

UNDT/2014/102, Flaetgen

UNAT Held or UNDT Pronouncements

The UNDT found that the contested decisions were lawful and that there was no evidence to support the claim that these decisions were motivated by ill will. The Tribunal also expressed its concern at the huge volume of unnecessary as well as irrelevant material that had been filed by the Applicant thereby imposing an onerous burden on the Tribunal at the expense of other cases awaiting a judicial determination.

The Tribunal noted an indication of favouritism towards a particular candidate and a desire to appease the staff council neither of which are consistent with the standard of conduct expected of international civil servants. It observed that there appeared to be an attempt by some senior managers to subvert a lawfully conducted selection exercise, by exerting pressure on the hiring manager to favour a particular candidate over others, and considered that this warranted a referral under art. 10.8 of the Tribunal's Statute.

The classification of the post: The investigation report of the UNFPA Division of Oversight Services shows that the allegations of impropriety in the selection procedure were well-founded. The Tribunal is satisfied that the decision to cancel the selection procedure was properly motivated by the results of the investigation. The Applicant failed to substantiate his allegations that he had been retaliated against because of his position on the staff council. On the contrary, there is clear evidence of an attempt by senior managers to appease the staff council.

Priority consideration: The fact that the Applicant was an internal candidate is not a guarantee that “priority consideration” would have led to his selection.

Assignment of the Applicant to a P-4 post: The Tribunal found that, in light of the circumstances of this case, the decision to assign the Applicant to a budgeted and classified post at the P-4 level at the same duty station was not unlawful.

Discontinuance of SPA: There is no merit in the Applicant's claim that SPA payment should not have been discontinued. In fact, there was no legal basis to justify the continuation of the payment of SPA at P-5 level when the Applicant was assigned to a P-4 level post.

Accountability referral: the Tribunal used its power under article 10.8 of the Statute of the Dispute Tribunal to refer this case to the Secretary-General and the UNFPA Executive Director for consideration to enforce accountability in light of the judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested three administrative decisions: (1) the decision to establish a P-4 post; (2) the decision assigning him to the said P-4 post; and (3) the decision to discontinue payment of the special post allowance (SPA) to the P-5 level that he had been receiving since April 2010.

Legal Principle(s)

Attempts to interfere with or subvert the lawful process of recruitment is in violation of the principles enshrined in the United Nations Charter and of the duty on all staff members as set out in the staff rules and regulations, in ST/SGB/2008/5 prohibiting abuse of authority and ST/SGB/2002/13 (Status, basic rights and duties of United Nations staff members). No right to promotion: A staff member who may be very experienced and highly

qualified does not have a right to be promoted although staff members do have a right to be fully and fairly considered for promotion through a competitive selection process untainted by improper factors.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Flaetgen

Entity

UNFPA

Case Number(s)

UNDT/NY/2012/61

Tribunal

UNDT

Registry

New York

Date of Judgement

21 Jul 2014

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Classification (post)

Disciplinary matters / misconduct

Abuse of authority

Retaliation

Due process

Staff selection (non-selection/non-promotion)

Referral for accountability

Applicable Law

Secretary-General's bulletins

- ST/SGB/2002/13
- ST/SGB/2008/5

Staff Regulations

- Regulation 1.1
- Regulation 1.2
- Regulation 4.4

Staff Rules

- Rule 3.10

UNDT Statute

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

2010-UNAT-088

2010-UNAT-070