

UNDT/2016/090, Krioutchkov

UNAT Held or UNDT Pronouncements

The Tribunal found that filling a vacancy by laterally transferring a staff member holding the same grade and within the department of the vacant post, without undergoing a full-fledged selection procedure under the staff selection system, does not per se violate the applicable legal framework. Lateral transfer under sec. 2.5 of ST/AI/2010/3: Sec. 2.5 of ST/AI/2010/3 explicitly provides for the possibility of transferring staff within their departments or offices to job openings at the same level without following the procedures laid down in the staff selection system. This provision does not contradict art. 101.3 of the UN Charter or staff regulation 4.2, nor General Assembly resolutions requesting the Secretary-General to publish vacancies. Conditions for resorting to lateral transfers: Lateral transfers do not constitute an exception to the Staff Rules. Exceptions are ad hoc departures from the prescriptions set out in the rules, whereas transfers are built in the legal framework, in this case, in the staff selection system. Lateral transfers are thus not subject to the conditions of staff rule 12.3(b). The UN legislator did not place restrictions or conditions other than those laid down in sec. 2.5 of ST/AI/2010/3. Interpretation of sec. 2.5 of ST/AI/2010/3: Sec. 2.5 allows a lateral move to be effected without advertisement of the post. This does not bar the Administration from internally circulating the vacancy; such a publication is not a regular advertisement under Inspira and does not trigger the application of the general regime of the staff selection system. In addition, a staff member's transfer to a clearly distinct post should be considered as a lateral move for the purposes of ST/AI/2010/3, even if the functions of the former and the new posts are similar.

Decision Contested or Judgment/Order Appealed

The Applicant, a Russian Translator at the P-3 level, contests the decision not to evaluate/consider him for a position of P-4 Russian Reviser with UNOG, a vacancy that was filled by lateral transfer instead of through a competitive selection process.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Krioutchkov

Entity

ESCAP

Case Number(s)

UNDT/GVA/2015/115

Tribunal

UNDT

Registry

Geneva

Date of Judgement

27 Jun 2016

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Reassignment or transfer

Staff selection (non-selection/non-promotion)

Selection decision

Applicable Law

Administrative Instructions

- ST/AI/234/Rev.1

GA Resolutions

- A/RES/51/226
- A/RES/61/244

Staff Regulations

- Regulation 1.2(c)
- Regulation 4.2

Staff Rules

- Rule 101.3
- Rule 12.3(b)

UN Charter

UNDT RoP

- Article 16

Related Judgments and Orders

2012-UNAT-266

2013-UNAT-329

2010-UNAT-021

2010-UNAT-084

2011-UNAT-110