

UNDT/2012/141, Cranfield

UNAT Held or UNDT Pronouncements

Administration's withdrawal of unlawful individual administrative decisions which created rights: According to the Appeals Tribunal's case law, a decision creating rights cannot in principle be withdrawn by the Administration. However, staff rule 11.2 which governs the management evaluation process constitutes an exception to this principle. Thus, under this provision, the Administration is obliged to withdraw an administrative decision that is unlawful where such decision is challenged by a staff member. It is not appropriate to distinguish between the situation where the Administration finds of its own accord that an administrative decision is unlawful and the situation where it finds so following a request for management evaluation, and the same time limits should apply to both situations. Accordingly, when the Administration finds of its own accord that a decision which created rights is unlawful, it is entitled to withdraw this decision within 90 days from the date on which the staff member received notification thereof.

Decision Contested or Judgment/Order Appealed

In October 2011, the Applicant was informed that her fixed-term appointment had been converted retroactively into an indefinite appointment; she then signed her new letter of appointment. However, in January 2012, the Administration notified her that the letter of appointment could not be considered legally valid and it accordingly decided to revoke it. Before the Tribunal, the Applicant challenged the decision to modify her indefinite appointment into a fixed-term appointment. The Tribunal observed that the October 2011 letter of appointment conferred rights on the Applicant and that her good faith was not called into question. It further noted that there was no provision in the Staff Regulations and Rules which provided for the revocation of unlawful decisions by the Administration, but that such possibility was implicitly recognized by staff rule 11.2 within the framework of the management evaluation process. Assuming that the October 2011 decision to grant the Applicant an indefinite appointment was unlawful, and extending the application of the time

limits foreseen in staff rule 11.2(c) and 11.2(d), the Tribunal found that the Administration could not withdraw its October 2011 decision beyond the 90-day time limit, and it consequently decided to rescind the January 2012 decision. It also awarded to the Applicant moral damages in the amount of EUR1,000.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Cranfield

Entity

UNHCR

Case Number(s)

UNDT/GVA/2012/51

Tribunal

UNDT

Registry

Geneva

Date of Judgement

23 Sep 2012

Duty Judge

Judge Cousin

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Appointment (type)

Fixed-term appointment

Compensation

Non-pecuniary (moral) damages

Applicable Law

Administrative Instructions

- ST/AI/2009/1

Staff Rules

- Rule 11.2(c)
- Rule 11.2(d)

Related Judgments and Orders

UNDT/2009/085

UNDT/2011/062

2010-UNAT-037