

UNDT/2012/056, Fagundes

UNAT Held or UNDT Pronouncements

The main legal issues in this case are whether the Applicant and the Organization had entered into a contract and whether the Applicant is entitled to access to the system of justice of the United Nations. The Tribunal found that no binding contract of employment was concluded by the Applicant and the Organization. The Applicant was not a staff member at the time the decision was made not to select her for the vacancy and the Tribunal does not have jurisdiction over this case. Outcome: The application was rejected.

Decision Contested or Judgment/Order Appealed

The Applicant appealed against a decision by the Organization not to appoint her to a position for which she was initially identified as the preferred candidate but not formally appointed. The main legal issues in this case are whether the Applicant and the Organization had entered into a contract and whether the Applicant is entitled to access to the system of justice of the United Nations. The Tribunal found that no binding contract of employment was concluded by the Applicant and the Organization. The Applicant was not a staff member at the time the decision was made not to select her for the vacancy and the Tribunal does not have jurisdiction over this case.

Legal Principle(s)

Contract, definition of: Generally, a contract is an agreement giving rise to obligations which are enforced or recognised by law. Contract of employment: A contract of employment is generally formed upon unconditional acceptance of an offer containing the essential terms of the agreement. An agreement is not a binding contract if it lacks certainty, either because it is too vague or because it is obviously incomplete. Whether a binding contract has been concluded is established by

making an objective assessment of what the parties said and did at the time of the transaction. What the parties later say they intended to do is secondary to the evidence of their contemporaneous acts. Offer: An offer is an expression of willingness to enter into a contract on specified terms, made with the intention that it is to become binding as soon as it is accepted by the person to whom it is addressed. Acceptance: An acceptance is a final and unqualified expression of assent to the terms of an offer. Letter of appointment: Under staff regulation 4.1, upon appointment each staff member shall receive a letter of appointment in accordance with the provisions of Annex II to the Staff Regulations (Letters of appointment). But this does not mean that the only document capable of creating legally binding obligations between the Organisation and its staff has to be called a “letter of appointment”. What matters is the substance. Essential contractual terms: Pursuant to former staff rule 104.1, a letter of appointment contains “all the terms and conditions of employment”. Annex II to the Staff Regulations provides a list of terms that shall be included in a standard letter of appointment. They include, inter alia, the nature and the period of employment, the category and the level of the appointment, and details concerning salary and other conditions of employment (see Annex II to ST/SGB/2006/1). Not all terms and conditions specified in Annex II are necessarily essential components of a binding contract, but at the very least a contract of employment should include, as standard essential terms, the date of commencement of work, its duration, and remuneration for the work performed.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Fagundes

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2010/055/UNAT/1725

Tribunal

UNDT

Registry

New York

Date of Judgement

19 Apr 2012

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Applicable Law

Staff Regulations

- Regulation 4.1

UNDT Statute

- Article 3.1

Related Judgments and Orders

UNDT/2010/022

UNDT/2010/191

2010-UNAT-029

2010-UNAT-057

2011-UNAT-120