

# **UNDT/2013/031, Guedes**

## UNAT Held or UNDT Pronouncements

The Applicant specifically submits that the staff rules state that “[c]ontinuity of service shall not be considered broken by periods of special leave” and the Respondent may not therefore deny his eligibility on the ground that his six months of special leave without pay resulted in him not having been employed for a continuous period of five years. The UNDT rescinds the contested decision and finds that the Applicant is eligible for consideration for permanent appointment.

## Decision Contested or Judgment/Order Appealed

The Applicant contests the decision denying his request to be considered for conversion to permanent appointment on the ground that the Respondent’s reliance on OHRM’s guidelines to interpret ST/SGB/2009/10 imposes requirements that are not consistent with the bulletin.

## Legal Principle(s)

When interpreting the requirements by which a staff member can be considered for permanent appointment, the Tribunal is obliged to rely on the plain letter of the law as promulgated. In this case, there are no provisions within ST/SGB/2009/10 or the Staff Rules that would enable the Tribunal to consider that the Applicant’s SLWOP affected the continuous duration of his appointment. For the Tribunal to rule otherwise would be to give legitimacy to the misconception that OHRM Guidelines may overrule or add requirements to a duly promulgated administrative issuance.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Guedes

## Entity

UNODC

## Case Number(s)

UNDT/NY/2012/086

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

25 Feb 2013

## Duty Judge

Judge Meeran

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Appointment (type)

Continuing appointment

Permanent appointment

Benefits and entitlements

Special leave (with or without pay)

## Applicable Law

Secretary-General's bulletins

- ST/SGB/1997/1
- ST/SGB/2009/10
- ST/SGB/2009/4

Staff Rules

- Rule 5.3

## Related Judgments and Orders

UNDT/2011/126

UNDT/2012/178

UNDT/2012/208

2010-UNAT-037