

UNDT/2011/195, Corbett

UNAT Held or UNDT Pronouncements

The Applicant also contested the adequacy of compensation paid to her for having been placed in a hostile work environment. The UNDT found that the Administration was obliged, at the expiration of the three years, to make a decision to either separate the Applicant or to grant her a permanent appointment. The Administration's reliance on former staff rule 112.2(b) (on exceptions to staff rules) to further extend her probationary contract was improper as the procedural requirements of that staff rule were not met as the Applicant did not agree to the extension. The UNDT found that the Administration failed to give proper consideration to the fact that the Applicant's performance was fully successful in the last 20 of her 36 probationary months, as determined by two rebuttal panels. The UNDT found that the Administration acted unlawfully in that it failed in its duty to give full, fair, and proper consideration to the Applicant's legitimate aspiration for a permanent appointment in November 2005. The UNDT found that had the proper procedures been followed and proper factors been taken into account, the Applicant stood a reasonable prospect of being given a permanent appointment. However, the UNDT found that the Applicant's compensation should be limited as she resigned for personal reasons and, even if she were to have been given a permanent contract, there is no certainty as to how long she would have continued in employment under such a contract. The UNDT further found that the payment of two months' salary already made to the Applicant was insufficient to compensate her for the damage she suffered in connection with the hostile work environment over an extended period of time as a staff member on a probationary appointment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision of the Administration not to grant her a permanent appointment following the expiration of her probationary appointment and to, instead, extend her probationary contract for a further period of six months, beyond the three-year limit for probationary appointments.

Legal Principle(s)

Conversion to permanent appointment: Although the decision to grant or deny permanent appointment is a discretionary decision, it is subject to certain requirements, including consideration of whether that determination was reasonably open to the Administration to make. Whilst acknowledging that it is for a staff member's managers and not for the Tribunal to make decisions as to the competence of the staff member and her or his suitability for a permanent appointment, the Tribunal may, in appropriate cases, call into question that assessment if it appears to lack essential components of rational decision-making or appears to have been arrived at in circumstances that could reasonably be considered to have been unfair. Exceptions to Staff Rules: Former staff rule 112.2(b) required exceptions to the Staff Rules to be "agreed to by the staff member directly affected". Such consent is vital for the proper application of this rule. Role of advisory bodies on selection and promotion: Whilst it is accepted that the recommendations of the Central Review Committee are not binding, the Organization's legal framework envisages the process whereby the role, functions, and recommendations of central review bodies are to be respected. Their recommendations are not to be lightly set aside and, if they are to be disregarded by management, there should be good and cogent reasons for doing so. Furthermore, there should be an audit trail, in the interests of transparency and accountability, and, in the event of a challenge, for the Tribunal to be able to assess whether there has been an error of law or breach of due process. Right to harmonious work environment: Every staff member has the right to a harmonious work environment that protects his or her physical and psychological integrity (Nwuke 2010-UNAT-099). If this right is violated, proper compensation is warranted, taking into account the particular circumstances of the case.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Corbett

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2010/006/UNAT/1583

Tribunal

UNDT

Registry

New York

Date of Judgement

15 Nov 2011

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Permanent appointment

Probationary appointment

Applicable Law

Administrative Instructions

- ST/AI/2002/3

Former Staff Rules

- Rule 104.12
- Rule 104.13
- Rule 104.14
- Rule 112.2(b)

Secretary-General's bulletins

- ST/SGB/2002/6

Related Judgments and Orders

2010-UNAT-035

2010-UNAT-044

2010-UNAT-052

2010-UNAT-099