

UNDT/2012/004, Valimaki-Erk

UNAT Held or UNDT Pronouncements

Decision affecting the applicant's rights: Since staff members have the right to apply to other positions under the Staff Regulations and Rules, they are entitled to contest a non-selection decision and a fortiori a decision imposing an additional condition for appointment after having been selected. Such a decision does affect the staff member's rights and is thus open to appeal. Lack of legal basis for the condition to renounce to permanent resident status: The General Assembly never endorsed the recommendations to approve the establishment of the condition that staff members must relinquish their permanent resident status in order to obtain an appointment with the Organization. There is no written Rules prescribing such a condition. In addition, the terms of appointment of staff members and in particular the conditions for their recruitment are governed exclusively by the Staff Regulations and Rules, and, if anything else, by the administrative issuances promulgated in application thereof. The Secretary-General exceeded his authority in prescribing the general application of an additional condition to the recruitment of international staff members, without any written Rules supporting it. Difference in post adjustment: The post adjustment paid to a staff member is linked to the duty station in which he/she serves and the difference between post adjustments in two different duty stations cannot be used to claim material damage. Material damage: Potential and future prejudice as well as that not directly related to an unlawful decision does not constitute material damage for which compensation may be claimed.

Decision Contested or Judgment/Order Appealed

The Applicant, a Finish national holding a short-term appointment, was selected for a post and offered a two-year contract, but OHRM informed her that, if she wished to be granted this contract, she would need to relinquish her permanent resident status in Australia. The Tribunal found this decision unlawful as lacking any valid legal basis. It awarded the Applicant three months' net base salary for moral damage.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Valimaki-Erk

Entity

DM

Case Number(s)

UNDT/GVA/2011/66

Tribunal

UNDT

Registry

Geneva

Date of Judgement

5 Jan 2012

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Applicable Law

Former Staff Rules

- Rule 104.4
- Rule 104.7
- Rule 104.8
- Rule 111.2(a)

GA Resolutions

- A/RES/65/247

Information Circulars

- ST/AFS/SER.A/238

Other UN issuances (guidelines, policies etc.)

- ACABQ Report A/2581

UN Charter

- Article 101

Related Judgments and Orders

2010-UNAT-076