

# UNDT/2017/037, Munyan

## UNAT Held or UNDT Pronouncements

Filling of a vacancy by a lateral transfer: The choice of filling a post by lateral move—without going through a fullfledged competitive selection process—is provided for by sec. 2.5 of ST/AI/2010/3 and does not per se violate any of the superior rules prescribing the goal of ensuring the highest standards of efficiency, competency and integrity. Nevertheless, as any discretionary decision, such course of action must not be arbitrary, capricious, tainted by improper motives, based on erroneous or irrelevant considerations, procedurally flawed or resulting in a manifestly unreasonable outcome. Conditions to cancel a job opening: The Administration is entitled to cancel a JO, even after the application period has elapsed, subject to certain limitations: (a) the cancellation must occur before undertaking the assessment exercise and also before placing at least one candidate on the recommended list; (b) if an advertised position becomes no longer available, the Hiring Manager must provide a detailed written clarification for the reasons of the cancellation of the JO; and (3) the candidates who applied for the JO must be informed of its cancellation.

## Decision Contested or Judgment/Order Appealed

The Applicant appealed the cancellation of a job opening concerning an Economic Affairs Officer (P-3) position with UNCTAD, further to the filling of said vacancy by a lateral transfer of another UNCTAD staff member. The Tribunal found that filling a vacancy by lateral transfer is not per se unlawful, nor was the fact of cancelling a JO neither after its advertisement nor after expiration of the application period. Moreover, the Tribunal found no evidence indicating bias or ill-motivation and, in this connection, it also concluded that the mere fact that the Administration's intent to protect an employee in a vulnerable situation was one of the factors considered for the decision does not alone suffice to demonstrate bias.

## Legal Principle(s)

N/A

## Outcome

Dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Munyan

## Entity

UNCTAD

## Case Number(s)

UNDT/GVA/2016/87

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

30 May 2017

## Duty Judge

Judge Bravo

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Reassignment or transfer

Staff selection (non-selection/non-promotion)

## Applicable Law

Administrative Instructions

- ST/AI/2010/3

Other UN issuances (guidelines, policies etc.)

- Inspira Manual for Hiring Managers (Version 3.0)
- Inspira Manual for the Recruiter (Release 3.0)

Staff Regulations

- Regulation 4.2

Staff Rules

- Rule 1.2(c)

UN Charter

- Article 101.3

## Related Judgments and Orders

UNDT/2016/051

UNDT/2016/070

UNDT/2010/149

2010-UNAT-081

2013-UNAT-329

2012-UNAT-201

2012-UNAT-266

2016-UNAT-624

2013-UNAT-281