

UNDT/2018/101, Milicevic

UNAT Held or UNDT Pronouncements

The Tribunal was satisfied that the Applicant did in fact contest the administrative decision to transfer him to Brindisi based on him having been declared PNG by the Syrian authorities and, thus, finds that the application is receivable *ratione materiae*. The Tribunal had no reason to question the testimony from the CMSS and found that the reason provided by the Administration to remove the Applicant from UNDOF—namely that he had been declared PNG—was supported by the evidence. The Tribunal found that in a situation where the Organization is bound to take prompt action to reassign a staff member whom a host country has declared as PNG, it is reasonable for the Organization to reassign the staff member, temporarily, to a post with levels of a lower function, while continuing to pay salary and entitlements at the level of the staff member's grade. Under international law, it has long been recognized that every sovereign nation has the right to determine whether it will receive a diplomatic envoy from another nation or if he/she will be allowed to stay. The same rationale applies *mutatis mutandis* to the relationship between the UN and a host country. The logical consequence that follows a *persona non grata* declaration is that the sending state must recall its agent. This again applies *mutatis mutandis* to staff members working for the United Nations in a given country that declares them PNG. Indeed, as this Tribunal held in Hassouna, “in [a] peacekeeping context, the Organization can only operate in a sovereign State with the consent of ... the host country” and “the decision to remove [a] staff member still vests in the Secretary-General though it is triggered by a decision of the host country”. If a staff member is declared PNG by a host country, the Organization has no alternative but to remove that staff member, because such declaration falls within the sovereign prerogative of the host country. The Secretary-General's discretion to reassign a staff member is therefore somewhat limited by his duty to follow the request of the Host Government to remove a staff member, which may lead to situations where a staff member has to be reassigned, on an urgent basis, and only limited placement options are available. The Tribunal was satisfied that under the circumstances, and since the Applicant's parent post was temporarily encumbered, the Administration fulfilled its duty *vis-à-vis* the Applicant after he had been declared PNG in Syria by transferring him back to UNGSC, and paying his salary and entitlements at the P-5 level despite temporarily discharging functions below his grade. The contested decision was therefore found lawful and, consequently, the Applicant was not entitled to any compensation.

Decision Contested or Judgment/Order Appealed

The Applicant contests two Management Evaluation outcomes, namely MEU/658-15/R and MEU/081-16/R, related to the “decision to abruptly move [him] out of mission area on 30 November 2015 as Chief, [Communication and Information Technology Section (“CITS”)], [United Nations Disengagement Observer Force (“UNDOF”)] before the expiration date of [his] Temporary Assignment”.

Legal Principle(s)

The duties of a Judge prior to taking a decision include adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content, as the judgment must necessarily refer to the scope of the parties' contentions. The authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review, which could lead to grant, or not to grant, the requested judgment. (Massabni 2012- UNAT-238). While, in case of reassignment, the Secretary-General disposes of great discretion, such is not unfettered (Rees 2012-UNAT-266).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Milicevic

Entity

UNLB

Case Number(s)

UNDT/GVA/2016/030

Tribunal

UNDT

Registry

Geneva

Date of Judgement

9 Oct 2018

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Reassignment or transfer

Applicable Law

Staff Regulations

- Regulation 1.2(c)

Related Judgments and Orders

2012-UNAT-266