

UNDT/2009/030, Hastings

UNAT Held or UNDT Pronouncements

The meaning of any legislative provision is ascertained by the meaning of its words in the light of the intention of the rules as a whole. Where the wording of an instruction suggests that no exception is permitted, a number of common law jurisdictions have found the mandatory or directory dichotomy inappropriate. To establish the meaning and intention of a UN provision the relevant context is the hierarchy of the UN's internal legislation. This is headed by the Charter of the UN followed by resolutions of the General Assembly, staff regulation and rules, Secretary-General bulletins and then administrative instructions. Staff Rules 112.2(b) is relevant when interpreting staff rules and their operational counterparts in the administrative instructions. Exceptions under the Rules may be made by persons properly delegated by the Secretary General. An administrative instruction is not of itself a staff Rule but is the means by which such rules are put into operation. Administrative instructions may be subject to staff Rules 112.2(b) in the same way as staff rules are. A decision maker exercising powers conferred by rules and regulations is obliged to turn his or her mind to the factors which are relevant to the decision to be made. Outcome: The question of remedies is reserved as the parties are encouraged to seek a joint resolution of this issue. If they are unable to reach a resolution the parties are proposed to refer the case to mediation.

Decision Contested or Judgment/Order Appealed

The Applicant applied to the Secretary-General for an exception to be made to administrative instruction ST/AI/2006/3 to allow her to apply for a D-2 position that was more than one level higher than her P-5 personal grade. At the time of the application she was receiving a D-1 special post allowance (SPA) as she was working in the acting position for which she wished to apply. The application for an exception was refused by the Assistant Secretary-General for Human Resource Management (ASG). The Applicant sought an administrative review which upheld the original decision.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Hastings

Entity

DM

Case Number(s)

UNDT/NY/2009/087/JAB

Tribunal

UNDT

Registry

New York

Date of Judgement

7 Oct 2009

Duty Judge

Judge Shaw

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Applicable Law

Staff Regulations

- Regulation 1.1(d)

Staff Rules

- Rule 112.2(b)

UN Charter

- Article 101.3