

UNDT/2019/135, Fosse

UNAT Held or UNDT Pronouncements

Regarding the Applicant's challenge to the decision not to return her to the post she previously encumbered, since the Applicant was transferred to another Organization, she no longer has any contractual relationship, and therefore any lien to a post, with the United Nations Secretariat from the date of the transfer. The only remedy that the Applicant seeks is the return to the post she previously encumbered or assignment to a suitable vacant position in New York, and the Tribunal cannot order such remedy due to the cessation of the Applicant's contractual relationship with the United Nations Secretariat. The Applicant did not seek any other remedies. Therefore, a judicial decision will be moot since any remedy that can be issued in this case would have no concrete effect. Concerning the Applicant's challenge to the alleged implicit decision not to recognize her two temporary assignments, the Applicant's two assignments were recorded in the Personnel Action forms. Therefore, to the extent that she challenges the alleged implicit decision not to recognize her assignments, this matter is moot. What is unresolved is the nature of these assignments, that is, whether they were temporary assignments or permanent reassignments. This matter is directly tied to the question whether she is entitled to be returned to the post she previously encumbered. Since the Applicant does not have any contractual relationship with the United Nations Secretariat anymore and therefore there is no possible remedy that could have concrete effect, this question is also moot. Even assuming that this matter is not moot, the Administration has discretion to consider the Applicant's two assignments as reassignments, as opposed to temporary assignments, and there is no evidence that such discretion was abused. Thus, the Applicant's claim has no merit. The Applicant also raised a claim of constructive dismissal for the first time in the application. Since this claim was not subject to management evaluation as required, this claim is not receivable.

Decision Contested or Judgment/Order Appealed

The decision not to return the Applicant to a post she previously encumbered following a temporary change of responsibilities. The alleged implied decision not to recognize the Applicant's two temporary assignments in her official status file.

Legal Principle(s)

A judicial decision will be moot if any remedy issued would have no concrete effect because it would be purely academic or events subsequent to joining issue have deprived the proposed resolution of the dispute of practical significance thus placing the matter beyond the law, there no longer being an actual controversy between the parties or the possibility of any ruling having an actual, real effect. The mootness doctrine is a logical corollary to the court's refusal to entertain suits for advisory or speculative opinions. Just as a person may not bring a case about an already resolved controversy (*res judicata*) so too he should not be able to continue a case when the controversy is resolved during its pendency. The doctrine accordingly recognizes that when a matter is resolved before judgment, judicial economy dictates that the courts abjure decision. Since a finding of mootness results in the drastic action of dismissal of the case, the doctrine should be applied with caution. The defendant or respondent may seek to "moot out" a case against him, as in this case, by temporarily or expediently discontinuing or formalistically reversing the practice or conduct alleged to be illegal. And a court should be astute to reject a claim of mootness in order to ensure effective judicial review, where it is warranted, particularly if the challenged conduct has continuing collateral consequences. It is of valid judicial concern in the determination of mootness that injurious consequences may continue to flow from wrongful, unfair or unreasonable conduct. The Tribunal may not award compensation without a party having first requested it. Staff regulation 1.2(c) provides that staff members are subject to assignment by the Secretary-General to any of the activities or offices of the United Nations. Such discretionary power is not unfettered, and it can be challenged on the basis that the decision was arbitrary or taken in violation of mandatory procedures or based on improper motives or bad faith.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Fosse

Entity

DM

Case Number(s)

UNDT/NY/2018/009

Tribunal

UNDT

Registry

New York

Date of Judgement

20 Aug 2019

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Reassignment or transfer
Discretion

Applicable Law

Staff Regulations

- Regulation 1.2(c)

Staff Rules

- Rule 11.2

UNDT Statute

- Article 8.1(c)

Related Judgments and Orders

2017-UNAT-742

2013-UNAT-288

2010-UNAT-035