

UNDT/2015/126, Kallon

UNAT Held or UNDT Pronouncements

rocedurally flawed because the ASG/OCSS failed to give the Applicant an opportunity to respond to the concerns raised in the HCC Note and to comment on any perceived concerns regarding his performance. It was also unclear from the written decisions what specific conclusions the ASG/OCSS had reached about the Applicant's responsibility for the issues raised in the HCC Note. In addition, the Tribunal was not convinced that the contested decisions would have been justified notwithstanding the breaches of due process and procedure.

Decision Contested or Judgment/Order Appealed

The Applicant filed two applications. In the first application he contested the decision of the Assistant Secretary- General, Office of Central Support Services ("ASG/OCSS") to deny him the required designation to take up the post of Chief Procurement Officer ("CPO") at the United Nations Interim Security Force for Abyei. In the second application he contested the decision of the ASG/OCSS to remove his designation as CPO for the United Nations Stabilization Mission in Haiti ("MINUSTAH").

Legal Principle(s)

On the Administration reconsidering the contested decisions after the Applicant had filed the applicationOnce an application has been filed before the Tribunal, any new decision taken by management, particularly when based on new or different information, constitutes a separate administrative decision, which should be the subject of new and distinct proceedings if the staff members wishes to contest it. The Tribunal cannot simply consider a new administrative decision, or a reconsideration of a previous decision, as part of an existing case. As noted by this Tribunal in Adundo et al. UNDT/2012/118, the Tribunal cannot adjudicate cases involving decisions of a changing nature (see also Tredici et al. UNDT/2014/114,

para. 23).Adverse decisions resulting from a negative assessment of a staff member's performanceWhere an adverse decision clearly results from a negative assessment of a staff member's performance, particularly with such drastic consequences, as a matter of fairness, the staff member should be clearly apprised of the concerns and be afforded an opportunity to respond. His or her responses should be taken into account and he or she should be informed of the conclusions reached and be allowed to make representations before the ultimate decision.On the Respondent's submission that providing the Applicant an opportunity to comment would have made "no difference" It would be wrong in principle for the Tribunal to condone a breach of the right to due process on the basis that, in the Respondent's view, it made no difference in the end. Procedural propriety and the protection of fundamental rights is a central theme pervading various issuances of the Secretary-General and the General Assembly. Adverse decisions taken as a result or as a consequence of a breach of the fundamental principle of due process cannot be regarded as fair. A breach of the right to due process is both procedurally and substantively unfair.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Kallon

Entity

MINUSTAH

Case Number(s)

UNDT/NY/2013/18

Tribunal

UNDT

Registry

New York

Date of Judgement

31 Dec 2015

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Performance management

Staff selection (non-selection/non-promotion)

Applicable Law

Administrative Instructions

- ST/AI/2004/1
- ST/AI/2010/3
- ST/AI/2010/5

Secretary-General's bulletins

- ST/SGB/2005/7
- ST/SGB/2010/2

Staff Rules

- Rule 11.1
- Rule 11.2

Related Judgments and Orders

UNDT/2012/118

UNDT/2014/114

2010-UNAT-084

2013-UNAT-311

UNDT/2011/096

UNDT/2011/104

2015-UNAT-558

2012-UNAT-222

2014-UNAT-459