

UNDT/2019/115, Gizaw

UNAT Held or UNDT Pronouncements

The Tribunal finds the Respondent's application for interpretation as an attempt to have the Tribunal re-examine its Order, which is not a proper way to seek a reversal or modification of the Tribunal's Order. As the Appeals Tribunal clearly stated, the exercise of interpretation under art. 30 of the Dispute Tribunal's Rules of Procedure is not an avenue for review or the basis for a fresh judgment. It goes without saying that the motion is not receivable and must be dismissed. The Administration provided some reasonable explanation for the contested decision, which is supported by evidence. The Administration's internal review processes are well-documented and there seems to be a rational connection between the materials before the decision maker and the contested decision. The realignment of functions and positions in the Applicant's office caused some confusion and disagreements, but the Tribunal's role is not to decide what is the best way to conduct project management and quality assurance and under which methodology. Although the Applicant presented extensive evidence to support the claim that quality assurance functions were removed from her after the realignment of functions and specifically following the creation of the Quality Assurance Specialist post, she failed to present sufficient evidence to show that such decision was based on retaliation, reprisal, or other improper motives or bad faith. The Applicant claimed that the contested decision violated the UNDP's People Realignment Policy and Processes, but considering that they only applied at the time of realignment and the Applicant accepted no change letters issued in 2014 and 2015, any challenge to the contested decision on the grounds that it violated this particular policy is time-barred. Since the Applicant did not point out any other mandatory rules, regulations, policies or procedures that have been violated, the Tribunal cannot find that the contested decision was procedurally irregular. The Applicant further claimed that she was de facto demoted and contructively dismissed as her functions were systematically taken away. Considering that the Applicant remains employed at the same level and conducts her responsibilities relating to testing, albeit under a different term, and having found that the Applicant has not satisfied the burden of proof to show that

there was anything other than lawful justification for the contested decision, the Applicant's claims of de facto demotion and constructive dismissal are without merit. While the Applicant argues that her post could be abolished, in the event of another downsizing, due to the contested decision, this is a pure speculation at the moment and there is no evidence that the Administration has been taking any such steps indeed, the Applicant has been assured that her position is secure. The Tribunal cannot rule on an anticipatory breach. Related

Decision Contested or Judgment/Order Appealed

The refusal to address and rectify the inconsistencies and duplication in the job descriptions and duties of the Applicant's post and another post.

Legal Principle(s)

An application for interpretation is not receivable if its actual purpose is to have the Tribunal re-examine its decision, even though its judgments are final and without appeal, or to have it comment on its decision. It is only admissible if the wording of the judgment is not sufficiently clear, owing to ambiguity or incoherence, such that a party might, in good faith, be unsure of the meaning or scope of that judgment. The Tribunal needs to decide if the impugned administrative decision is reasonable and fair, legally and procedurally correct, and proportionate. The Tribunal's role is to decide whether there is a rational connection between the materials presented to the Tribunal and the contested decision. The Tribunal's role is not to decide what is right or wrong or what is a better business decision. The Tribunal's role is to decide if the contested decision is one which a reasonable person might have reached and whether there is a rational connection between the materials presented to the Tribunal and the decision. In a case of alleged constructive dismissal, the actions of the employer must be such that a reasonable person would believe that the employer was "marching them to the door". The term constructive dismissal is predicated upon a resignation.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Gizaw

Entity

UNDP

Case Number(s)

UNDT/NY/2016/050

Tribunal

UNDT

Registry

New York

Date of Judgement

24 Jun 2019

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Judgment-related matters

Interpretation of Judgment

Applicable Law

Laws of other entities (rules, regulations etc.)

UNDT RoP

- Article 30

UNDT Statute

- Article 12.3