

UNDT/2017/080, Timothy

UNAT Held or UDT Pronouncements

The Tribunal found that the Administration did not respect its obligation pursuant to staff rule 9.6(e)(i) and 9.6(f) to retain the Applicant and the Applicant's correlative right to be retained in any available suitable post at her level (G7 step 10) or at a lower level in UNHCR NY, or at her Professional level or lower in the parent Organization. The Tribunal granted the Applicant's claim in part, rescinding the contested decision and ordering the Respondent to retain the Applicant with retroactive effect from 31 December 2016 in any current suitable available post(s), or in alternative, the Respondent to pay compensation of 12 months net-base salary. In addition, the Tribunal ordered the Respondent to pay compensation of 3 months of net base salary as moral damages.

Decision Contested or Judgment/Order Appealed

The decision by the Administration to not make good faith efforts to absorb the Applicant on to a new post after it decided to abolish her existing post

Legal Principle(s)

Staff members holding continuing appointments to be considered for all available suitable posts, at the same level and/or at an inferior level: Staff rule 9.6 (e)(i) (Termination for abolition of posts and reduction of staff) is to interpreted as referring to all the available suitable posts, at the same level and/or at an inferior level which must be taken into consideration for the legal mandate requirement to be respected. Furthermore, a staff member holding a continuing/indefinite appointment has the highest level of legal protection from being terminated. S/he has the right to be retained either in any suitable positions vacant at the same level or at lower level at the date of abolition or reduction of staff, or in any suitable positions occupied at the date of abolition, or reduction of staff, by staff members recruited through competitive examination for a career appointment serving on a two year fixed-term appointment, by staff members holding fixed-term appointments, and by staff members on temporary appointment. Staff members retained pursuant to staff rule 9.6(e) required to have relative competence for new suitable post: A staff member who is to be retained in the order of preference established in staff rule 9.6(e) is not required according to this provision to be fully competent for the alternative post where s/he is to retained, but to have a relative competence for the new suitable post, as clearly specified in staff rule 9.6. Further the staff member is to be retained in another position(s) on a non-competitive basis without having to go through a full competitive selection process, including by applying, for any of the suitable posts available. Administration's obligation pursuant to staff rule 9.6(e): In order for Administration to fully respect its obligation pursuant to staff rule 9.6 (e), it has the duty to timely provide staff member(s) affected by abolition of posts or reduction of staff with a list of: (1) all posts, at the staff member's duty station, occupied at the date of abolition by staff members with a lower level of protection than the one of the staff member(s) affected, if any; and (2) all the vacant suitable positions, if any, in order for the staff member to be able to evaluate all the options and to timely express his/her interest.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial compensation and specific performance

Full judgment

[Full judgment](#)

Applicants/Appellants

Timothy

Entity

UNHCR

Case Number(s)

UNDT/NY/2017/007

Tribunal

UNDT

Registry

New York

Date of Judgement

29 Sep 2017

Duty Judge

Judge Greceanu

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Separation from service

Applicable Law

Staff Regulations

- Regulation 9.1
- Regulation 9.3

Staff Rules

- Rule 13.2
- Rule 9.6
- Rule 9.7

UNDT RoP

- Article 7.1
- Article 7.2
- Article 7.3

UNDT Statute

- Article 10.5(b)
- Article 3
- Article 8