

UNDT/2019/124, Gueben

UNAT Held or UNDT Pronouncements

The Tribunal reviewed the evidence on record and found that the Organization followed the instructions provided by the Appeals Tribunal in Gueben et. al. 2016-UNAT-692, and properly considered the Applicant's suitability for a permanent appointment in the reconsideration exercise that led to the contested decision of 17 March 2017. According to the evidence on file, the Administration assessed the Applicant's qualifications, competencies and transferable skills while taking into account the overall interests of the Organization. Considering that UNKART is a downsizing entity, the Tribunal found it reasonable for the Administration to evaluate the Applicant's transferable skills in the context of the requirements for language professional staff within the Secretariat. The Tribunal considered that it was not discriminatory to include such considerations in the overall assessment of language professionals compared to non-language professionals. The Tribunal noted that the Administration considered that the employment of language staff in the Secretariat is dependent on the Language Competitive Examination (LCE) and that the Applicant had not passed such examination. It also considered that French translators, interpreters and revisers in the Secretariat must have an excellent knowledge of at least two other official languages, as tested by the relevant United Nations competitive examination and that the Applicant did not meet this criterion either. The Tribunal further found that there was no evidence of a discriminatory treatment of the Applicant vis-à-vis non language staff. The Applicant's situation was not equivalent to the situation of non-language professional staff because the latter possess skills that are common to the broader Secretariat and are not subject to the same requirements as language professional staff. The Tribunal therefore found that the decision not to grant the Applicant a permanent appointment, following the reconsideration exercise, was lawful. Concerning the Applicant's request for payment of a termination indemnity, the Tribunal considered that he was not entitled to it because he had been separated from service on 11 March 2016 due to his own resignation. His appointment was not terminated by the Secretary-General as per staff rule 9.6(a). The Tribunal also rejected the Applicant's request for moral damages as it found that there was no evidence of harm to support an award of compensation apart from the Applicant's own claims.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision not to grant him a permanent appointment, following judgment Gueben et al. 2016-UNAT-692 in his favour.

Legal Principle(s)

The force of the assumption that "alike should be alike" whilst things which are "unlike should be treated unlike" explains much of the normative appeal of the principle of equality, but it still needs to be understood in a factual context. Indeed, a discriminatory practice only arises when two similar situations are treated differently without any reasonable justification for such a distinction.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Gueben

Entity

UNAKRT

Case Number(s)

UNDT/GVA/2017/079

Tribunal

UNDT

Registry

Geneva

Date of Judgement

5 Jul 2019

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Applicable Law

GA Resolutions

- A/RES/51/226

Secretary-General's bulletins

- ST/SGB/2019/10

Staff Regulations

- Regulation 9.3(c)

Staff Rules

- Rule 9.6(a)
- Rule 9.6(b)

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2016/026

2016-UNAT-692

UNDT/2019/022

UNDT/2019/092

2015-UNAT-554

2010-UNAT-026

2018-UNAT-882