

UNDT/2016/016, Benser

UNAT Held or UNDT Pronouncements

The Tribunal rescinded the decision not to grant the Applicant a continuing appointment and ordered the Respondent to grant the Applicant a continuing appointment retroactively from 7 June 2014. As the contested decision concerned a question of appointment, the Respondent was given the alternative option of paying the Applicant USD5,000 in compensation. The Applicant's request for moral damages was rejected.

Decision Contested or Judgment/Order Appealed

The Applicant, a Language Reference Assistant at the GS-7 level in DGACM contested the decision not to grant her a continuing appointment. She requested that the contested decision be rescinded and that she be granted a continuing appointment as well as compensation for the alleged breach of her due process rights and undue delays. T

Legal Principle(s)

Plain meaning rule. The Appeals Tribunal has confirmed and defined the application of the plain meaning rule in several judgments. *Ubi lex non distinguit, nec nos distinguere debemus.* According to the general legal principle of interpretation, *ubi lex non distinguit, nec nos distinguere debemus*, i.e., where the law does not distinguish, neither should we distinguish, the interpreter of the law cannot distinguish where the law does not distinguish and cannot create and/or add an exception(s) to an established rule with a general applicability and thereby limit its area of application. Interpretation of staff rule 4.16(b). Strictly applicable to: (a) the appointment to P-1 and P-2 level posts that are subject to the system of desirable ranges at the United Nations Secretariat; and (b) the appointment to all posts requiring special language competence in the United Nations Secretariat. From a

plain reading of staff rule 4.16(b)(i) it results that the provision does not include any exceptions and does not distinguish between the posts requiring language skills in the GS and the P-levels. Therefore, staff rule 4.16 is generally applicable to all appointments to posts requiring special language competence within the UN Secretariat. Pursuant to staff rule 4.14(b), a staff member in the language services needs to satisfy the following mandatory and cumulative conditions to be granted a continuing appointment: (a) the staff member in the UN Secretariat must be recruited upon successful completion of a competitive examination pursuant to staff rule 4.16; (b) the staff member must complete two years on a fixed-term appointment; (c) the staff member's service must have been satisfactory. Compensation and art. 10.5(b) of the Statute. Art. 10.5(b) of the Dispute Tribunal's Statute was amended by the General Assembly in December 2014 and that the text introduced, as a mandatory new requirement, that the Dispute Tribunal may only award compensation "for harm, supported by evidence". This requirement is both substantive, because the compensation can only be awarded for harm, and procedural, because the harm must be supported by evidence. Breach of a fundamental nature can give rise to an award of moral damages only if the harm to the staff member is supported by evidence.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial comp. and specific performance

Full judgment

[Full judgment](#)

Applicants/Appellants

Benser

Entity

DGACM

Case Number(s)

UNDT/NY/2014/60

Tribunal

UNDT

Registry

New York

Date of Judgement

8 Mar 2016

Duty Judge

Judge Greceanu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Continuing appointment

Compensation

Evidence of harm

Applicable Law

Administrative Instructions

- ST/AI/1998/4

Secretary-General's bulletins

- ST/SGB/2011/9
- ST/SGB/2014/1

Staff Rules

- Rule 4.14
- Rule 4.16