

# UNDT/2013/138, Jitsamruay

## UNAT Held or UNDT Pronouncements

One of the eligibility requirements was five years of continuous service with the Secretariat, excluding any service with separately administered funds or programmes. The Respondent asserted that for part of the relevant period the Applicant was employed pursuant to a Memorandum of Understanding between the United Nations Secretariat and the United Nations Development Programme, a separately administered programme. The UNDT found that the Applicant was converted by the United Nations to a permanent appointment in November 2010, which meant that the Organization had accepted that he had at least five years of continuous service with the United Nations Secretariat. The Organization was bound by this finding in relation to other administrative decisions involving a determination of continuity. The UNDT further found that, in view of the circumstances of the case, it was also manifestly unreasonable to disregard the Applicant's service during the period in question when determining his eligibility for the YPP examination in 2011. The UNDT ordered the rescission of the contested decision.

## Decision Contested or Judgment/Order Appealed

The Applicant, a Security Officer with the United Nations Secretariat in New York, contested the decision declaring him ineligible to sit the Young Professionals Programme ("YPP") examination in 2011.

## Legal Principle(s)

Eligibility for conversion to permanent appointment: The requirement of a minimum of five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules (ST/SGB/2009/10, sec. 1(a)) is another way of saying that the appointment was continuously with the United Nations Secretariat for at least five years on fixed-term contracts. Exception to staff rules: If a request for an exception to the Staff Rules or lower legal instrument is made for the first time in the request for management evaluation, any response (or lack thereof) from the Administration would necessarily result in the first administrative decision that the Applicant could then contest by filing a management evaluation request.

## Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Only spec. perform. (incl. rescission with \$ alt.)

Full judgment

[Full judgment](#)

Applicants/Appellants

Jitsamruay

Entity

DSS

Case Number(s)

UNDT/NY/2012/21

Tribunal

UNDT

Registry

New York

Date of Judgement

8 Nov 2013

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Permanent appointment

Applicable Law

Administrative Instructions

- ST/AI/2003/7
- ST/AI/2010/7

Secretary-General's bulletins

- ST/SGB/2009/10

Staff Rules

- Rule 11.2(a)
- Rule 12.3(b)

Related Judgments and Orders

UNDT/2010/071

UNDT/2011/206

UNDT/2012/033

2011-UNAT-109

2013-UNAT-303