

UNDT/2012/033, Rockcliffe

UNAT Held or UNDT Pronouncements

Outcome: Judgment for the Applicant. The parties were ordered to attempt to resolve the issue of appropriate relief, failing which it would be considered by the UNDT. The UNDT found that the requirement to take a break in service was unlawful and did not reflect the true facts as no actual break in service or separation took place. The UNDT found that there was no legal requirement for the Applicant to be placed on appointment of limited duration between 5 and 30 June 2009, and the decision to give her an appointment of limited duration was manifestly unreasonable and therefore unlawful. The UNDT found that the Applicant failed to establish that she had made requests for an exception under former staff rule 112.2(b).

Decision Contested or Judgment/Order Appealed

The Applicant, a staff member of the United Nations Stabilization Mission in Haiti (“MINUSTAH”), contested the decisions to subject her to a retroactive seven-day break in service from 29 May to 4 June 2009 and to give her an appointment of limited duration (as opposed to a fixed-term appointment) from 5 to 30 June 2009, prior to her appointment under a fixed-term contract effective 1 July 2009.

Legal Principle(s)

Break in service: In the United Nations context, a break in service is, in essence, a certain period following the ending of a contract during which a person cannot be employed by the United Nations. The decision to impose a break in service is intrinsically linked to the staff member’s contract as this period commences immediately after the end of the contract and continues for some time prior to the new appointment. Exceptions to administrative issuances other than staff rules: Although former staff rule 112.2(b) refers to exceptions to the Staff Rules, exceptions may be made by the Secretary-General also in relation to the provisions of lower instruments. Requests for exceptions: The Administration should not be excessively formalistic and demand that for a request for an exception to be considered as such, it must necessarily be addressed directly to the Secretary-General. However, such a request must be formulated by the staff member in sufficiently clear terms to be regarded by the Administration as a request for an exception to the Staff Rules or subordinate instruments under former staff rule 112.2(b). A request for an exception to the Staff Rules should be sufficiently clear to create, on reasonable assessment, the impression that what is being asked for is the consideration for an exception under the mechanism envisaged by former staff rule 112.2(b). It should not be a matter of second- guessing the staff member’s intentions.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Rockcliffe

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2009/142

Tribunal

UNDT

Registry

New York

Date of Judgement

2 Mar 2012

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Appointment of Limited Duration

Applicable Law

Administrative Instructions

- ST/AI/2010/4
- ST/AI/2010/4/Rev.1

Former Staff Rules

- Rule 112.2(b)

Related Judgments and Orders

UNDT/2011/126

UNDT/2011/189

UNDT/2011/196

UNDT/2009/075

2010-UNAT-037

UNDT/2010/042