

UNDT/2018/112, Chemingui

UNAT Held or UNDT Pronouncements

While staff regulation 1.2(c) provides that in exercising his authority to assign staff members to activities or offices of the United Nations, the Secretary-General shall seek to ensure that “all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them,” such arrangements are not, in all circumstances, merely limited to physical safety and security. Reassigning a staff member from a core P-5 post established by the General Assembly to a General Temporary Assistance (GTA)-funded P-5 post established by ESCWA did not satisfy the test of a proper reassignment. While operational needs and restructurings may dictate that General Assembly-established core posts be abolished, this does not detract from the fact that GTA posts which are administratively created and are timebound, are profoundly less secure. The Tribunal found absurd the Respondent’s submission that taking an Applicant away from a position in which he performed managerial functions and reassigning him to a new position with no leadership or managerial role was of no consequence. The Tribunal found that reassignment to the post of Regional Adviser carried significant risks and disadvantages for the Applicant. Although the Executive Secretary of ESCWA had the discretion to reassign the Applicant to another post within the Commission, he failed to meet the conditions for doing so as set out in staff regulation 1.2(c) and section 2.5 of ST/AI/2010/3. Since these conditions had not been fully met by the Executive Secretary, the proposed reassignment was adjudged to be unlawful. The Applicant’s allegation that the impugned decision was tainted by improper motives was not substantiated by any evidence.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision to laterally reassign him to the position of “Regional Adviser on Trade” in the Economic Development and Integration Division (EDID).

Legal Principle(s)

The Respondent has the authority, prerogative or discretion to laterally reassign a staff member of ESCWA within the Commission but there are conditions that must be fulfilled for him to exercise that discretion (staff regulation 1.2(c) and section 2.5 of ST/AI/2010/3). The burden of proving improper motives is not satisfied by mere claims and assertions.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal found the proposed reassignment to be unlawful and ordered rescission of the impugned decision.

Full judgment

[Full judgment](#)

Applicants/Appellants

Chemingui

Entity

ESCWA

Case Number(s)

UNDT/NBI/2015/079

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

21 Nov 2018

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Reassignment or transfer

Discretion

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Staff Regulations

- Regulation 1.2(c)

Related Judgments and Orders

2019-UNAT-930