

UNDT/2011/178, Gehr

UNAT Held or UNDT Pronouncements

Receivability/administrative decision: Preliminary decisions such as the choice of an appropriate basis for a staff member's performance appraisal do not have direct legal effects on his/her rights. They can only be reviewed within the context of the assessment of the final decision, that is, the outcome of the staff member's performance appraisal.

Delegation of authority: A delegation of authority should not be guessed at or presumed. It must precede the taking of a decision and is not synonymous with retrospective rubberstamping.

Classification of posts/generic job profiles: Section 2.2 of ST/AI/1998/9 does not require that requests for the classification of a post include systematically a generic job profile. In fact, the administrative instruction does not expressly refer to generic job profiles at all. Further, the wording of section 2.2(c) of ST/AI/1998/9 strongly suggests that the classification procedure applies to a "post" as defined by the Tribunal in its case law, that is, "the financial authorization given for a job to be performed", and not to generic job profiles.

Compensation: Not every violation of due process rights will necessarily lead to an award of compensation.

Outcome: Judgment in favour of applicant in part (only rescission ordered)

Decision Contested or Judgment/Order Appealed

Following a restructuring of his branch, the Applicant, a UNOV/UNODC staff member, was reassigned, at the same level, to the newly created position of Senior Legal Adviser. The UNOV Administration then proceeded to classify his position. This process culminated in the issuance of a classification notice on 15 March 2011. The Applicant challenges the classification decision, as well as the decision of his first reporting officer to use terms of reference which, he says, were not the ones used to classify his position, with a view to appraising his 2010-2011 performance.

Concerning the first decision, the Tribunal finds that, whilst UNOV had received in 1995 a delegation of authority from Headquarters to classify posts in the Professional category, the validity of such delegation was limited to one year. It

therefore considers that, at the material time, there existed no valid delegation of authority, and it rescinds the classification decision on this ground. Subsidiarily, the Tribunal notes first that the fact that the Administration proceeded to “classify” generic job profiles before it classified individual posts does not accord with the provisions of ST/AI/1998/9. Second, in view of the dates of the classification request and terms of reference used for the classification exercise, the classification of the post of Senior Legal Adviser could not have become effective as early as 1 April 2010. Concerning the second decision, the Tribunal finds that the choice of an appropriate basis for a staff member’s performance appraisal does not constitute an administrative decision within the meaning of article 2.1 of the Statute. It also dismisses the Applicant’s contention on the merits. Though the Tribunal considers that the classification decision was tainted by lack of authority, it rejects the Applicant’s claim for compensation given that he did not produce evidence of the damage, if any, suffered by him as a result of this flaw.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Gehr

Entity

UNODC

Case Number(s)

UNDT/GVA/2011/024

Tribunal

UNDT

Registry

Geneva

Date of Judgement

19 Oct 2011

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Classification (post)

Compensation

Due process

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Applicable Law

Administrative Instructions

- ST/AI/1998/9
- ST/AI/2010/5

Secretary-General's bulletins

- ST/SGB2008/5

Related Judgments and Orders

UNDT/2009/086

UNDT/2010/111

UNDT/2011/028

2010-UNAT-099

2010-UNAT-042

2010-UNAT-100

2010-UNAT-009

2011-UNAT-109

2010-UNAT-030

2010-UNAT-013