

UNDT/2016/102, El-Kholy

UNAT Held or UNDT Pronouncements

The Tribunal found that the Respondent did not comply with his obligation to make reasonable and good faith efforts under staff rules 9.6(e) and 13.1(d) to find the Applicant an alternative post. Termination of appointment: A termination of a contract of employment by reason of restructuring of the workplace is lawful provided that the Organization discharges fully its duty and obligations towards the displaced staff member in accordance with the applicable law; the latter, in the case of termination of a permanent appointment for abolition of post, is staff rules 9.6(e) and 13.1(d). Duty of good faith under staff rules 9.6(e) and 13.1(d): Staff rules 9.6(e) and 13.1(d) clearly set out the Administration's duty and obligation, with an unequivocal commitment, to give priority consideration to retaining the services of staff members holding a permanent appointment, subject to the following conditions or requirements: relative competence, integrity, length of service and the availability of a suitable post in which the staff member's services can be effectively utilized. In exercising that duty, the issue to consider for the Administration is whether there are any vacant posts for which the permanent contract holder could be considered as possibly suited to and in which his/her services could be utilized effectively. If there are such posts, a plain reading of staff rules 9.6(e) and 13.1(d) requires that the Administration has an obligation to consider retaining the services of the affected permanent contract holder in order of first preference, independently of whether he or she has applied to such post. Where a possible suitable vacant post exists prior to termination, and before proceeding to external recruitment and termination, the Administration thus has to assess the suitability of the affected unassigned permanent contract holder whose post has been abolished. Vis-à-vis a staff member recruited by an Agency, the duty under staff rules 9.6(e), (g) and 13.1(d) extends to all available suitable positions within that Agency, without any limitation to a particular department of that agency or duty station. Hierarchy of norms: the purpose of staff rules 9.6(e) and 13.1(d) and the Administration's obligation, under these provisions, to secure employment cannot be undermined by norms of a lower level. Amount of compensation (10.5(b) of the Tribunal's Statute):

If the Tribunal finds that the activating cause of a staff member's loss of employment was principally due to a fault on the Organization to fulfil its obligations under staff rules 9.6(e) and 13.1(d), it may be justified to grant compensation in excess of the two years under art. 10.5(b) of the Tribunal's Statute. However, the Tribunal may decide not to exceed that limit in case, for instance, an Applicant failed to make more efforts to apply to posts opened via a job fair. Evidence of moral damages: The requirement under art. 10.5, as amended, for supporting evidence is not restricted to the provision of reports from the medical and ancillary professions. Oral evidence is frequently accepted as being sufficient. In the absence of a hearing, it may be sufficient to arrive at an assessment on the basis of the documents. The Tribunal will subject any assertion and description of anxiety and distress to a sensible and rational examination and will arrive at a reasonable conclusion.^{1/2}

Decision Contested or Judgment/Order Appealed

The Applicant appealed the termination of her permanent appointment and her separation from service, resulting from the abolition, in March 2014, of the post she encumbered with UNDP. Following the post abolition and before being separated from service in May 2015, the Applicant went on a one-year temporary assignment. In light of some structural changes affecting a total of 1,700 staff, UNDP organized a job fair and the Applicant did not apply for any of its posts. However, she had applied for two posts outside the job fair, for which she was found not to be suitable.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial compensation and specific performance ordered.

Full judgment

[Full judgment](#)

Applicants/Appellants

El-Kholy

Entity

UNDP

Case Number(s)

UNDT/GVA/2015/148

Tribunal

UNDT

Registry

Geneva

Date of Judgement

22 Jul 2016

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Appointment (type)

Permanent appointment

Separation from service

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNDP Recruitment and Selection Policy

Staff Regulations

- Regulation 1.2(c)

Staff Rules

- Rule 13.1(d)
- Rule 9.6(a)
- Rule 9.6(c)
- Rule 9.6(e)
- Rule 9.6(f)
- Rule 9.6(g)

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2016/028

UNDT/2010/004

2010-UNAT-097