

# **UNDT/2009/083, Bye**

## **UNAT Held or UNDT Pronouncements**

In the present case, the Administration must be deemed to have made good faith efforts to identify a position for the Applicant, for it actually offered him an adequate position. For a position to be considered adequate, it is not sufficient that it is at the same level than the previous position of the concerned staff member. It is also required that it be in line with his/her skills, qualifications and experience. Anyone alleging that a given decision was based on improper motivation bears the burden of proof. Outcome: The application was rejected. UNADT Judgment No. 910 (1998)

## **Decision Contested or Judgment/Order Appealed**

The Applicant's post was abolished since the host state of the country office that he headed decided to close the office. After a temporary assignment, he was offered a position at the same level he held (P-5) in another country office located in the region of the Applicant's expressed preference (Latin America) with funding secured for one year. The Applicant declined this offer pointing out that he would not be the head of mission but the latter's deputy. Consequently, his fixed-term appointment was terminated. In the meantime, he had applied for three positions as chief of mission in Latin America, unsuccessfully.

## **Legal Principle(s)**

Former staff rule 109.1 (c) has been interpreted in the past to impose on the Administration a duty to make good faith efforts to find alternative employment for a staff member whose post has been abolished. However, it is questionable that this provision applies to holders of a fixed-term appointment, as its wording clearly refers to staff members with a permanent appointment.

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Bye

## Entity

UNOG

## Case Number(s)

UNDT/GVA/2009/026

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

29 Nov 2009

## Duty Judge

Judge Laker

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Abolition of post

Burden of proof

Non-disciplinary

## Applicable Law

Former Staff Rules

- Rule 101.2(b)
- Rule 109.1(c)