

Judgment No. 2019-UNAT-977

confirming that he had often worked beyond the normal hours of work due to understaffing in the Procurement Section.

11. The UNFICYP Administration has been taking advantage of Mr. Symeonides overtime work without providing any compensation over the years in violation of its responsibility to establish a normal working week for its employees. As the professional malpractice was continuous, the Dispute Tribunal should have permitted an effective toll[ing] of the applicable time limits to allow Mr. Symeonides to present his claims, and such a tolling is intuitively deemed justified.

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20. The Secretary-

25. In other words, a party may not submit additional evidence to the Appeals Tribunal if it was available to him or her and could have been submitted to the UNDT. In the absence of any reason to the contrary, we find that had Mr. Symeonides acted with due diligence, he should have been able to produce the documents before

Appeals Tribunal considers the annexes to Mr. Sy appeal not receivable, except the copy of the impugned Judgment.

29 Further, it is undeniable that the actions on the part of the Administration regarding the daily practices of its staff members might be doctrinally considered as administrative decisions. However, for the purposes of filing a valid application before the UNDT, a party must identify an administrative decision, express or implied, which has alle conditions of service.⁶ This is because the competence of the UNDT, as established by Article 2 of its Statute, is dependent upon the existence of an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. As we have stated in ., an administrative decision is a unilateral decision of an administrative nature taken by the Administration involving the exercise of 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.⁷ In the context of overtime at UNFICYP, the decision takes the form of UNFI or its lack of action on, Mr. Symeonides request for overtime compensation or compensatory time off (CTO).

30. According to Mr. Symeonides, he worked overtime for years without compensation and the issue was raised with the UNFICYP Administration. But he has been unable to provide any evidence showing that he requested overtime compensation in writing, and that the UNFICYP Administration either did not respond or responded negatively to his request for overtime compensation or CTO. As a consequence, he has not complied with the full requirements before filing an application before the UNDT.

31. It should be noted that these requirements contribute to the efficiencong (en-GB) >1(o) 17(r)8(e)] TJE

34. In view of the foregoing, the UNDT correctly determined that Mr. Symeonides application in respect of his overtime work and his allegations of harassment and abuse of authority was not receivable.