

UNDT/2010/191, Garcia

UNAT Held or UNDT Pronouncements

The main legal issue in this case is whether there was a duly constituted contract between the parties. The Respondent made the bare assertion that the communication dated 21 September 2007 mistakenly referred to the cancellation of his appointment, whereas it was a withdrawal of the offer. Therefore, according to the Respondent no contract was created, the Applicant was not a staff member, and his application is not receivable. The Applicant submitted that there was a duly constituted contract between the parties. UNDT found that the offer of appointment accepted by the Applicant and the communications between the parties contained the necessary material terms for the formation of a binding contract. UNDT found that all the essential terms of the appointment were agreed by the parties and there was no basis to find that the parties intended any subsequent document to vary or add to the terms contained in the offer of appointment in any significant respect. UNDT found that there was no evidence to support the Respondent's averment that the Applicant had failed to satisfy any clearances and formalities. UNDT found that on the particular facts of the case, including the agreement reached and the actions of the parties, there was a binding contract between the Applicant and the Respondent, that the application was receivable, and that UNDP's refusal to further effectuate the employment relationship on 1 October 2007 was in breach of its contract with the Applicant. Outcome: Having determined the issue of liability in favour of the Applicant, UNDT ordered the parties to file submissions on relief.

Decision Contested or Judgment/Order Appealed

In August 2007, the Applicant received and accepted an offer of appointment from UNDP subject to "a number of clearances" and "formalities". He was to commence his duties on 1 October 2007. On 21 September 2007, the Applicant received a communication from UNDP informing him of the "cancellation of [his] appointment".

Legal Principle(s)

Offer of appointment, letter of appointment: It is not the case that the only document capable of creating legally binding obligations between the Organisation and its staff has to be called a "letter of appointment". Contracts with future date of commencement: Parties may enter into a binding contract on a particular date with a future date for commencement of duties. Evidence and pleadings: An averment in pleadings does not constitute evidence.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Garcia

Entity

UNDP

Case Number(s)

UNDT/NY/2009/112

Tribunal

UNDT

Registry

New York

Date of Judgement

25 Oct 2010

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Evidence

Applicable Law

Staff Rules

- Rule 204.2

UN Charter

- Article 101
- Chapter XV

Related Judgments and Orders

UNDT/2010/098

2010-UNAT-029