UNDT/2016/192, Wright

UNAT Held or UNDT Pronouncements

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.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 states 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. The Administration is required to make good faith efforts to find suitable and available posts against which the Applicant, as a permanent staff member affected by post abolition, could have been placed (El-Kholy UNDT/2016/102; Hassanin UNDT/2016/181; Tiefenbacher UNDT/2016/183). Staff regulation 1.2(c) allows the Administration to reassign staff laterally (see also sec. 11 of ST/AI/2010/3, which specifically permits the placement of staff affected by abolition of posts outside the normal selection process). The Tribunal finds that staff rule 13.1(d) does not provide for a right to alternative employment at the same or higher level. What is required is that the Administration make good faith efforts to identify suitable available posts. In this case, the Applicant secured a new position, albeit at a lower salary.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).

Decision Contested or Judgment/Order Appealed

On 24 March 2014, the Applicant, a 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, and, as a result, to terminate his permanent appointment.

Legal Principle(s)

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.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 states 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. The Administration is required to make good faith efforts to find suitable and available posts against which the Applicant, as a permanent staff member affected by post abolition, could have been placed (El-Kholy UNDT/2016/102; Hassanin UNDT/2016/181; Tiefenbacher UNDT/2016/183). Staff regulation 1.2(c) allows the Administration to reassign staff laterally (see also sec. 11 of ST/AI/2010/3, which specifically permits the placement of staff affected by abolition of posts outside the normal selection process). The Tribunal finds that staff rule 13.1(d) does not provide for a right to alternative employment at the same or higher level. What is required is that the Administration make good faith efforts to identify suitable available posts. In this case, the Applicant secured a new position, albeit at a lower salary.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).

Outcome

Judgment entered for Applicant in full or in part
Full judgment
Full judgment
Applicants/Appellants
Wright
Entity
DGACM
Case Number(s)
UNDT/NY/2014/76
Tribunal
UNDT
Registry
New York
Date of Judgement
19 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

Related Judgments and Orders
UNDT/2009/034
UNDT/2009/083
2010-UNAT-059
2010-UNAT-093