

UNDT/2015/020, Roberts

UNAT Held or UNDT Pronouncements

Was the decision based on properly promulgated legal instruments or other issuances?

The primary and binding legal instrument is ST/SGB/2009/10, to be read together with the Guidelines made thereunder. It is not for the decision-makers to operate outside the strict terms of the primary legal instrument by explicit or tacit agreement to adopt a rule of practice or procedure that is not in strict compliance with ST/SGB/2009/10 and its guidance. Above all, those making recommendations or decisions must be guided by the Organization's policies as reflected in properly promulgated administrative guidelines that remain within the parameters of the primary instrument and not through the moral precepts of any individual or group of individuals. On the role of Central Review Bodies, specifically the Central Review Panel Oversight bodies such as the CRP are an important component part of the decision-making process in ensuring procedural and substantive fairness, accountability and transparency. The effective discharge of their roles and responsibilities is essential in establishing and maintaining the legitimacy and credibility of managerial recommendations leading to fair and transparent decision-making in compliance with the Organization's commitment and duty under art. 101.3 of the UN Charter to secure the highest standards of efficiency, competence and integrity. Oversight bodies should play an important role in reviewing procedures and advising managers and should not be used, or conduct themselves in a manner, that amounts to simply rubber-stamping recommendations by managers without examining whether the manner in which the recommendations had been arrived at was in accordance with the applicable statutory instrument and guidelines. On the relevance of Hermosa UNDT/2013/130The Respondent will no doubt be aware of the fact that judgments of the first instance Tribunal are not binding. Furthermore, insofar as the Respondent's plea for consistency in judgments is concerned, he has failed to provide sufficient particulars to show how or why this Tribunal should conclude that the factual and legal matters in Hermosa are so

strikingly similar as to logically and legally lead to the same judicial outcome. It is clear that there are significant differences between the two cases. If a party is so desirous of consistency in dealing with similar issues, the onus is on that party to draw to the attention of the Tribunal any cases which they consider should be subject to an order for combined proceedings. The Administrative Law Section is best placed to identify such cases.

Referral to the Secretary-General under Article 10.8 of the Statute of the Dispute Tribunal?

The evidence in this case reveals a lack of vigilance at every level but particularly on the part of the CRP in carrying out the necessary checks and balances to ensure procedural propriety and fairness in decision making. It is for the Secretary-General to consider whether this is an isolated instance or whether any measures need to be taken to remind the review bodies of the purpose for which they have been established and the duty they have to maintain the integrity of the decision-making process by carrying out a proper oversight of the process.

The Tribunal found that the staff members making recommendations to the ASG/OHRM, and the ASG/OHRM herself, fettered their discretion by applying an unpromulgated rule that no staff member who had been subject to a disciplinary measure could receive a permanent appointment. In addition, the Central Review Panel failed to perform its crucial oversight role and its recommendation to the ASG/OHRM in respect of three different staff members did not take into account the individual circumstances of the Applicant's case. Finally, the Organization failed to follow its own guidelines on conversion to permanent appointment in that no reasoned written explanations were provided for the recommendations made by various staff members to the ASG/OHRM and there was no record of consideration being given to the gravity and timing of the sanctioned conduct. The Tribunal rescinded the decision to deny the Applicant conversion to permanent appointment and directed the ASG/OHRM to consider, within 90 days of the promulgation of the judgment, whether the Applicant's contract should be converted to a permanent appointment. The Respondent was ordered to pay to the Applicant USD 10,000 as moral damages for the anxiety and stress he suffered as a direct consequence of the decision and the manner in which he was treated.

Accountability referral: the case was referred to the Secretary-General, pursuant to art. 10.8 of the Tribunal's Statute, to consider any appropriate action to ensure that proper oversight and accountability measures are in place, with particular reference

to the role of the CRP in ensuring procedural propriety in decision-making within its remit.

Decision Contested or Judgment/Order Appealed

The Applicant, a Security Lieutenant in the Security and Safety Service, Department of Safety and Security, contested the decision of the Assistant Secretary-General, Office of Human Resources Management (“ASG/OHRM”) to deny him conversion of his fixed-term appointment to a permanent appointment because of a disciplinary measure recorded in his Official Status File.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Roberts

Entity

DSS

Case Number(s)

UNDT/NY/2012/69

Tribunal

UNDT

Registry

New York

Date of Judgement

4 Mar 2015

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Referral for accountability
Permanent appointment
Performance management
Performance evaluation
Appointment (type)
Referral for accountability

Applicable Law

Secretary-General's bulletins

- ST/SGB/2004/15
- ST/SGB/2008/5
- ST/SGB/2011/1
- ST/SGB/2011/9

Staff Regulations

- Regulation 1.2(b)

Staff Rules

- Rule 13.4

UNDT Statute

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

UNDT/2013/130

2014-UNAT-415

2013-UNAT-357

2010-UNAT-059

2010-UNAT-093

2010-UNAT-044