

# UNDT/2015/002, Tran Nguyen

## UNAT Held or UNDT Pronouncements

UNICEF had made the Applicant applying and being selected to a UNICEF vacant post a condition for his return. The Tribunal found that by imposing such a condition to the Applicant's return, UNICEF violated the terms of his secondment, under which the Applicant retained "rights to employment" in the releasing organization (i.e., UNICEF). Compensation in lieu of rescission: although the chain of events lead to ending the Applicant's permanent appointment with UNICEF, this was not the direct consequence of the contested decision, i.e., conditioning the Applicant's return to UNICEF service after the expiry of his secondment to his competitive selection for a vacancy. Rather, it derived from his transfer to WMO. Therefore, for the purposes of art. 10.5(b) of the Statute, the instant case does not concern "appointment, promotion or termination". Compensation in lieu of rescission, constitutes an exception to the rule, and exceptions, as a matter of principle, must be interpreted narrowly and strictly.

## Decision Contested or Judgment/Order Appealed

The Applicant, a former UNICEF staff member who had been seconded to WMO, contested the decision to refuse his return to UNICEF at the end of his secondment.

## Legal Principle(s)

Nature of the secondment: Unlike inter-organization transfers, the characteristic features of secondment are that the "service lien" or the "contractual relationship" between the seconded staff member and the releasing organization is maintained and simply suspended for the duration of the secondment and that the staff member retains a right to employment in the releasing organization at the end of his/her secondment. This must not be confused with an entitlement to a lien to a specific post, which—unlike inter-organization loans of staff—is not intrinsic to a

secondment. Rights to employment: a seconded staff member should be reabsorbed at the end of his/her secondment, all the more in case of a staff member holding a permanent appointment. At any rate, even if the term “rights of employment” were not to be interpreted as an entitlement to mandatory reabsorption, it entails, at the very least, not less than what is due to a staff member holding a permanent appointment in case his post is abolished (under staff regulation 9.3), that is, the Organization must make good faith efforts to identify a post for the staff member.

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

Only financial compensation

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Tran Nguyen

## Entity

UNICEF

## Case Number(s)

UNDT/GVA/2013/51

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

13 Jan 2015

## Duty Judge

Judge Laker

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Appointment (type)

Compensation

In-lieu compensation

## Applicable Law

Staff Regulations

- Regulation 9.3

Staff Rules

- Rule 13.1
- Rule 4.17
- Rule 9.6

UNDT Statute

- Article 10.5(b)

## Related Judgments and Orders

2010-UNAT-011

2010-UNAT-017

2012-UNAT-238