

# UNDT/2014/143, Kusuma

## UNAT Held or UNDT Pronouncements

The Tribunal ruled that the transfer within the recipient organization does not fall within the Tribunal's jurisdiction and that, hence, the application was irreceivable *ratione materiae* in this respect. Regarding UNICEF's alleged failure to intervene to prevent the Applicant's reassignment, while conceding that the Organization has a duty of care vis-à-vis its employees, the Tribunal found that such duty had not been breached in this case, since the Applicant informed UNICEF of her reassignment only a few days before she ceased being a UNICEF staff member following her inter-organization transfer. Since there was no breach by UNICEF of the Applicant's terms of appointment, there were no valid grounds for compensation; therefore, it was rightful for UNICEF to refuse to pay her compensation.

## Decision Contested or Judgment/Order Appealed

The Applicant, a former UNICEF staff member who was loaned and eventually transferred to another organization, challenged her reassignment within the recipient organization, as well as UNICEF's failure to intervene to protect her interests and UNICEF's refusal to pay her compensation in this regard.

## Legal Principle(s)

**Competence:** The Tribunal is not competent to examine applications directed against decisions emanating from an organization different from the United Nations and which is not one of the organizations or entities having concluded a special agreement under art. 2.5 of the Tribunal's Statute. **Duty of care:** the Organization has a duty of care concerning its employees. Nevertheless, the latter does not imply an obligation to take action within a matter of days when the concerned staff member omitted to timely inform his/her employer of a potential breach of his/her rights; this is all the more true when the staff member has at no point explicitly requested

his/her employer's assistance.

## Outcome

Dismissed as not receivable

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Kusuma

## Entity

UNICEF

## Case Number(s)

UNDT/GVA/2014/11

UNDT/GVA/2014/13

UNDT/GVA/2014/54

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

10 Dec 2014

## Duty Judge

Judge Laker

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Compensation

Jurisdiction / receivability (UNDT or first instance)

Subject matter (*ratione materiae*)

Reassignment or transfer

## Applicable Law

UNDT RoP

- Article 16.1

UNDT Statute

- Article 10.6
- Article 2.1
- Article 2.5

## Related Judgments and Orders

UNDT/2010/009

UNDT/2012/018

UNDT/2014/053

2012-UNAT-278

2013-UNAT-287

2013-UNAT-311