

UNDT/2012/162, Schoone

UNAT Held or UNDT Pronouncements

Delegation of authority: Any withdrawal or limitation of the delegation of authority must be explicit. In the absence of a clear and formal revocation of the delegation by the delegating authority, the decision taken by the delegating authority is tainted by a substantial procedural flaw—that of the lack of competence of the decision-maker. Legal certainty and application of administrative issuances: ST/SGB/2009/10 does not provide for transitional measures in situations, such as the instant case, where an eligible staff member is assigned to a different department or office between the time when he or she is reviewed to ascertain whether he or she meets the criteria for the granting of a permanent appointment and the time when a final decision is taken by the relevant authority. However, legal certainty requires that ST/SGB/2009/10 be applied in a predictable manner and that, once the procedure foreseen in the Secretary-General's bulletin is initiated, it should be followed through. Administrative discretion and judicial review: The outcome of the consideration for conversion to a permanent appointment is a discretionary decision and in its discretion, the Administration is bound to take into account "all the interests of the Organization" as per former staff rule 104.12(b), as well as 'the operational realities' of the Organization (see GA 51/226). Alternative compensation under art. 10.5(a) of UNDT Statute: In setting the amount of alternative compensation, the Tribunal must take into account the nature of the irregularity which led to the rescission, that is, a procedural irregularity as opposed to a substantive one. It must also take into consideration that staff members eligible for conversion have no right to the granting of a permanent appointment but only that to be considered for conversion.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of the International Criminal Tribunal for the former Yugoslavia ("ICTY") who has been employed since September 2010 in the UN Secretariat in New York, contested the decision conveyed to him in October 2011

whereby the Assistant Secretary-General for Human Resources Management refused to convert his fixed-term appointment into a permanent appointment. The Tribunal noted that, while the Applicant joined the UN Secretariat in New York in September 2010, he was still in the employ of ICTY at the time when his situation was reviewed to ascertain whether or not he met the criteria for conversion. Thus, ST/SGB/2009/10 was applicable throughout the relevant period. The Tribunal further found that the contested decision was tainted by a substantial procedural flaw—that of the lack of competence of the decision-maker, the Assistant Secretary-General for Human Resources Management. It accordingly rescinded the contested decision and set at EUR 2,000 the amount of compensation that the Respondent may elect to pay to the Applicant as an alternative to the rescission.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Schoone

Entity

OAJ

Case Number(s)

UNDT/GVA/2012/42

Tribunal

UNDT

Registry

Geneva

Date of Judgement

31 Oct 2012

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Permanent appointment

Compensation

Applicable Law

Former Staff Rules

- Rule 104.12(b)
- Rule 104.13(c)
- Rule 104.14(a)(i)

GA Resolutions

- A/RES/37/126
- A/RES/51/226

Secretary-General's bulletins

- ST/SGB/2009/10
- ST/SGB/Staff Rules/1/Rev. 7/Amend. 3

UNDT Statute

- Article 10.5(a)
- Article 10.5(b)
- Article 10.7

Related Judgments and Orders

UNDT/2012/129

UNDT/2012/130

UNDT/2012/131

2010-UNAT-044

2012-UNAT-212