

UNDT/2010/172, Lauritzen

UNAT Held or UNDT Pronouncements

The Tribunal found that both the decision to remove the applicant from her post and the decision to place her on SLWFP constituted a proper exercise of the Secretary-General's discretion pursuant to former staff regulation 1.2 (c) and former staff rule 105.2 (a), respectively. However, the Tribunal also considered that keeping the applicant on SLWFP for four years and four months breached staff rule 105.2 (a), as it did not serve the interests of the Organization. The Tribunal further found that this breach had caused the applicant moral injury for which she should be compensated.

Disguised disciplinary measure: While former staff regulation 1.2 (c) gives the Secretary-General the authority to remove a staff member from his/her position in the interest of the service, if in fact such a decision is taken as a disciplinary measure, procedures applicable in case of misconduct should be followed. In the present case, however, the applicant was criticized for her incapacity to solve interpersonal problems which she contributed to create, not for conduct that could be the subject of disciplinary proceedings.

Organization of work and discretionary power: Pursuant to former staff regulation 1.2 (c), the Secretary-General has wide discretion over the organization of work. Such discretion, however, is not unfettered but is subject to the Tribunal's supervision, the extent of which has been explained by the Appeals Tribunal in Judgment 2010-UNAT-021, Asaad. While the Tribunal cannot substitute its judgment for that of the Secretary-General regarding the appropriate organization of work, it must verify that a decision in this respect has not been taken for unlawful reasons. In the present case, removing the applicant from her post was a way to put an end to a dysfunctional situation and it is not for the Tribunal to determine whether another measure could have been taken. When an organizational measure affecting a staff member is taken based on the personal circumstances of that staff member, s/he must have the possibility to present observations before the decision is taken.

SLWFP: While former staff rule 105.2 (a) allows the Secretary-General to place, at his own initiative, a staff member on SLWFP if he considers such leave to be in the interest of the Organization, such measure should only be taken in exceptional cases and for a limited period of time.

It is not in the interest of the Organization to keep a staff member on SLWFP for four years and four months without assigning him/her any work. The respondent cannot claim that it had no choice but to leave the applicant on SLWFP for more than four years. If, as stated by the respondent, it was not possible to appoint the applicant to any other post, the respondent should have drawn the consequences from that situation and it should have terminated the applicant's indefinite appointment pursuant to former staff regulation 9.1 (c). Staff members, as long as they remain in the service of the Organization, have the right not only to be remunerated, but also to be given work. Damages: Since the applicant continued to receive her salary, she did not suffer any material loss. Moral injury arising from a lawful decision cannot be compensated. Moral injury arising from an unlawful decision may be compensated provided evidence of the injury suffered is provided. In the present case, moral damages were set in lump-sum figures, not in net base salary. Costs: Article 10.6 of the UNDT Statute provides for the award of costs to a party only where the other party has manifestly abused the proceedings. Where an applicant had filed his/her application with the former UNAT, the Tribunal must examine whether under the former justice system, s/he could claim costs. The former UNAT defined in its Judgment No. 237, Powell (1979), the limited circumstances in which it might grant costs.

Decision Contested or Judgment/Order Appealed

The applicant was the UNHCR Representative (P-5) in Hungary when the High Commissioner decided to remove her from her post, with effect from 1 March 2004, because of interpersonal problems. Further to her removal, she was placed on special leave with full pay ("SLWP") as a "staff member in between assignments" ("SIBA"), pending reassignment to another position. However, the applicant was never selected for any of the positions to which she subsequently applied and remained on SLWFP until she retired four years and four months later, in June 2008. The Tribunal found that both the decision to remove the applicant from her post and the decision to place her on SLWFP constituted a proper exercise of the Secretary-General's discretion pursuant to former staff regulation 1.2 (c) and former staff rule 105.2 (a), respectively. However, the Tribunal also considered that keeping the applicant on SLWFP for four years and four months breached staff rule 105.2 (a), as it did not serve the interests of the Organization. The Tribunal further found that this breach had caused the applicant moral injury for which she should be compensated.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

USD15,000 awarded for the moral injury resulting from her remaining on SLWFP for four years and four months.

Full judgment

[Full judgment](#)

Applicants/Appellants

Lauritzen

Entity

UNHCR

Case Number(s)

UNDT/GVA/2010/025

Tribunal

UNDT

Registry

Geneva

Date of Judgement

27 Sep 2010

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Benefits and entitlements

Special leave (with or without pay)

Compensation

Non-pecuniary (moral) damages

Disciplinary matters / misconduct

Separation from service

Termination (of appointment)

Applicable Law

Former Staff Regulations

- Regulation 1.2(c)
- Regulation 9.1(c)

Former Staff Rules

- Rule 105.2(a)(i)
- Rule 105.2(a)(ii)

Related Judgments and Orders

2010-UNAT-012

2010-UNAT-021

UNDT/2010/130