

UNDT/2013/090, Candusso

UNAT Held or UNDT Pronouncements

The UNDT found that, having waited for approximately one year and a half to raise claims regarding the alleged lack of access to the United Nations cafeteria facilities, the Applicant acquiesced to the arrangements put in place by the Respondent in view of the renovation-related requirements. The UNDT further found that, in view of the CMP-related requirements that necessitated the move to the Madison Building, the Respondent put in place alternative measures that were neither unreasonable nor unfair. The UNDT rejected the application.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision of the Secretary-General rejecting his request for compensation for lack of cafeteria facilities in the building to which he was relocated in connection with the renovation of the United Nations Headquarters Complex in New York.

Legal Principle(s)

Legal standing, capacity: To have standing before the Tribunal, a staff member must show that the contested administrative decision affects her or his legal rights. The only representative capacity envisaged by art. 3.1(c) of the Tribunal's Statute is, for applications filed on behalf of incapacitated and deceased staff members. Variation of contract, acquiescence, waiver: A contract of employment is consensual and, generally, once the parties have agreed to the terms neither party may unilaterally amend them unless the original contract provides for agreed variations. In terms of fairness and reasonableness, an employer may only vary the terms and conditions of employment if there is a valid reason for the change in the conditions of employment and the change must be brought about through a fair procedure. In other words, the variation must be based on a rationalization of an economic,

technical or structural nature, and, procedurally, the employer must consult or negotiate depending on the nature of the change in the terms and conditions. However, there may be situations where the employees consent to the variation, including through a waiver of a right (i.e., an express or implied abandonment of a right). Consent to the variation need not be express, and silence coupled with tacit acquiescence in the change may stop the parties from later denying the legality of the variation. If not expressly waived, a right may be impliedly waived by acquiescence or conduct that is inconsistent with the enforcement of the right on the part of the party entitled. A party to a contract may also be deemed to have waived his rights if it does not act within a reasonable time. Waiver in simple terms means that one of the parties by his words, actions or inaction, has evinced an intention not to enforce one or more of his rights conferred by his contract. Legitimate expectation: A legitimate expectation can be created either through the application of a regular practice or through an express promise. Legitimate expectations may result in the creation of an enforceable legal right, although the application of the doctrine is subject to a number of qualifications. Not only must the expectation be “legitimate” or have some reasonable basis, the fulfilment of the expectation must lie within the powers of the person or body creating the expectation. Furthermore, a decision that has the effect of taking away such an expectation must be shown to have been unfair, not merely adverse to the interests of the individual, and considerations of public policy could override an individual’s legitimate expectations in appropriate circumstances.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Candusso

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2011/073

Tribunal

UNDT

Registry

New York

Date of Judgement

26 Jun 2013

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Applicable Law

Staff Rules

- Rule 11.2 (d)

UNDT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2010/043

UNDT/2010/060

UNDT/2010/165

UNDT/2010/218

UNDT/2011/053

UNDT/2011/101

UNDT/2012/036

UNDT/2013/006

2010-UNAT-094