

UNDT/2011/144, Johnson

UNAT Held or UNDT Pronouncements

The Tribunal finds in favour of the Applicant and orders the Administration to carry out a new calculation of the 2009 staff assessment deductions that ought to be reimbursed to her, without taking into consideration her foreign tax credit. Rules governing taxation: In the Organization, as in most national systems, only the deliberative assembly may set the amount of taxes. While the executive power is responsible for setting procedural rules applicable to the collecting of taxes, it is not for that power to take decisions which modify the amount set by the assembly. Hierarchy of the Organization's internal legislation: The Controller had no authority to add to staff regulation 3.3 and administrative instruction ST/AI/1998/1 by stating in ST/IC/2010/10 that foreign tax credits ought to be applied to reduce the staff members' total income tax liability. In so providing, ST/IC/2010/10 contravenes the principle of equal treatment of staff, which was recognized by the General Assembly in both resolution 13 (I) and staff regulation 3.3.

Decision Contested or Judgment/Order Appealed

Prior to joining UNHCR in 2006, the Applicant had accumulated a foreign tax credit in her country of origin, the United States of America, while working abroad. From 2006 onwards the Administration, relying on ST/IC/2010/10, took into consideration her tax credit for the purpose of determining her US income tax. In view of the fact that the Applicant had not actually paid any US income tax (she had used her foreign tax credit instead), it refused to reimburse her staff assessment deductions in respect of her UN salary. Before the Tribunal, the Applicant challenges the decision of the Income Tax Unit not to reimburse her staff assessment deductions in respect of her 2009 UN salary and she claims reimbursement of the amounts withheld from 2006 to 2009.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Specific performance ordered.

Full judgment

Full judgment

Applicants/Appellants

Johnson

Entity

UNHCR

Case Number(s)

UNDT/GVA/2010/104

Tribunal

UNDT

Registry

Geneva

Date of Judgement

16 Aug 2011

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Taxation

Staff income tax liability

Applicable Law

Administrative Instructions

- ST/AI/1998/1

GA Resolutions

- A/RES/1/13

Information Circulars

- ST/IC/2010/10

Secretary-General's bulletins

- ST/SGB/1997/2

Staff Regulations

- Regulation 3.3(f)(i)

Related Judgments and Orders

UNDT/2011/126