

UNDT/2015/117, Featherstone

UNAT Held or UNDT Pronouncements

Binding force of UNAT judgments: Judgments of the Appeals Tribunal are binding upon the parties. Their binding effect is not restricted to the orders provided under the “Judgment” section, but also extends to the other operative paragraphs, which set out the major considerations for the determinations made. **Articulation of the interest of the Organization and the criteria for conversion:** The interest of the Organization is a legitimate consideration to be taken into account when assessing the suitability of a staff member; however, as articulated in the relevant rules, it is ancillary to the two primary suitability criteria (i.e., the concerned staff member’s qualifications, performance and conduct, and the highest standards of efficiency, competence, and integrity) and is to be appraised together with, and in relation to, them, as opposed to a fully independent criterion on equal footing with the two others. **Meaning of “retroactive consideration”:** Implementing retrospectively the decisions resulting from the reconsideration exercise is not sufficient to meet the requirement of retroactive consideration. The reconsideration exercise ought not to include new circumstances that were only known when the new decisions were reached, but be limited to those known at the time of the initial conversion exercise. For the purpose of the reconsideration exercise, the Applicants’ suitability should have been appraised by reference to the relevant circumstances as they stood at the time of the first impugned refusal to convert their appointments. **Reassignment of staff members holding appointments limited to a certain entity:** The limitation of the Applicant’s appointment to service in ICTY/MICT does not preclude the possibility of reassigning them under sec. 11.1(b) of ST/AI/2010/3. **Identifying and weighing the interests of the Organization:** The Organization disposes of broad discretion to determine what the interests of the Organization are and in weighting them up together with other circumstances. The finite mandate of a staff member’s entity of employment is a factor that can be validly considered in deciding on the conversion of the Applicants’ appointment to permanent, as it is a relevant “operational reality”. However, although it is acceptable to give adequate weight to the operational realities of the entity in question, including its finite mandate, the Administration cannot rely exclusively on this circumstance. **Specific performance:** Where the judicial review concerns the exercise of discretion, the Tribunal can order specific performance, such as granting conversion to a permanent appointment, solely in the rare hypothesis where the result of the exercise of discretion is narrowed down in such a way that there is only one legally correct outcome. **Non-retroactive application of the Statute’s amendment:** An amendment of the applicable rules cannot apply to an application filed prior to the adoption of said amendment. **Publication of rules:** Staff members can only be expected to be aware of any regulations introduced if and when they have been subjected to a public announcement. Despite the absence of specific rules on the procedures for the entry into force of norms within the Organization, new rules cannot become binding until they are duly published.

Decision Contested or Judgment/Order Appealed

A retired staff member of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) contested the decision denying the conversion of her fixed-term appointment into a permanent one. This decision arose from a reconsideration exercise ordered by the Appeals Tribunal (Judgment 2013-UNAT-359) following the rescission of a non-conversion decision issued in an initial round of a one-time Secretariat wide-exercise of review for conversion to permanent appointment. Recalling the above-mentioned Appeals Tribunal’s ruling and the requirements set therein for the reconsideration ordered by it, the Tribunal found that the impugned decisions were unlawful on several accounts, but primarily in that (a) the Applicant was not considered individually in light of her proficiencies, qualifications, competencies, conduct and transferrable skills, and (b) the decision was based on the limited mandate of ICTY alone, to the exclusion of all other relevant factors. Accordingly, the Tribunal rescinded the impugned decision, ordered the matter to be remanded once again for a second reconsideration by the Administration within 90 days of the issuance of the Judgment, and awarded Applicant

EUR3,000 as moral damages.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Relief ordered: both financial compensation and specific performance.

Full judgment

[Full judgment](#)

Applicants/Appellants

Featherstone

Entity

ICTY

Case Number(s)

UNDT/GVA/2014/116

Tribunal

UNDT

Registry

Geneva

Date of Judgement

27 Nov 2018

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Permanent appointment

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Secretary-General's bulletins

- ST/SGB/2009/10

Staff Rules

- Rule 104.12
- Rule 104.13

UNDT Statute

- Article 10.5
- Article 10.6

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

UNDT/2013/172

UNDT/2015/078

2010-UNAT-061

2010-UNAT-084

2011-UNAT-110

2013-UNAT-303

2013-UNAT-309

2013-UNAT-357

2013-UNAT-358

2013-UNAT-359

2014-UNAT-410

2013-UNAT-360

2013-UNAT-372

2014-UNAT-396

2014-UNAT-409

2014-UNAT-444