

UNDT/2016/181, Hassanin

UNAT Held or UNDT Pronouncements

The UNDT found that the Administration failed to fully honour the material provisions of staff rule 13.1 with respect to the Applicant. The UNDT found that the Organization committed material irregularities and failed to act fully in compliance with the requirements of staff rule 13.1(d) and (e) and 9(6)(e). The onus was on the Administration to carry out a matching exercise and find a suitable post for the Applicant, who was a permanent staff member, prior to opening the vacancy to others. The UNDT found that the Applicant's termination was unlawful because he did not receive proper consideration as a permanent appointee and as an elected high-level official of the Staff Union.

Decision Contested or Judgment/Order Appealed

On 24 March 2014, the Applicant, a G-4 level staff member in the Publishing Section, Meeting and Publishing Division of the Department for General Assembly and Conference Management ("DGACM"), filed an application contesting the decision to abolish his post effective 1 January 2014, and, as a result, to terminate his permanent appointment.

Legal Principle(s)

N/A International standards on retrenchment and retention: There are international norms and standards regarding the termination of employment of work due to economic, technological or structural change, and the rights of retrenched workers and of staff representatives. The International Labour Organization Convention on Termination of Employment (Convention No. C158) (1982), which contains provisions applicable to all branches of economic activity and to all employed persons (art. 2), states at art. 4 that the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service. Union membership or participation in union activities; seeking office or acting or having acted in the capacity of a workers representative; the filing of a complaint or participation in proceedings against an employer involving alleged violation of laws or regulations, shall not constitute valid reasons for termination (art. 5). Article 19 of ILO Recommendation on Termination of Employment (Recommendation No. R166) (1982), enjoins all parties concerned to seek to minimize and mitigate the adverse effects of the termination of employment of workers for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking. Amongst measures to avert or minimize termination, Recommendation No. R166 recommends, inter alia: restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal working hours. Recommendation No. R166 also emphasizes the need for established criteria for selection for termination and priority on rehiring. International standards on staff representation: The ILO Convention on the Right to Organise and Collective Bargaining (Convention No. 98) (1949), and the ILO Workers Representative Convention (Convention No. C135) (1971), state that workers representatives shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers representative or on union membership or participation in union activities, insofar as they act in conformity with existing laws or collective agreements. Article 6(2) of ILO Recommendation on Workers Representatives (Recommendation No. R143) (1971) recommends specific measures to be taken to ensure effective protection of workers representatives, inter-alia: detailed and precise definition of reasons justifying termination of employment of workers representatives, requirement of consultation with an advisory opinion from an independent body before

dismissal of workers representatives, special recourse procedure where workers representatives consider their employment has been unjustifiably terminated or they have been subjected to an unfavourable change in the conditions of employment or to unfair treatment, provision for an effective remedy including reinstatement with payment of unpaid wages and maintenance of the acquired rights and recognition of a priority to be given to workers representatives with regard to their retention in employment in case of reduction of the workforce (see art. 6 (2)(f)).

Nature of permanent appointment: The status of a “permanent” staff member signifies a particular type of an employment relationship, whereby the Organization, in recognition of the staff member’s exemplary and long service, provides her or him with additional legal protections and guarantees. It is important to keep in mind the reasons for the creation and existence of an institute of permanent staff in the context of an international organization such as the United Nations. Staff members of the Organization owe their allegiance to no national government. Having complied with all the necessary requirements and criteria for a permanent appointment, and having received such an appointment, they become entitled to certain legal protections and advantages as articulated in the Staff Regulations and Staff Rules, including as compared to staff on other types of appointments. This reasoning applies equally to permanent staff regardless of the type of their contractual arrangement.

Abolition and permanent staff: Staff rule 13.1 is clear that permanent staff on abolished posts, if they are suitable for vacant posts, have only to be compared against other permanent staff—it would be a material irregularity to place them in the same pool as continuing, fixed-term, or temporary staff members.

Termination indemnity and relief: As the Appeals Tribunal stated in Bowen 2011-UNAT-183, the Applicant’s termination indemnity should be taken into account when awarding compensation. Therefore, any amount of termination indemnity paid to the Applicant upon his separation is to be deducted from the final amount of compensation to be paid as alternative to rescission (see also Koh UNDT/2010/040 (no appeal); Tolstopiatov UNDT/2011/012 (no appeal); Cohen 2011-UNAT-131).

International standards on retrenchment and retention: There are international norms and standards regarding the termination of employment of work due to economic, technological or structural change, and the rights of retrenched workers and of staff representatives. The International Labour Organization Convention on Termination of Employment (Convention No. C158) (1982), which contains provisions applicable to all branches of economic activity and to all employed persons (art. 2), states at art. 4 that the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service. Union membership or participation in union activities; seeking office or acting or having acted in the capacity of a workers representative; the filing of a complaint or participation in proceedings against an employer involving alleged violation of laws or regulations, shall not constitute valid reasons for termination (art. 5). Article 19 of ILO Recommendation on Termination of Employment (Recommendation No. R166) (1982), enjoins all parties concerned to seek to minimize and mitigate the adverse effects of the termination of employment of workers for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking. Amongst measures to avert or minimize termination, Recommendation No. R166 recommends, inter alia: restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal working hours. Recommendation No. R166 also emphasizes the need for established criteria for selection for termination and priority on rehiring.

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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

Hassanin

Entity

DGACM

Case Number(s)

UNDT/NY/2014/20

Tribunal

UNDT

Registry

New York

Date of Judgement

7 Oct 2016

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Appointment (type)

TEST -Rename- Benefits and entitlements-45

Separation from service
Termination (of appointment)
Applicable Law
Administrative Instructions

- ST/AI/293

Staff Regulations

- Regulation 1.2
- Regulation 9.3(a)(i)

Staff Rules

- Rule 13.1
- Rule 9.6

UNDT Statute

- Article 10.5