

# UNDT/2018/066, Latimer

## UNAT Held or UDT Pronouncements

Staff rule 4.7(a) and (b) has a limited and express area of application as established in staff rule 4.7(c) and that, per a contrario, a person who is the father, mother, son, daughter, brother or sister of a staff member and who applied to a post, was considered and was selected through a competitive selection process as being the best candidate, can be assigned to any post, including in the same department/unit which is not superior or subordinate in the line of authority to the staff member to whom s/he is related. Staff rule 4.7(c), by establishing that the posts which are superior or subordinate in the line of authority to a United Nations staff member, are not to be assigned to another staff member to whom s/he is related, institutes an exception with a strict area of application which cannot be extended and transformed in a general rule. Such an interpretation will breach the fundamental rights to work and to free choice of employment of any individual who is the father, mother, brother, sister, son or daughter. The Tribunal is of the view that any individual, including the father, mother, son, daughter, brother or sister and/or the spouse of a United Nations staff member, has the right to apply, to be fully and fairly considered through a competitive meritorious process, to be shortlisted and selected as the best candidate, and to be appointed under any type of contract (temporary/WAE, fixed-term, and/or continuous/permanent appointments), to any post within the United Nations, including in the United Nations Secretariat, in the same department/unit and/or in a different department/unit, except the post(s) in the same department(s)/unit(s) which is/are superior and/or subordinate in the line of authority to the staff member to whom s/he is related. Therefore, the Tribunal concludes that the request for the Applicant's resignation, which constitutes a constructive dismissal, is unlawful. The Dispute Tribunal decided that (a) the application is granted in part, the contested decision consisting in the Applicant's constructive dismissal is rescinded, and as an alternative to the rescission of the decision, the Respondent is to pay to the Applicant the amount of USD 10,000; (b) the Respondent is to pay to the Applicant a compensation consisting in the salary corresponding to this period and up to 125 days according to ST/AI/2003/8/Amend.2; and (c) the Applicant is considered eligible for future WAE contracts within the United Nations Secretariat.

## Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member holding a temporary appointment on a "when actually employed" ("WAE") basis as a Reviser at the T-IV level in the English Translation Service, Department of General Assembly Conference Management ("ETS/DGACM"), contests "the termination of [his] WAE contract", alleging that the Organization's request that he resign when his daughter accepted a fixed-term appointment with the Organization was a constructive dismissal.

## Legal Principle(s)

Legal value and application of universal legal instruments: Universal legal conventions/treaties establishing the fundamental principles of international human rights law, such as the UN Charter, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), constitute the legal foundation of and are directly applicable to and by all organizations and entities founded/created after their adoption by the United Nations General Assembly, at the international, regional and national level, in order for them to promote, protect and monitor the implementation of fundamental human rights, including the United Nations—the leading promoter of human rights around the world. Hierarchy of legal norms within the United Nations: At the top of the hierarchy of the Organization's internal legislation is the UN Charter, together with other universal legal instruments, including but not limited to the UDHR, the ICCPR and the ICESCR, followed by Staff Regulations

adopted by the United Nations General Assembly and Staff Rules adopted by the Secretary-General and other relevant resolutions and decisions adopted by the General Assembly, Secretary-General's bulletins and administrative instructions; information circulars, office guidelines, manuals, and memoranda are at the bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances. The decisions taken by the Secretary-General, including the decisions to implement and/or execute Staff Regulations established by the General Assembly, General Assembly resolutions and/or decisions, which are not in accordance/consistent/conform to with the content of higher norms, are unlawful. Staff rule 4.7 cannot have legal effect without legal basis in higher legal norms: Staff rule 4.7 has no legal basis in the Staff Regulations and is contrary to art. 101 of the UN Charter, art. 23 of the UDHR, art. 26 of the ICCPR and art. 6 of the ICESCR. How to apply and read staff rule 4.7: Staff rule 4.7(a) must be read together with staff rule 4.7(c)(i) and (ii) in case an appointment is to be granted to a person who is the father, mother, son, daughter, brother or sister of a UN staff member; and staff rule 4.7(a) and (c) must be interpreted and applied together with art. 101 of the UN Charter, art. 23 of the UDHR, art. 26 of the ICCPR and art. 6 of the ICESCR.

#### Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Latimer

Entity

DGACM

Case Number(s)

UNDT/NY/2017/18

Tribunal

UNDT

Registry

New York

Date of Judgement

14 Jun 2018

Duty Judge

Judge Greceanu

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Separation from service

Applicable Law

Administrative Instructions

- ST/AI/2003/8
- ST/AI/2003/8/Amend.2
- ST/AI/2010/3

Former Staff Rules

- Rule 104.10(a)

## Secretary-General's bulletins

- ST/SGB/1999/5
- ST/SGB/2002/1
- ST/SGB/2009/7

## Staff Regulations

- Regulation 1.1(d)
- Regulation 1.1(e)
- Regulation 4.1
- Regulation 4.2
- Regulation 4.3
- Regulation 4.4

## Staff Rules

### UNDT RoP

- Article 15
- Article 19

## UNDT Statute

- Article 10.5(a)
- Article 10.5(b)
- Article 10.7
- Article 8

## Related Judgments and Orders

UNDT/2011/126

UNDT/2012/178

UNDT/2009/030

UNDT/2011/040

2015-UNAT-534

2011-UNAT-160

2011-UNAT-109

2012-UNAT-269

2015-UNAT-509

2010-UNAT-073

2015-UNAT-530

2010-UNAT-059

2011-UNAT-111