

UNDT/2016/187, Lemonnier

UNAT Held or UNDT Pronouncements

The UNDT found that the Applicant was not afforded proper priority consideration for the CISS post under the framework established by staff rule 9.6(e). He, therefore, lost a fair chance of being selected for the CISS post. The UNDT also found that the decision not to select the Applicant was vitiated by the arbitrary and inconsistent application of the requirement of “Headquarters experience”. The Tribunal finds that the Applicant has already mitigated his losses for some part of the relevant period and received compensation for the rest of the lost earnings as part of Lemonnier UNDT/2016/186, which compensated him for the loss of earnings. Therefore, although the application succeeded, no compensation was ordered.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of the United Nations Stabilization Mission in Haiti (“MINUSTAH”), serving at the P-5 level on a continuing appointment, filed an application challenging his non-selection for the position of Chief, Integrated Support Services (“CISS”), MINUSTAH.

Legal Principle(s)

Placement of staff on abolished posts: As stated in Lemonnier UNDT/2016/186, the Administration is required to make good faith efforts to find suitable and available posts against which the Applicant can be placed (see also El- Kholy UNDT/2016/102; Hassanin UNDT/2016/181; Tiefenbacher UNDT/2016/183). Staff regulation 1.2(c) allows the Administration to transfer or reassign staff laterally, whereas sec. 11 of ST/AI/2010/3 specifically permits the placement of staff affected by the abolition of posts outside the normal selection process. Relief: The Tribunal finds that the Applicant has already mitigated his losses for a portion of the relevant period (1 January 2015 to 1 September 2015) and received compensation for the rest of his

lost earnings (2 September 2015 to 31 December 2016). Specifically: (a) with regard to the period of 1 January 2015 to 1 September 2015, the Applicant was fully employed by the United Nations and suffered no pecuniary harm; (b) with regard to the period of 2 September 2015 to 31 December 2016, the Applicant's lost earnings are fully compensated in Lemonnier UNDT/2016/186, which compensated him for the loss of earnings in the period of September 2015 to September 2017—an even longer period than the period covered by the present case. The Tribunal cannot award the Applicant additional compensation for lost earnings during the same period as he could not have held two jobs at the same time with the Organization.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Lemonnier

Entity

MINUSTAH

Case Number(s)

UNDT/NY/2015/11/R1

Tribunal

UNDT

Registry

New York

Date of Judgement

14 Oct 2016

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Appointment (type)

Termination (of appointment)

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Staff Regulations

- Regulation 1.2(c)

Staff Rules

- Rule 9.6(e)