

UNDT/2017/018, Wondimu

UNAT Held or UNDT Pronouncements

The best interests of UNHCR were clearly not served by the removal of the Applicant. It is unfortunate that some members of the UNHCR senior management sought to hide behind the veil of acting in the Organization's best interests to act in their own self-interest. The Tribunal therefore found on that score that the Respondent's explanation were a mere afterthought which was only spun to defend an action that was clearly lacking in due process and constituted an unfair and highhanded removal of the Applicant and abuse of official discretion. The Tribunal was not in any doubt that the removal of the Applicant from his new position as Deputy Representative was predicated on the offence he was perceived to have caused Ms. Yoshida and other senior staff of UNHCR. The said offence consisted of leaving Juba during an emergency and taking it upon himself to decide without authority to advise UNHCR female staff members to stay away from South Sudan due to the high incidence of gender-based violence at that time. The clear inference was that some UNHCR senior officials were determined to punish the Applicant but would not institute a disciplinary process as they ought to have done. The Tribunal saw through the efforts of these senior officials to inflict punishment while circumventing a proper disciplinary process which could have served to exonerate the Applicant. The decision of the UNHCR leadership to remove the Applicant in this case was not based on any operational reasons but was simply disciplinary action by stealth. By the manner of its removal of the Applicant from his position as Deputy Representative, the UNHCR acted in violation of the extant provisions of the paragraphs 18, 19 and 23 of its own legislation, the PPAP.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to remove him from the post of Deputy Representative, UNHCR, South Sudan, and the attendant decision to re-advertise his post.

Legal Principle(s)

While there is no contest that staff regulation 1.2(c) confers authority on the Secretary-General to assign staff members to suitable duties and offices, the argument that he can also on the strength of that authority alone simply and arbitrarily remove staff members from their duties is not unimpeachable. It has been well established by judicial pronouncements that any discretionary authority must be exercised judiciously and in the best interests of the Organization. Where the Organization acts without proper justification, as in this case, to remove a staff member from a position he had properly earned, the claim of an exercise of discretion failed because discretion must be exercised judiciously. UNAT held that Courts or Tribunals do not normally interfere in the exercise of a discretionary authority except where there is evidence of illegality, irrationality and procedural impropriety. It has become the style of some counsel that appear for the Respondent to lecture the Tribunal in their submissions about its proper role. The Tribunal is an umpire, not a party. It therefore does not stand on the same platform as the parties. In submitting to the Tribunal's jurisdiction, it is not the place of any party to a case to lecture the Tribunal as to its proper role. Counsel must respectfully refrain from telling the Tribunal what it cannot do but can always exercise the due rights of appeal to UNAT where he or she believes that an error of law has occurred. It is the role of the Tribunal to determine whether the Respondent acted in good faith when he removed the Applicant from a position that was duly earned after going through a competitive selection process. It is the role of the Tribunal also to determine whether the said decision to remove the Applicant was a judicious exercise of discretion and whether the reasons given for the removal are borne out by the facts and supported by relevant evidence and the applicable legislation.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Having found that the Applicant's removal from his position as Deputy Representative was unlawful and that this removal has evidently harmed his career prospects, the Applicant was entitled to compensation for the illegal actions of the UNHCR Administration including its failure to follow its own rules and procedures and the Tribunal awarded the Applicant four months' net base salary as compensation.

Full judgment

[Full judgment](#)

Applicants/Appellants

Wondimu

Entity

UNHCR

Case Number(s)

UNDT/NBI/2014/031

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

10 Mar 2017

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Reassignment or transfer

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNHCR Policy and Procedures on Assignments and Promotions (PPAP)

Staff Regulations

- Regulation 1.2(c)