

UNDT/2009/064, Buckley

UNAT Held or UNDT Pronouncements

One of the elements that an application for suspension of action must show is that the contested decision “appears prima facie to be unlawful”, i.e. that there is a reasonably arguable case that the contested decision is unlawful. A merely reasonable (hence legitimate in ordinary parlance) expectation of a particular outcome is not the same as a legitimate expectation that gives rise to any legal rights, and will be insufficient to establish reasonably arguable unlawfulness.

Outcome: The Judge held that there is an insufficient evidentiary basis for concluding even on a prima facie level that the contested decision of the Under-Secretary-General has been motivated by other than management considerations, and thus refused the application.

Decision Contested or Judgment/Order Appealed

The applicant applied for a P-5 position. He was subjected to a lengthy selection process, and had been given to understand that, in the ordinary course, he would be appointed to the post. When it seemed that the applicant was on the verge of appointment, he was informed that the Under-Secretary-General had decided to re-advertise the post.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Buckley

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2009/133

Tribunal

UNDT

Registry

New York

Date of Judgement

3 Nov 2009

Duty Judge

Judge Adams

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Suspension of action / interim measures
Irreparable damage

Applicable Law

Administrative Instructions

- ST/AI/2006/3

Staff Regulations

- Regulation IV

UN Charter

- Article 101

UNDT RoP

- Article 13.1

UNDT Statute

- Article 2.2