

UNDT/2017/008, Awoyemi

UNAT Held or UNDT Pronouncements

Temporary reassignment: The characteristic of a temporary reassignment is its limited duration. From the outset, it is clear that it has an expiration date and that, unless renewed by a subsequent discretionary decision, it will come to an end naturally on the date specified for this purpose. The natural outcome of a temporary assignment is the staff member's return to his/her original duties. Accordingly, a staff member on temporary reassignment has no entitlement or legal expectancy to have such reassignment extended. The decision not to extend a temporary reassignment is within the Administration's discretion and is therefore lawful unless it can be established that such discretion was abused. Authority to repurpose a post: Generally speaking, posts set up under the regular budget are to be used for the aim and duties for which they were approved. However, this does not amount to say that the applicable framework completely rules out any possibility to assign a certain post to different functions as a transitory measure. The Secretary-General enjoys wide discretion in managing the Organization's resources, including human resources and "the reassignment of staff members' functions comes within the broad discretion of the Organization to use its resources and personnel as it deems appropriate" (Hepworth 2015-UNAT-503). The decision to repurpose a vacant post for a short period clearly falls under the Organization's general power to restructure some of its services. Right to be informed of the reasons behind a decision: A staff member must be timely informed of the reasons relied upon to take any decision that directly impacts him or her. All the more so whenever the staff member unambiguously requested to know them. Burden of proof of improper motives: Where the Administration has not refused to disclose to the Tribunal the reasons behind the decision at issue, the burden of proving that the latter was tainted by improper motives rests with the Applicant. In addition, even in respect of decisions regarding which all details and records of the decision-making process are exclusively in the Administration's hands, if the Administration is able to minimally show that the decision was lawful, the burden is on the applicant to demonstrate the contrary. Performance issues: Where performance is the principal reason for a

decision regarding the reassignment of a staff member, the Administration has to provide a performance-related justification for its decision and, in reaching it, the Administration must respect the rule of law and standards of due process in decision-making.

Decision Contested or Judgment/Order Appealed

The Applicant appealed the decision not to extend her temporary reassignment to the position of Legal Officer in UNLB. Management did not initially provide her with the reasons for the decision. Later, throughout the litigation of this matter (notably at the management evaluation stage), the Administration brought forward two reasons for the impugned decision: a) the need to repurpose the post the Applicant was appointed against, and b) certain performance shortcomings. The Management Evaluation Unit concluded that the Administration did not afford the Applicant due process regarding her alleged performance issues, before making a decision that was principally based on them, and recommended compensation of USD3,000 on this account, which the Applicant had already received at the time of filing her application with the Tribunal. The UNDT found, on the one hand, that by initially failing to disclose the reasons for the contested decision the Administration breached the Applicant's rights to be timely informed of a decision directly affecting her. However, this breach did not cause her any harm warranting compensation since she was not prevented from contesting the decision; in addition, she eventually learnt about them, through her request for management evaluation, and was able to use them to make her case before the Tribunal. On the other hand, the Tribunal did not find established that the contested decision was based on extraneous factors. As to the two reasons put forward by the Administration, the Tribunal considered that: a) the alleged need to transitorily repurpose the litigious post for the successful deployment of Umoja appeared to be reasonable and supported by the facts; and b) there were no good reasons to disturb MEU's conclusions regarding the lack of due process in relation to the purported performance shortcomings, and this irregularity had been appropriately redressed by the amount of compensation already awarded.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Awoyemi

Entity

UNLB

Case Number(s)

UNDT/GVA/2015/160

Tribunal

UNDT

Registry

Geneva

Date of Judgement

6 Feb 2017

Duty Judge

Judge Bravo

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Reassignment or transfer

Applicable Law

Other UN issuances (guidelines, policies etc.)

- Controller's instructions for the 2014-2015 biennium budget—by memorandum of 17 July 2013
- Standard Operating Procedure on Staffing Table and Post Management of UN Peace Operations

Staff Regulations

- Regulation 1.2(c)

Related Judgments and Orders

UNDT/2011/126

UNDT/2012/178

2012-UNAT-194

2010-UNAT-021

UNDT/2015/054

UNDT/2015/075

UNDT/2012/018

UNDT/2010/009

2011-UNAT-110

2013-UNAT-281

2014-UNAT-425

2014-UNAT-433

2015-UNAT-592

2016-UNAT-624

2015-UNAT-503

2012-UNAT-201

2011-UNAT-153

2013-UNAT-311

2011-UNAT-122

2011-UNAT-174

2011-UNAT-175

2015-UNAT-533

2011-UNAT-115

2012-UNAT-266