

# UNDT/2013/160, Nwuke

## UNAT Held or UNDT Pronouncements

The Tribunal concluded that the filling of the post by lateral transfer on the retirement of the incumbent was in breach of ST/AI/2003/8. Lateral transfer: The Tribunal held that as a lateral move is a discretionary measure, its use must be in accordance with the established procedural rules and must not be arbitrary or motivated by factors inconsistent with proper administration or based on erroneous, fallacious or improper motivation. The Tribunal concluded that the use of a lateral transfer in this case was an arbitrary use of the discretion conferred by ST/AI/2010/3 in light of the fact that the Administration failed to give adequate reasons, exceptional or otherwise.

## Decision Contested or Judgment/Order Appealed

The Applicant challenged a decision by the Executive Secretary (ES) of ECA to fill the post of Director, Office of Strategic Planning and Programme Management (D/OPM) by way of a lateral transfer without advertising it. The Applicant alleged that this decision was one of a series of retaliatory actions taken against him by the ES that began in 2009 when he made an allegation of prohibited conduct against him.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

The Applicant did not seek any monetary compensation nor did he claim any specific harm or damage so there was no order for compensation.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Nwuke

## Entity

ECA

## Case Number(s)

UNDT/NBI/2011/60

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

4 Dec 2013

## Duty Judge

Judge Shaw

## Language of Judgment

English

## Issuance Type

## Judgment

### Categories/Subcategories

Disciplinary matters / misconduct

Retaliation

Discrimination and other improper motives

Reassignment or transfer

Applicable Law

Administrative Instructions

- ST/AI/2003/8
- ST/AI/2010/3

## GA Resolutions

- A/RES/51/226
- A/RES/61/244
- A/RES/63/250

## Secretary-General's bulletins

- ST/SGB/2009/7

## UNDT Statute

- Article 10.5

## Related Judgments and Orders

UNDT/2009/030

UNDT/2009/095

UNDT/2011/126

2010-UNAT-042

2010-UNAT-021

2010-UNAT-081

2011-UNAT-150

2012-UNAT-200