Rules and award compensation for harm suffered as a consequence of the unlawful decision to charge him in the equivalent of two years' net base salary.

The Secretary-General's Answers

Order No. 118 (NY/2023)

30. The Secretary-General contends that the interlocutory appeal is not receivable. The UNAT has found that an appeal against an order is receivable when the UNDT has clearly exceeded its jurisdiction, when the issue cannot be properly raised later in an appeal against the final judgment on the merits, or if the UNDT's error is "irremediable". The UNAT has made clear that appeals of interlocutory decisions on matters of evidence, procedure, and trial conduct, as in the present case, are not receivable. Consequently, the interlocutory appeal is not receivable.

31. The Secretary-General contends that in addition to not being receivable, the interlocutory appeal also has no merit. The UNDT has broad discretion in case management matters, such as in the instant case, and Mr. Schifferling fails to demonstrate that the UNDT misused this discretion. Further, Mr. Schifferling's request that the Secretariat join the proceedings has no basis. As his application was not receivable, there was no need to join a party to the proceedings in order to adjudicate the instant case on the merits. The Secretary-General contends that Mr. Schifferling refers to Article 11 of the UNDT Rules as a legal basis for his Motion for the first time on appeal, and as a new argument, it lacks receivability. In any case, pursuant to this provision, the UNDT may join a party to a case if it determines that "that party has a legitimate interest in the outcome of the proceedings". Mr. Schifferling fails to demonstrate that the UNDT should have determined

that such legitimate interest existed for the Secretariat and instead relies on his own interests, which is not covered by Article 11 of the UNDT Statute.

32. As to Mr. Schifferling's argument that some of the facts covered by the Charge Letter relate to the year 2017 when he was not a UNOPS staff member, but a gratis personnel at the Secretariat, the Secretary-General submits that separately administered funds and programmes have the delegated authority to administer possible violations of the Staff Regulations and Rules that occurred when the staff member concerned was working in a different part of the United Nations system. Moreover, in the impugned Judgment, the UNDT also noted that the application was unequivocally directed against the Charge Letter issued by UNOPS.

33. The Secretary-General therefore requests that the UNAT affirm the impugned Order and dismiss the interlocutory appeal.

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34. The Secretary-General contends that Mr. Schifferling fails to demonstrate any error on the part of the UNDT. First, Mr. Schifferling does not identify a legal basis for his argument that the UNDT could not rule on receivability in the Judgment because it had already moved on to the trial stage by giving Mr. Schifferling an opportunity to produce additional evidence in its Order No. 53 (NY/2023). His argument is based on a misinterpretation of that Order that clearly showed the UNDT had not yet ruled on the receivability of the application. Also, contrary to Mr. Schifferling's assertion, the UNDT did not order a hearing to discuss the merits but rather expressly stated in its Order that it was for the assigned Judge to determine whether a hearing was necessary. Therefore, there is no merit to his argument that his claim had already been found receivable and that the discussion had purportedly moved to the merits following Order No. 53 (NY/2023).

35. Second, the Secretary-General avers that there is no merit in Mr. Schifferling's argument that the Charge Letter was an appealable administrative decision and that the UNDT purportedly erred in finding otherwise. It has been the UNAT's consistent case law that preliminary or intermediate acts are not appealable before the UNDT. The UNDT correctly determined that a "charge is but one of several steps in a disciplinary process"¹¹ and that Mr. Schifferling's reference

¹¹ *Ibid.*, para. 34.

to the fact that at the time of the application he had not been sanctioned or absolved speaks of future action with the potential to affect his rights, “sanction or not”.

36. The Secretary-General contends that Mr. Schifferling’s claims that being charged for nine months produced legal effects by breaching his due process rights enshrined in Staff Rule 10(3) has no merit. The UNDT was correct to find that there was no direct legal effect on him. His claim that he was charged “indeterminately” must fail.

37. The Secretary-General contends that there is no merit to Mr. Schifferling’s argument that the UNDT erred in rejecting his plea that the Secretariat be joined to the proceedings.

38. In addition, there is no basis to Mr. Schifferling’s request for an oral hearing and for compensation. Given that the application was not receivable and that Mr. Schifferling fails to show any error by the UNDT, this case is a straightforward matter of law, which should be decided without a hearing before the UNAT.

39. Finally, in the absence of receivability and illegality, Mr. Schifferling’s claim for compensation must be rejected.

40. The Secretary-General requests that the UNAT affirm the impugned Judgment and dismiss the appeal.

Considerations

Preliminary Issues

Motion to Stay

41. Shortly before the start of the Appeals Tribunal session, Mr. Schifferling filed a Motion to Stay the Proceedings. He says that the French authorities initiated a criminal investigation against him based on the same allegations of wrongdoing that are the subject of the contested decision and investigation. The preliminary criminal investigation against Mr. Schifferling was opened in December 2020. On 20 March 2024, Mr. Schifferling was summoned for questioning in a hearing which included questions on the UNOPS investigation and charges. He was requested to, and did, provide further information in the national investigation. Mr. Schifferling argues that the national investigation seems now to be at the concluding stage and that the final decision regarding him will be issued in the “near future”. That decision will

produce “legal effects” over the Appeals Tribunal proceedings, namely if they clear him of any wrongdoing, this would be a key piece of evidence that would benefit his defense before the Appeals Tribunal and could render the UNOPS charges “moot”. Furthermore, the French criminal investigation involving Mr. Schifferling underscores his argument of the lack of jurisdiction of UNOPS to investigate him. In support of his Motion to Stay, he relies on Appeals Tribunal Order No. 406 (2021) in the *Fayek-Rezk* case.¹² Staying the proceedings at this stage would help the Appeals Tribunal deliver a fair and final decision.

42. The Secretary General opposes the Motion.

43. We dismiss the Motion for the following reasons.

44. First, Order No. 406 (2021) does not assist Mr. Schifferling as the stay in that appeal was granted for entirely different reasons. In that case, the appellant died after filing the appeal and the Appeals Tribunal had not been notified of authorization allowing counsel for the now-deceased appellant to represent the appellant’s estate. The proceedings were stayed due to the death of appellant and to allow a representative to be appointed. This is not applicable to the present case.

45. Second, the issue in the present appeal is whether the Dispute Tribunal erred in dismissing the application for the lack of receivability *ratione materiae*, namely whether the contested decision is an appealable administrative decision. In making this determination, the merits of the misconduct charges and allegations are not in issue and the outcome of national proceedings will not impact the determination of the question of receivability.

46. Therefore, we find that staying the appeal proceedings to allow national proceedings to be concluded would simply delay the timely resolution of the appeal and a stay is not “appropriate for the fair and expeditious management of the case and to do justice to the parties”.¹³

¹² *Maha Fayek-Rezk v. Secretary-General of the United Nations*, Order No. 406 (2021).

¹³ UNAT Rules, Article 18bis(1).

Request for an Oral Hearing

47. As a further preliminary matter, Mr. Schifferling requests an oral hearing before the Appeals Tribunal pursuant to Article 8(2) and (3) of the Statute of the Appeals Tribunal (UNAT Statute) and Article 18(1) of the Rules of Procedure of the Appeals Tribunal (UNAT Rules).

48. The UNAT Statute provides that the Appeals Tribunal shall decide whether the personal appearance of the appellant or any other person is required at oral proceedings and the appropriate means to achieve that purpose; and the judges assigned to a case will determine whether to hold oral proceedings. In turn, the UNAT Rules stipulate that the judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.

49. Mr. Schifferling's argument for an oral hearing is that he was deprived at the Dispute Tribunal of his right to produce evidence despite the fact that the Dispute Tribunal had already issued an order instructing the parties to produce evidence and to call witnesses.

50. However, the issues in the appeal concern the receivability of the challenge of the contested decision and the Dispute Tribunal Order. Generally, the issue of receivability is a legal issue where facts relevant to receivability are not in dispute. Therefore, the issue is not one that requires an oral hearing to hear evidence or require the personal appearance of an appellant or any witness. An oral hearing would not assist in the expeditious and fair disposal of the appeals. We have extensive submissions from both parties and the record of the Dispute Tribunal. This is sufficient to decide the issues of receivability.

51. The request for an oral hearing is denied.

Appeal of Judgment No. UNDT/2023/134

i) Whether the Dispute Tribunal erred in procedure

52. Mr. Schifferling says that the Dispute Tribunal committed an error of procedure. He says the question of receivability as decided by the Dispute Tribunal was moot on the basis that the application had moved to the trial stage where the Tribunal had issued case management orders, specifically Order No. 53 (NY/2023), and scheduled the matter for a hearing.

53. We find no merit to this claim.

54. Article 19 of the UNDT Rules gives discretion to the Dispute Tribunal at any time to issue an order or give any direction which appears to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

55. As a result, the Dispute Tribunal issued case management orders including Order No. 53 (NY/2023) which gave Mr. Schifferling the opportunity to indicate whether he wished to adduce any further evidence and to file a rejoinder to the Secretary-General's reply "in particular to the contentions concerning receivability of the application".¹⁴

56. The terms of the Order clearly show that the issue of receivability was alive and not moot. In the impugned Judgment, the Dispute Tribunal held that "requesting the parties to clarify their positions or to agree to streamline the issues by filing submissions whether as rejoinder or counter-rejoinder or otherwise does not signify that a matter is receivable".¹⁵

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

58. Rather, Article 2(6) of the UNDT Statute provides that "[i]n the event of a dispute as to whether the Dispute Tribunal has competence under the present statute, the Dispute Tribunal shall decide on the matter".

59. This is because the Dispute Tribunal's competence is entirely based on an application being receivable pursuant to the requirements of the applicable legal framework. The determination of its competence can be exercised *sua sponte* and even if the parties do not raise the issue, because it constitutes a matter of law, and the UNDT Statute prevents the UNDT from receiving a case which is non-receivable.¹⁶ The parties do not "acquire rights" to preclude the Dispute Tribunal from determining competency as a result of case management orders being issued. Otherwise, this would allow the parties, either deliberately or by negligence, to empower the Dispute Tribunal with jurisdiction in excess of the parameters established for it.¹⁷

¹⁴ *Schifferling v. Secretary-General of the United Nations*, UNDT Order No. 53 (NY/2023).

¹⁵ Impugned Judgment, para. 17.

¹⁶ *Ali v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-773, para. 17; *Christensen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-335, para. 20.

¹⁷ *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406, para. 28.

60. Mr. Schifferling also says the Dispute Tribunal erred in procedure in disregarding his Motion to join the United Nations Secretariat which has a legitimate interest in the outcome of the proceeding, pursuant to Article 11 of the UNDT Rules. He also appeals the interlocutory order denying this motion to join the Secretariat on an error of law in a separate appeal. We will deal with some of those arguments below, but in summary, we find that the Dispute Tribunal did not err in law or procedure in denying this motion.

61. Article 11 provides that the “Dispute Tribunal may at any time, either on the application of a party or on its own initiative, join another party if it appears to the Dispute Tribunal that that party has a legitimate interest in the outcome of the proceedings”.

62. We find that there was no error in procedure in denying the Motion to join the Secretariat. The Dispute Tribunal heard from both parties and made a timely determination on the Motion and as such acted with procedural fairness. Further, we have consistently held that as a court of first instance, the UNDT is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties.¹⁸

63. As stated by the Dispute Tribunal in the impugned Judgment,¹⁹ the contested decision was issued by UNOPS and not the Secretariat. Given the determination that the application is not receivable, there is no basis to find that joining the Secretariat would have had any impact on the outcome of the application.

64. Therefore, there is no merit in Mr. Schifferling’s claim that the Dispute Tribunal erred in procedure in denying to join the Secretariat to the proceedings.

ii) *Whether the Dispute Tribunal erred in finding the Charge Letter was not an appealable administrative decision*

65. Mr. Schifferling contends that the Dispute Tribunal erred in law in finding that the Charge Letter was not an appealable administrative decision and therefore finding that the application was not receivable *ratione materiae*.

¹⁸ *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-981, para. 48.

¹⁹ Impugned Judgment, para. 42.

66. Article 2(1)(a) of the UNDT Statute provides that the Dispute Tribunal is competent to hear and pass judgment on an application filed by an individual to appeal “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms ‘contract’ and ‘terms of appointment’ include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance.”

67. The “jurisdictional precondition” for the Dispute Tribunal is that the contested decision constitutes an administrative decision. An administrative decision is defined as 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.²⁰ It must have a direct legal effect. The Appeals Tribunal has held that:²¹

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

The onus is on the staff member to show on a balance of probabilities that the impugned decision is an appealable administrative decision.²²

68. Mr. Schifferling says that the Charge Letter produced adverse legal effects on him as a “charged person” because UNOPS failed to conclude the investigative process in a timely manner, because he was placed on administrative leave for more than nine months, and he was separated from service in a rushed manner after he filed his application to the Dispute Tribunal.

69. However, Mr. Schifferling has not appealed the investigation process, the decision to place him on administrative leave, nor the decision to separate him from service. The Appeals Tribunal

²⁰ *Lloret-Alcañiz v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-840, para. 61.

²¹ *John O’Brien v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1313, para. 30 (internal footnote omitted).

²² *Prakash Neupane v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1378, para. 31.

has held that the latter two decisions are appealable administrative decisions,²³ but those decisions are not the subject of this application or appeal.

70. Rather, Mr. Schifferling has contested UNOPS's decision to charge him with misconduct, namely the Charge Letter. What he is challenging is the impact on him and his reputation as someone charged with misconduct. But this alone is insufficient to prove a direct and adverse impact that would be in "non-compliance with the terms of appointment or the contract of employment".

71. Deciding what is and what is not a decision of an administrative nature may be difficult and must be done on a case-by-case basis and will depend on the circumstances, taking into account the variety and different contexts of decision-making in the Organization. The nature of the decision, the legal framework under which the decision was made, and the consequences of the decision are key determinants of whether the decision in question is an administrative decision. What matters is the nature of the function performed or the power exercised.²⁴

72. In reviewing the legal framework under which the contested decision was made, we note that the Staff Regulations and Rules set out the disciplinary process as well as the authority to provide detailed policies through administrative issuances.²⁵ These Staff Regulations and Rules and issuances form part of the terms of appointment or contract of employment. They provide for reporting of suspected misconduct, reviewing of allegations, administrative leave following allegations, investigation procedures, and procedures after investigation, including the conclusion of a disciplinary process.

73. The Charge Letter is a preliminary step in the formal disciplinary process. Sections 6.5 and 6.6 of Operational Instruction Ref. OI.IAIG.2020.01, "Investigations and Measures relating to Misconduct Allegations against UNOPS Personnel", provide that if the "[human resources legal officer (HRLO)] considers that the evidence indicates that misconduct occurred, he or she shall charge the personnel with misconduct" and that the "charge letter initiates the disciplinary/administrative proceedings". In addition, the staff member is given a specified period

²³ *Gisage v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-973; *Loeber v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-844.

²⁴ *Lloret-Alcañiz* Judgment, *op. cit.*, para. 62.

²⁵ Article X of the Staff Regulations and Chapter X of the Staff Rules; Secretary-General's bulletin ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances).

of time to answer the charges and produce countervailing evidence before the Executive Director makes a decision.

74. After receiving the response to the Charge Letter and after consulting the Director, People and Culture Group and the HRLO, if the General Counsel considers that the staff member's conduct constitutes misconduct or a breach of the employment contract with UNOPS, s/he shall then make a recommendation to the Executive Director as to the appropriate disciplinary or non-disciplinary or administrative measures to be imposed. The Executive Director may decide whether or not to impose those measures. (Sections 7.1 and 7.2/Sections 8.1 and 8.2).

75. Based on this legal framework, the Charge Letter merely constitutes a preliminary step in the decision process which in and by itself had no direct legal consequences for Mr. Schifferling or his employment contract with UNOPS. This is confirmed in the Charge Letter in which the HRLO requested a reply and any countervailing evidence to respond to the allegations before making a decision.

76. Therefore, the UNDT was correct to find that the Charge Letter did not produce a direct legal effect but rather granted Mr. Schifferling an opportunity to defend himself with a view to allowing the Administration to make a fair and just final decision by either sanctioning or absolving him. This is in accordance with the terms of appointment or contract of employment and the relevant legal framework. Mr. Schifferling does not show any error with the UNDT's finding that he "continued to exercise his rights and freedoms under his contract of employment"²⁶ while being charged. As for his claim that the disciplinary process lasted too long, the UNDT correctly found that this had not been submitted to management evaluation, and as such, the UNDT was not competent to rule on it.

77. We have previously held that only final administrative decisions with direct legal effect are subject to review. "The idea is to focus judicial review pragmatically on the more important and effective administrative decisions and not on preliminary or intermediate decisions prior to a final decision being reached. Steps, including investigative reports, that are preliminary in nature 'may

²⁶ Impugned Judgment, para. 28.

only be challenged in the context of an appeal against a final decision of the Administration that has direct legal consequences”²⁷.

78. Therefore, the contested decision, i.e. the Charge Letter, did not constitute an administrative decision as contemplated in Article 2 of the UNDT Statute. The UNDT accordingly did not err in finding that the application challenging the contested decision was not receivable *ratione materiae*.

79. Lastly, we do not accept Mr. Schifferling’s argument that the Organization had no jurisdiction over him as he was purportedly not a staff member having initially been engaged as a gratis personnel serving in the Secretariat and later appointed as a staff member.

Appeal of Order No. 118 (NY/2023)

80. As indicated above, Mr. Schifferling separately appeals the Dispute Tribunal Order No. 118 (NY/2023) denying his Motion to join the Secretariat as a necessary party to his application on the basis that the Dispute Tribunal erred on question of law. However, given that the application was correctly dismissed as not receivable *ratione materiae*, the question of whether the Dispute Tribunal erred in not joining the Secretariat is moot.

81. In any event, the cases decided by the UNAT on this question indicate that while some significant interlocutory decisions will be appealable, most, including issues of admissibility of evidence, hearings, procedure and the like must await an appeal against the UNDT’s substantive or final judgment before they can be aired. Exceptions to this practice may include where the UNDT has manifestly exceeded its jurisdiction or powers in determining an interlocutory issue. A useful test to determine whether any particular interlocutory order is amenable to immediate and discrete appeal is to ask whether the rights or obligations of either party are affected irrevocably by the interlocutory order or its implementation, or, on the other hand, whether if the UNDT has erred, the decision and its effects can be justly remedied as part of a later substantive appeal.²⁸

²⁷ *Marius Mihail Russo-Got v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1300, para. 23, citing *Nguyen-Kropp & Postica v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-509, para. 33.

²⁸ *Richard Loto v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1362, para. 82.

82. In the present case, Mr. Schifferling has not shown that his rights or obligations in the application were irrevocably affected by the impugned Order and that the Dispute Tribunal erred in issuing it.

83. Finally, we recall our jurisprudence that the Appeals Tribunal should not interfere lightly with the broad discretion of the UNDT in the management of cases.

84. For the foregoing reasons, we dismiss both appeals.

Judgment

85. Mr. Schifferling's appeals are dismissed, and Order No. 118 (NY/2023) and Judgment No. UNDT/2023/134 are hereby affirmed.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Savage

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 11th day of December 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar