

UNDT/2019/045, Mohamed

UNAT Held or UNDT Pronouncements

The Tribunal found the application receivable because the Applicant filed a timely request for management evaluation. Additionally, the Tribunal was satisfied with the Applicant's documentation regarding technical issues with the e-Filing portal that he filed to support his claim of exceptional circumstances for filing his application late. Lastly, to the extent that the resignation of the Applicant was instigated by the Respondent or his agents, the Tribunal found that this was an administrative decision capable of being challenged. The Tribunal found that the Applicant had misrepresented his personal history, education, work experiences and criminal conviction but that there was no proof that UNICEF was aware of these misrepresentations at the time of the decision to appoint him a Local Security Officer in 2009. The Tribunal held that UNICEF followed proper procedure in mandating its Senior Security Advisor to question the Applicant on 15 January 2015 rather than initiate a disciplinary process. The Office of Internal Audit and Investigation duly investigated the false claims in the Applicant's P-11 and the CV he submitted to UNICEF when he applied for his job and followed it up with the interview. The Tribunal held that the Applicant had not been coerced into resigning but rather, he choose to resign to avoid a disciplinary process. Further, he had thirty days after his resignation letter was received to withdraw it if he felt that his rights had been breached but he did not do so. The Tribunal held that no duty existed on the part of UNICEF in the face of the Applicant's resignation to continue to issue charges.

Decision Contested or Judgment/Order Appealed

The Applicant contested the Administration's decision to "coerce" him into submitting a resignation letter.

Legal Principle(s)

Under Staff Rule 9.6(c), the Secretary-General may terminate any staff member's appointment if facts anterior to the appointment of the staff member and relevant to his or her suitability come to light that, if they had been known at the time of his or her appointment, should, under the standards established in the Charter of the United Nations, have precluded his or her appointment. Pursuant to staff regulation 9.3(c), an indemnity may be paid and notice may be given in those instances where the Secretary-General terminates the appointment of a staff member.

Outcome

Dismissed on merits

Outcome Extra Text

The Tribunal dismissed the Applicant's prayer for compensation because he had received the benefit of both a resignation and a facts anterior termination.

Full judgment

[Full judgment](#)

Applicants/Appellants

Mohamed

Entity

UNICEF

Case Number(s)

UNDT/NBI/2015/088

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

25 Mar 2019

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Termination (of appointment)

Applicable Law

Laws of other entities (rules, regulations etc.)

Staff Regulations

- Regulation 9.3(c)

Staff Rules

- Rule 11.2(c)
- Rule 11.4(a)
- Rule 9.6(c)

UNDT Statute

- Article 8.1(d)(i)

UNICEF Executive Directives

- CF/EXD/2012-005