

UNDT/2019/164, Collins

UNAT Held or UNDT Pronouncements

The reason given to the Applicant for the impugned decision, namely, the organizational restructuring at UNFPA, is supported by the facts. Evidence shows that UNFPA suffered the significant financial shortfalls, and UNFPA, facing such a precarious financial situation, undertook the genuine organizational restructuring which resulted in the abolition of the Applicant's post and the termination of her appointment. While the Applicant claims improper motives, the Tribunal finds that she presented no supporting evidence and thus did not meet the burden of proof in this regard. The Organization's obligation to make reasonable efforts to find a suitable post under staff rule 9.6(e) is premised on the requirement that the affected staff member shows an interest in a new position by timely and completely applying for the position. In this case, the Applicant admitted that she failed to do so. While the Applicant felt that the notice period given to her was short and she did not trust the good faith of the Organization, she was given the notice of termination as required by staff rule 9.7 and her belief of bias does not excuse her from her own obligation to fully cooperate in the process by applying for the vacant positions. Related

Decision Contested or Judgment/Order Appealed

The termination of a fixed-term appointment as a result of abolition of post.

Legal Principle(s)

It is well settled jurisprudence that an international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, and the Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff, but like any other administrative decision, the Administration has the duty to act fairly, justly and transparently in dealing with staff members. In addition, when a justification is given by the Administration for the exercise of its discretion, it must be supported by the facts. If the applicant claims that the decision was ill-motivated or based on improper motives, the burden of proving any such allegations rests with the applicant. Staff rule 9.6(e) creates an obligation on the Administration to make reasonable and good faith efforts to find suitable placements for the redundant staff members whose posts have been abolished. The Administration is bound to demonstrate that all reasonable efforts have been made to consider the staff member concerned for available suitable posts. Nevertheless, while efforts to find a suitable post for the displaced staff member rest with the Administration, it is lawful and reasonable to expect that the affected staff members cooperate fully in the process: the relevant person(s) is/are required to cooperate fully in these efforts and must show an interest in a new position by timely and completely applying for the position. Once the application process is completed, however, the Administration is required by staff rule 9.6(e) to consider such staff members on a preferred or noncompetitive basis for the position in an effort to retain him or her. Regarding the definition of "suitable posts" in which a staff member's services can be utilized under staff rule 9.6(e), the Appeals Tribunal held that "suitable posts" include posts at the displaced staff member's grade level or even at a lower grade, if, in the latter case, the staff member has expressed an interest by way of application thereto.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Collins

Entity
UNFPA
Case Number(s)
UNDT/NY/2017/030
Tribunal
UNDT
Registry
New York
Date of Judgement
19 Nov 2019
Duty Judge
Judge Adda
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Termination (of appointment)
Applicable Law
Laws of other entities (rules, regulations etc.)

- UNFPA Disciplinary Framework

Staff Regulations

- Regulation 9.3(a)(i)

Staff Rules

- Rule 9.6(c)(i)
- Rule 9.6(e)

Related Judgments and Orders

2014-UNAT-433
2014-UNAT-450
2015-UNAT-592
2010-UNAT-084
2011-UNAT-115
2010-UNAT-081
2018-UNAT-847