

UNDT/2018/116, El-Awar

UNAT Held or UNDT Pronouncements

At the relevant time, the Applicant was serving as Senior Coordination Officer for the Global Water Operators Partnerships Alliance (“GWOPA”), an alliance of partners promoting the Water Operators Partnership established by UN-Habitat. He was heading the GWOPA Secretariat and was sitting ex officio on the GWOPA Steering Committee as representative of the GWOPA Secretariat. The contested decisions were notified to the Applicant in two memoranda sent on the same day.; The Tribunal identified the following legal issues:; What was the nature of the contested decisions? Was the Applicant subjected to a significant diminution of his core functions?; Having reviewed the Applicant’s job description, the Tribunal found that there was no direct reference to the Applicant having authority to sign template agreements and legal instruments or to undertake procurement. There was no explicit reference either to the Applicant performing specific functions in these areas of work. As to the authority of the Applicant to recruit consultants and individual contractors, the Applicant’s job description made him responsible for “recruiting the needed professional and support GWOPA Secretariat staff”. There was no reference to any recruitment of consultants and individual contractors, who, by definition, are not staff members and are thus recruited under a different legal and budgetary framework.; The Tribunal further found that the withdrawal of the Applicant’s delegations of authority did not necessarily mean that he could no longer be involved in the performance of his core functions. However, the memoranda curtailed his powers to formally commit the Organization without approval of the Executive Director, UNHabitat, who is the one vested with legal authority over these matters under the applicable legal framework.; The Tribunal found that the instructions contained in the memorandum of the Director, Programme Division, not to engage with any stakeholders without his prior; authorization is directly related to the Applicant’s core functions. His job description is replete with responsibilities which explicitly require him to be in contact with donors and other development partners and to represent UN-Habitat and GWOPA in various international, regional and national fora, including liaising with government bodies, Spanish stakeholders, UN agencies and the GWOPA Steering Committee. The Tribunal considered that the memorandum of the Director, Programme Division, which required that any contact with a stakeholder be subject to prior approval, had the effect of significantly curtailing the Applicant’s margin of manoeuvre and authority.; That said, it could not reasonably be concluded that the Applicant was effectively deprived of a significant part of his functions. He could still perform them, but he was subject to a much tighter level of scrutiny from his supervisors. Accordingly, the Tribunal was of the view that the contested decisions were properly characterized as administrative measures taken in the exercise of managerial discretion.; Did the contested decisions constitute a lawful exercise of managerial discretion?; The Tribunal found that the documentary evidence and the Applicant’s own submissions were sufficient to substantiate the management’s belief that the Applicant had taken decisions/actions which his managers reasonably believed could have a serious impact on the future of GWOPA and UN-Habitat as a whole; been involved in an initiative to move GWOPA from UN-Habitat to UNOPS, to replace the Executive Director, UN-Habitat, as chair of the GWOPA Steering Committee by Mr. Neil McLeod, and to rename the Committee as “GWOPA Advisory Board”. These are decisions and or actions which his managers reasonably believed could have a serious impact on the future of GWOPA and UN-Habitat as a whole. The evidence further supported the management’s assertion that the Applicant did not act with the consent of his hierarchy or even with their knowledge. Since the contested decisions did not involve the imposition of a disciplinary measure, the standard of “clear and convincing evidence” does not apply. The Tribunal considered that a reasonable belief based on a fair and reasonable examination of the evidence and taking into account the; interests of the Organization, as determined by those with authority and responsibility for doing so, was sufficient to impose the administrative measures in the circumstances of this case.; The Tribunal found that the administrative measures were rational and proportionate to address the concerns expressed by management.; In light of the above, the Tribunal

concluded that the administrative measures imposed to limit the delegations and authority of the Applicant constituted a legitimate exercise of managerial discretion. Faced with a staff member who was taking initiatives which, in the view of management, was perceived to have the potential to harm UN-Habitat's interests, they were entitled to limit his authority and temporarily increase the level of supervision. It has not been demonstrated that the measures were based on ulterior motives or taken in retaliation against the Applicant for his admittedly divergent views on the future of GWOPA.

Decision Contested or Judgment/Order Appealed

The Applicant contested decisions that he claimed prevented him from performing the majority of his functions.

Legal Principle(s)

There can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion (Sanwidi 2010-UNAT-084).; The reasons for an administrative decision must be justified by the facts (Islam 2011UNAT-115).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

El-Awar

Entity

UN-Habitat

Case Number(s)

UNDT/GVA/2017/35

Tribunal

UNDT

Registry

Geneva

Date of Judgement

23 Nov 2018

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Performance management

Related Judgments and Orders

2010-UNAT-084

2011-UNAT-115