

UNDT/2011/132, Gabaldon

UNAT Held or UNDT Pronouncements

An offer of employment and its acceptance amount to an agreement entailing rights for the Applicant: The contract by which an individual acquires staff member status can only be concluded validly on the date at which an official of the Organization signs the staff member's letter of appointment. However, as the Appeals Tribunal held, "this does not mean that an offer of employment never produces any legal effects. Unconditional acceptance by a candidate of the conditions of the offer of an appointment before the issuance of a letter of employment can form a valid contract, provided the candidate has satisfied all of the conditions. Frustration of contract: In employment law, if a contract of employment is frustrated by a supervening event, both parties are discharged from further performance of it. A frustrating event is one that is unforeseen or not in the direct control of either party. It so alters the nature of the contract that the continued employment of the employee would be radically different from what was contemplated at the time the contract was entered into. It would therefore be unjust to hold the parties to its original terms. Where a putative employee becomes ill after the agreement to employ has been concluded, the illness must be of sufficiently long lasting seriousness to amount to frustration. Competence to decide on medical fitness of a staff member: Such a decision is within the discretion of the Organization's medical service. It is not for the Tribunal to interfere with a well founded expert opinion or to substitute its own views for that of the medical service. Misleading information by the Administration: The Applicant relied, in good faith and to his detriment, on certain information given by the Administration which was wrong and unrealistically raised his expectations that his offer of employment was still alive in spite of his new illness. In acting in this way the Organization was in breach of its obligations to the Applicant to act with due diligence and fairness.

Decision Contested or Judgment/Order Appealed

The Applicant received an offer of employment from the UN Mission in Sudan (UNMIS) which was subject to certain conditions, namely, obtaining medical clearance by UNMIS medical services, lacking which the offer would automatically lapse, and submitting his diplomas and letters of reference. The Applicant accepted the offer in writing and sent the necessary documentation. He underwent the required medical examination, was medically cleared and received written confirmation that he had obtained medical clearance. Approximately two months after his medical clearance, while no letter of appointment had yet been signed, the Applicant was diagnosed with a serious illness. He informed UNMIS of the situation and gave the estimated treatment framework. He requested and obtained confirmation that the offer did not lapse but that, after his treatment, he needed to provide a medical report indicating that he was fit to fly and work in Sudan. A few months later, he produced a medical report stating that he was able “to retake his duties in his usual job”. The Medical Services Division, however, did not consider him apt to be deployed in a location such as Sudan, and the Administration subsequently informed him that the initial offer was withdrawn. A first UNDT judgment declared the case irreceivable as the Applicant was not a staff member or former staff member, but the Appeals Tribunal remanded the case to decide whether the conditions in the letter of offer were met and, in the affirmative, to decide on the merits of the application.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Judgment in favour of applicant in part (only financial compensation ordered). The Applicant was awarded compensation equivalent to three months of the net base salary for the position that had been offered to him.

Full judgment

[Full judgment](#)

Applicants/Appellants

Gabalidon

Entity

UNMIS

Case Number(s)

UNDT/GVA/2009/048/R1

Tribunal

UNDT

Registry

Geneva

Date of Judgement

19 Jul 2011

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Compensation

Remedies

Compensation (see also, Compensation)

Applicable Law

Former Staff Rules

- Rule 111.2
- Rule 304.1

Related Judgments and Orders

2011-UNAT-120

2010-UNAT-029