

UNDT/2011/045, Rosenberg

UNAT Held or UNDT Pronouncements

The issues before the Tribunal were whether the Applicant had a legal expectancy of renewal; whether the abolition of the Applicant's post was a valid exercise of the Organization's discretion; and whether the Applicant was fully and fairly considered for the newly created posts following a restructuring within the Organization.

Outcome: The application failed and was dismissed.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to take any further action following her report of abuse of authority and harassment.

Legal Principle(s)

On organisational restructuring: An employer is entitled to re-organise the work or business to meet the needs and objectives set by the employer. It is not for a labour court or tribunal to dictate to an employer how they should run the business or undertaking. The court will not interfere with a genuine organisational restructuring, even though it may have resulted in the loss of employment for an applicant.

Reorganising and restructuring of the workplace should not be used as a mechanism for getting rid of an employee whom management may regard as being troublesome or whose continued presence was no longer deemed desirable. Issues relating to an individual's conduct are to be dealt with through the appropriate internal procedures. On retaliation: An applicant will have to prove that the decision-maker was aware of the act which the applicant submits triggered the particular decision which was to his or her detriment. It is useful in such cases to apply the "but for" test. In other words whether, but for the act that attracts protection, the outcome would have been different or more favourable.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Rosenberg

Entity

UNDP

Case Number(s)

UNDT/NY/2010/043/UNAT/1709

Tribunal

UNDT

Registry

New York

Date of Judgement

3 Mar 2011

Duty Judge

Judge Meeran

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Disciplinary matters / misconduct

Retaliation

Non-renewal

Reason(s)

Staff selection (non-selection/non-promotion)

Applicable Law

Former Staff Rules

- Rule 204.3

GA Resolutions

- A/RES/63/253