

# **UNDT/2017/040, Katulu**

## **UNAT Held or UNDT Pronouncements**

The UNDT found that the decision to deny the Applicant's request for advance home leave was unlawful and ordered the Respondent to correct the Applicant's personnel file to reflect the home leave points she accrued while working on temporary appointments, and to pay her material damages in the amount of USD1,543.04, in compensation of the price she paid for her flight ticket. Transition from a temporary to a fixed-term appointment: Sec. 1.2 of ST/AI/2010/4/Rev.1 indicates how the Organization shall proceed when granting a fixed-term appointment after a temporary appointment. However, it does not, in and of itself, establish the contractual status of a staff member or otherwise create a legal fiction of reemployment. To determine the status of a staff member, the Tribunal must examine whether the staff member was actually re-employed under staff rule 4.17, as envisaged in sec. 1.2 of ST/AI/2010/4/Rev. 1. Re-employment: A re-employment under staff rule 4.17 necessarily implies a prior separation from service. Separation from service: A separation from service, defined in staff rule 9.1, triggers a number of consequences, as set out in, inter alia, staff rules 9.8 to 9.12, which provide for the possibility of termination indemnity (staff rule 9.8), commutation of accrued annual leave (staff rule 9.9) or restitution of advance annual and sick leave (staff rule 9.10), and return travel (staff rules 9.11(b) and 7.1(a)(v)). Entitlement to salary, allowances and benefits ceases at the date of the separation (staff rule 9.11(a)), and a settlement process is to ensue between the staff member and the Organization. The Applicant was not separated from service when she transitioned from a temporary to a fixed-term appointment as, on the one hand, she did not fall within any of the situations listed in staff rule 9.1 and, on the other hand, the factual circumstances surrounding her transition demonstrate that the Organization effectively treated her as being continuously employed since it did not proceed with an actual separation from service and did not deal with the effects that it entails. In particular, the Applicant continued to perform the same functions, without any interruption, she was never informed that she had allegedly been separated, and there was no settlement process to determine whether anything was due to the

Applicant on account of her separation, or whether she had to reimburse anything to the Organization. Rather, the Applicant's benefits and entitlements, with the exception of her home leave points, were treated as if she was continuously employed by the Organization. A "Special Separation [without] break" Personnel Action , which was an internal document created for administrative purposes, that was not notified to the Applicant and produced no practical effects is not sufficient to demonstrate that the Applicant was actually separated from service. Accrual of home leave points: Internationally recruited staff members working at 24-month home leave cycle duty stations accrue home leave credits, akin to those working at 12-month cycle duty stations. A distinction must be drawn between the accrual of home leave credit points pursuant to the applicable rules and the possibility to actually use them by claiming home leave.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision taken by a Human Resources Officer, United Nations Department of Economic and Social Affairs ("DESA"), to reject her request for advance home leave on the ground that she did not accumulate home leave points during her service under temporary appointments and that, in any event, she could not carry these points over when she transitioned from a temporary to a fixed-term appointment.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Katulu

## Entity

UNAKRT

## Case Number(s)

UNDT/GVA/2016/82

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

9 Jun 2017

## Duty Judge

Judge Bravo

## Language of Judgment

English

French

## Issuance Type

Judgment

## Categories/Subcategories

Appointment (type)

Temporary appointment

Benefits and entitlements

## Applicable Law

## Administrative Instructions

- ST/AI/2010/4/Rev.1
- ST/AI/2013/3
- ST/AI/2015/2

## Staff Rules

- Rule 4.12
- Rule 4.17
- Rule 4.5(a)
- Rule 5.2
- Rule 9.1
- Rule 9.11
- Rule 9.12
- Rule 9.6
- Rule 9.7
- Rule 9.8
- Rule 9.9

## UNDT Statute

- Article 10.5

## Related Judgments and Orders

2014-UNAT-485

2015-UNAT-570

2014-UNAT-428

2010-UNAT-037