

UNDT/2018/121, Kauf

UNAT Held or UNDT Pronouncements

Receivability; The application is receivable *ratione personae*. After accepting the offer of employment, the Applicant effectively started to perform the functions of Senior Economic Affairs Officer, ECE, on 1 May 2017. The Organization thus treated him like a staff member, although he was not eligible to apply and be selected for the position and no letter of appointment was signed. As a result, the Applicant is legitimately entitled to rights similar to those afforded to staff members, for the purpose of being granted access to the internal justice system of the United Nations.; Merits; The witness statement of the Deputy Executive Secretary establishing that he had waived the eligibility requirement for the Applicant does not lead to the conclusion that he had waived the legal requirements for the Applicant's recruitment.; Since no letter of appointment had been issued to the Applicant, the latter did not formally become a staff member—except for the purpose of access to the internal justice system, Gabaldon—and any reference to a termination of his appointment pursuant to staff rule 9.3(a)(v) and 9.3(c) is misplaced.; Having issued the offer of appointment on the basis of a factual error, and since as an ineligible candidate, the Applicant was legally barred from being recruited, the Administration had a duty to withdraw the offer, as soon as the mistake was discovered. The Administration was legally precluded from issuing a letter of appointment to the Applicant and had to put an end to an illegal situation, while paying him for the work effectively performed.; Accordingly, the decision to withdraw the offer of appointment was legal. The Applicant's argument that the Administration failed in its duty to inform him about his ineligibility as a consultant does not impact the legality of the decision to withdraw the offer of appointment.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision what he claimed to be the termination of his fixed-term appointment, by means of the withdrawal of the Letter of Offer he had signed.

Legal Principle(s)

The employment of a former consultant in violation of sec. 3.15 of ST/AI/2013/4 and sec. 6.11 of ST/AI/2010/3 is illegal and the fulfilment of that, or any other, eligibility criteria for a certain position is a condition precedent to any appointment.; The issuance of a letter of appointment is not a mere formality but a constitutional requirement under the Charter.; A waiver of a rule which allows for no exception or discretion would be contrary to the rule of law within the Organization hence, illegal.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kauf

Entity

ECE

Case Number(s)

UNDT/GVA/2017/69

Tribunal

UNDT

Registry

Geneva

Date of Judgement

4 Dec 2018

Duty Judge

Judge Downing

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Jurisdiction / receivability (UNDT or first instance)

Termination (of appointment)

Applicable Law

Administrative Instructions

- ST/AI/2010/3
- ST/AI/2013/4

Staff Regulations

- Regulation 4.1

Staff Rules

- Rule 9.3

UN Charter

- Article 101

Related Judgments and Orders

UNDT/2009/085

2010-UNAT-029

2011-UNAT-120