

UNDT/2018/085, Featherstone

UNAT Held or UNDT Pronouncements

The decision did not adversely affect the Applicant. The Tribunal referred to its judgment Featherstone UNDT/2015/117 whereby, inter alia, the decision denying the Applicant a conversion of her fixed-term appointment to a permanent appointment was rescinded and the case was remanded to the ASG/OHRM for retroactive individualized consideration of the Applicant's suitability for conversion of her appointment to a permanent one as mandated by ST/SGB/2009/10. The Tribunal was satisfied that by the decision of 17 November 2016 (the contested decision), the Organization complied with the terms of Judgment Featherstone UNDT/2015/117, as affirmed by Featherstone 2016-UNAT-683/Corr.1. As a result of the ASG/OHRM consideration, and although the Applicant was no longer in the employment of the Organization, she was offered a permanent appointment, retroactively from 30 June 2009. Having said the above, the Tribunal was of the view that the decision to offer the Applicant a permanent appointment, retroactively, was not a decision susceptible to adversely affect her terms of appointment, pursuant to art. 2.1(a) of the Tribunal's Statute. The decision did not cause the Applicant any harm. It was the Tribunal's view that no material damages could be or were caused by the decision of 17 November 2016 and the acceptance by the Organization that she was, and has been, entitled to conversion to a permanent appointment from 1 July 2009. The Tribunal was satisfied that the financial impact of the Applicant's separation from service was a direct consequence of her own and free decision to resign from the Organization effective 31 December 2011, that is, prior to the proceedings in front of the Dispute Tribunal and Appeals Tribunal. The decision of 17 November 2016 which was taken in compliance with Judgment Featherstone 2016-UNAT-683/Corr.1, was thus not susceptible to cause the Applicant compensable material harm. The Applicant cannot re-litigate matters that have already been adjudicated (*res judicata*). The Tribunal considered that since decisions on conversion to permanent appointment do not concern appointment, promotion or termination, the Tribunal cannot set an amount for compensation as an alternative to specific performance under art. 10.5(a) of its Statute. The Tribunal recalled that it found in Featherstone

UNDT/2015/117 that compensation for material damages equal to termination indemnities could not be granted because that would imply to prejudge that the Applicant would be granted a permanent appointment, which the Dispute Tribunal was not in a position to do. Neither did that Judgment, as affirmed by the Appeals Tribunal, required the Administration to grant the Applicant termination indemnities in case of conversion or in relation to the reconsideration exercise. The Tribunal found that these matters were res judicata. The Tribunal also noted that the Applicant's claim for moral damages was res judicata. Claims under ST/SGB/2008/5 The Tribunal further found that the Applicant's claims relating to ST/SGB/2008/5 were not receivable, as she failed to file a complaint and, hence, no decision was taken under the terms of that bulletin.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to offer her a permanent appointment limited to service with ICTY, effective retroactively on 30 June 2009, without recognizing that she "no longer [had] any contractual relationship with the United Nations or [offering] any alternative remedy to specific performance to reflect that fact".

Legal Principle(s)

N/A

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Featherstone

Entity

ICTY

Case Number(s)

UNDT/GVA/2017/27

Tribunal

UNDT

Registry

Geneva

Date of Judgement

29 Aug 2018

Duty Judge

Judge Downing

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Permanent appointment

Applicable Law

UNDT Statute

- Article 10.5(a)

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

UNDT/2015/117

2013-UNAT-359

2013-UNAT-303

2013-UNAT-357

2013-UNAT-358

2013-UNAT-360

2013-UNAT-372

2017-UNAT-742