

UNDT/2014/139, Nielsen

UNAT Held or UNDT Pronouncements

The Tribunal found that within UNFPA, the authority to place a staff member on SLWFP rests with the UNFPA Executive Director, and that his authority was not duly delegated to another UNFPA Official. In view of that, the Tribunal concluded that the decision-maker did not have the competence to take the contested decision, ordered its rescission and awarded USD1,000 to the Applicant as moral damages for the breach of her rights due to that fundamental procedural flaw. The compensation was restricted to the fact that the Applicant had stated on several occasions that while she did contest the reasons for her placement on SLWFP, she was nevertheless satisfied with the SLWFP as such, since she felt it was a relief from the stress she was enduring at her workplace.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision to place her on special leave with full pay (“SLWFP”) based on an allegation of disruptive behavior. The contested decision was signed by the Chief, Procurement Services Branch, UNFPA.

Legal Principle(s)

Lack of authority: 1) Competence of the decision-maker is a cornerstone of the legality of any administrative decision. When the exercise of discretionary power is under judicial review, any lack of authority leads inevitably to the rescission of the contested decision. Since the placement of a staff member on SLWFP is, by definition, a discretionary decision, it is not possible to predict what would have been the outcome on his/her situation if his/her case had been referred to the competent decision-maker in the first place. 2) In view of the fact that the legality of any exercise of administrative discretion fundamentally depends on the competence of the decision-maker, a lack of authority of that decision-maker, once established, constitutes a fundamental breach of a staff member's due process rights deserving compensation.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial compensation and specific performance

Full judgment

[Full judgment](#)

Applicants/Appellants

Nielsen

Entity

UNFPA

Case Number(s)

UNDT/GVA/2014/9

Tribunal

UNDT

Registry

Geneva

Date of Judgement

9 Dec 2014

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Special leave (with or without pay)

Compensation

Non-pecuniary (moral) damages

Applicable Law

Administrative Instructions

- ST/AI/234/Rev.1

Secretary-General's bulletins

- ST/SGB/2009/4
- ST/SGB/2011/1
- ST/SGB/2013/3

Staff Rules

- Rule 5.3(f)

Related Judgments and Orders

UNDT/2011/178

UNDT/2014/069

UNDT/2013/172

2013-UNAT-309

2013-UNAT-349