

UNDT/2013/130, Hermoso

UNAT Held or UNDT Pronouncements

The UNDT found that the decision to take into account the Applicant's recent disciplinary record was not a new disciplinary sanction but an exercise of discretion with regard to a new and separate discretionary administrative process. The contested decision did not amount to unequal or unfair treatment of the Applicant as compared to staff members with existing permanent appointments. The UNDT found that the Administration considered the Applicant eligible for consideration for conversion, but determined that he was not suitable for conversion in view of the recent disciplinary sanction imposed on him. The UNDT found that the decision was not manifestly unreasonable or otherwise unlawful. Principle of equality: The principle of equality means equal treatment of equals; it also means unequal treatment of unequals. Conversion: Decisions regarding conversion to a permanent appointment are discretionary and a staff member has no automatic right to have her or his contract converted to permanent status. For a temporary appointee to be converted to a permanent status, a staff member must meet various criteria set in relevant issuances. Section 2 of ST/SGB/2009/10 provides that, when considering a staff member for conversion, the Administration is required to take into account the staff member's "qualifications, performance and conduct". Double jeopardy: The principle of double jeopardy in the context of disciplinary cases was referred to in UNDT/2011/104 and UNAdT Judgment No. 1175, Ikegame (2001). Effect of warning, censure, reprimand: In many jurisdictions, disciplinary codes and practices normally provide that written warnings, cautions, reprimands and censures have an expiry date. In the United Nations context, the written censure is the least severe of disciplinary measures. It may be combined with some other form of punishment, for example ineligibility for promotion for a specified period.

Decision Contested or Judgment/Order Appealed

The Applicant, a staff member of the Office of Internal Oversight Service ("OIOS"), contested the decision of the Assistant Secretary-General for Human Resources

Management, dated 26 October 2011, not to grant him a permanent appointment, on account of a written censure placed in his file on 3 December 2010.

Legal Principle(s)

Principle of equality: The principle of equality means equal treatment of equals; it also means unequal treatment of unequals. Conversion: Decisions regarding conversion to a permanent appointment are discretionary and a staff member has no automatic right to have her or his contract converted to permanent status. For a temporary appointee to be converted to a permanent status, a staff member must meet various criteria set in relevant issuances. Section 2 of ST/SGB/2009/10 provides that, when considering a staff member for conversion, the Administration is required to take into account the staff member's "qualifications, performance and conduct". Double jeopardy: The principle of double jeopardy in the context of disciplinary cases was referred to in UNDT/2011/104 and UNAdT Judgment No. 1175, Ikegame (2001). Effect of warning, censure, reprimand: In many jurisdictions, disciplinary codes and practices normally provide that written warnings, cautions, reprimands and censures have an expiry date. In the United Nations context, the written censure is the least severe of disciplinary measures. It may be combined with some other form of punishment, for example ineligibility for promotion for a specified period.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Hermoso

Entity

OIOS

Case Number(s)

UNDT/NY/2012/28

Tribunal

UNDT

Registry

New York

Date of Judgement

25 Oct 2013

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Permanent appointment

Applicable Law

Secretary-General's bulletins

- ST/SGB/2009/10

Staff Regulations

- Regulation 1.2

Staff Rules

- Rule 4.2

UNDT RoP

- Article 19

Related Judgments and Orders

UNDT/2011/104

UNDT/2011/144

UNDT/2011/150

UNDT/2012/178

2011-UNAT-177

2012-UNAT-192