

UNDT/2009/092, Calvani

UNAT Held or UNDT Pronouncements

The Tribunal's decision to grant a suspension of action on such a decision would not have the effect of rescinding or reversing the contested decision as claimed by the Respondent, but only that of suspending temporarily, from the date of the Tribunal's decision and until such date as provided for in the UNDT statute, the legal consequences of the contested decision. The Applicant claims that the decision was not taken by the Secretary-General despite the Respondent's claims to the contrary. The Respondent refused to comply with the Tribunal's orders to submit a signed confirmation from the Secretary-General that he made the contested decision. It results from the Respondent's ill will that the proof of the identity of the author of the contested decision has not been adduced. Thus the decision to place the Applicant on administrative leave appears *prima facie* to be unlawful. Provisional staff rules 10.2(b) and 10.4 provide that "administrative leave" can be "with pay" or "without pay". Thus there are in fact two decisions within the contested decision, first the decision to place the Applicant on administrative leave and, second, the decision to deprive him of his salaries during such administrative leave. It is therefore appropriate to examine separately whether each "sub-decision" fulfills the requirements of article 2.2 of the UNDT statute to be the subject of a suspension of action. In the present case, the decision to place the Applicant on administrative leave is *prima facie* unlawful for the reason indicated above and would cause him irreparable damage. However, the Tribunal considers that there is no particular urgency for the Applicant to be reinstated in his functions. On the contrary, allowing the Applicant to continue exercising his functions while the investigation is ongoing could hinder the investigation. One of requirements of article 2.2 of the UNDT statute not being met, the Tribunal cannot order a suspension of action on the decision to place the Applicant on administrative leave. As regards the decision to deprive the Applicant of his salaries during his administrative suspension, it is *prima facie* unlawful not only for the above-mentioned reason but also because it is not based on exceptional circumstances as required by provisional staff rule 10.4(c). The damage, which is not merely financial, suffered by the Applicant as a result of the

suddenness and unexpected nature of the contested decision cannot be repaired by the possible restoration of any pay withheld or even by the award of damages. Finally, depriving the Applicant of his salaries in such a sudden and unexpected way obviously places him and his family in a situation of particular urgency.

Decision Contested or Judgment/Order Appealed

Following an audit of his institute, the Director of UNICRI was placed on administrative leave without pay pursuant to provisional staff rule 10.4. He contends, among other things, that the decision was not taken by the Secretary-General despite claims to the contrary by the Under-Secretary-General for Management and the Deputy Secretary-General.

Legal Principle(s)

The decision to place a staff member on administrative leave without pay during a certain period of time has continuous legal effects during that period of time and can only be deemed to have been implemented in its entirety at the end of the administrative leave. Accordingly, the Respondent cannot claim that the Tribunal does not have the authority to suspend the contested decision because it has already been implemented.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The decision to deprive the Applicant of his salaries while he is on administrative leave pursuant to provisional staff rule 10.4 is suspended until the management evaluation has been completed. The Applicant's request that the Tribunal order the suspension of action on the decision to place him on administrative leave is rejected.

Full judgment

[Full judgment](#)

Applicants/Appellants

Calvani

Entity

UNICRI

Case Number(s)

UNDT/GVA/2009/104

Tribunal

UNDT

Registry

Geneva

Date of Judgement

18 Dec 2009

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Suspension of action / interim measures

Applicable Law

Provisional Staff Regulations and Rules

- Rule 10.2
- Rule 10.4

UNDT RoP

- Article 13

UNDT Statute

- Article 2.2