

UNDT/2009/085, Boutruche

UNAT Held or UNDT Pronouncements

The former Staff Regulations provided that: “For the purpose of these Regulations, the expressions ‘United Nations Secretariat’, ‘staff member’ or ‘staff’ shall refer to all staff members of the Secretariat [...]” Former staff rule 104.10 (a) prohibited the recruitment of the father, mother, son, daughter, brother or sister of a staff member, except where another person equally well qualified could not be recruited. It results from the foregoing that candidates who have a family relationship with a staff member working for an entity part of the UN Secretariat are precluded from recruitment to a post within the UN Secretariat. Both the UNHCR and the OHCHR are part of the UN Secretariat. Hence the Applicant’s initial recruitment by the OHCHR violated former staff rule 104.10 (a), since his brother was already working for the UNHCR. Even if the Applicant was acting in good faith, the Administration was obliged to put an end to an illegal situation, while it had to respect the acquired rights of the Applicant. As such, the Administration had to respect the expiry date of the Applicant’s fixed-term appointment, which it did. However, the refusal to appoint the Applicant to another post, at another level, did not violate his acquired rights. If, as in the present case, a legal provision is clear and does not leave room for interpretation, the Administration is obliged to adhere to it. Without modifying the text, the Administration cannot change its doctrine and apply the text less rigorously in the future.

Decision Contested or Judgment/Order Appealed

The Applicant, through an oversight, was recruited by the OHCHR though he had indicated in his P-11 and PHP that his brother was working for UNHCR. While still under a fixed-term appointment at the P-2 level, the Applicant was selected for a P-3 post, but the Administration refused to appoint him since it discovered only then that his brother was working for UNHCR. The Administration based its decision on the then applicable staff rule 104.10 (a) which, except where another person equally well qualified could not be recruited, prohibited the recruitment of a person bearing

a family relationship with a staff member (father, mother, son, daughter, brother or sister). The Administration argued that it had the right to correct an error made in the past. Consequently, at the end of his fixed-term appointment, the Applicant was separated from the Organisation.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Boutruche

Entity

UNOG

Case Number(s)

UNDT/GVA/2009/032

Tribunal

UNDT

Registry

Geneva

Date of Judgement

29 Nov 2009

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Staff selection (non-selection/non-promotion)

Selection decision

Applicable Law

Former Staff Rules

- Rule 104.10(a)

Provisional Staff Regulations and Rules

- Rule 4.7(a)