

# UNDT/2020/137, Montecillo

## UNAT Held or UNDT Pronouncements

These positions to which the Applicant applied required specialized work experience which the Applicant did not have. The Administration reasonably concluded that the Applicant did not meet the minimum work experience required for these respective positions. Potential vacant posts likely to be created by an upcoming restructuring plan are not considered available posts. The Administration lawfully did not consider the Applicant for any potential vacant post. The Administration reviewed the Applicant's candidacy for the positions he applied for and lawfully determined that he did not meet the minimum work experience requirements. While the Administration seemed to have lacked a more systematic way to fulfill its legal obligations under staff rule 13.1(d) before the implementation of the applicable SOPs, it nonetheless produced evidence that it gave priority consideration to the Applicant's candidacies during this period. Sending the lists of all available posts does not show the Administration's lack of good faith. The Applicant was given the opportunity to review all available vacancies and apply to the ones he considered suitable for him. Under staff rule 9.7(d), the Administration can choose to pay compensation in lieu of the three-month notice period, and nothing in staff rule 13.1(d) and the relevant jurisprudence limits the Administration's discretion in that regard. It took two years from the notification of the abolition of the Applicant's post in April 2017 to the final notification of the termination in April 2019. Moreover, during this period, the Administration had to withdraw the termination notice twice due to procedural errors. This course of action is regrettable, but it produced no direct legal consequence in the Applicant's contractual rights as his contract was not terminated.

## Decision Contested or Judgment/Order Appealed

Decision to terminate the Applicant's permanent appointment following the abolition of his post.

## Legal Principle(s)

Subject to the availability of suitable posts for which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, a staff member whose permanent appointment is terminated as a result of the abolition of a post or the reduction of staff shall be retained in preference to those on all other types of appointments. The Administration must 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. Where there is doubt that a staff member has been afforded reasonable consideration, it is incumbent on the Administration to prove that such consideration was given. The Administration is required to consider the relevant staff members on a preferred basis for the available suitable posts. This requires, as per the clear language of this provision, determining the suitability of the staff member for the post, considering the staff member's competence, integrity and length of service, as well as other factors such as nationality and gender. If the redundant staff member is not fully competent to perform the core functions and responsibilities of a position, the Administration has no duty to consider him or her for this position. 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 staff member is 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 to consider such staff members "on a preferred or noncompetitive basis" for the position in an effort to retain him or her. The Administration has no duty to consider a redundant staff member for a position if he or she is not fully competent to perform the core functions and responsibilities of a position. The Administration

has ample latitude to organize its departments. However, this discretion is not unfettered and the Administration cannot freeze a position only to exclude a staff member. If an applicant claims that the decision was ill-motivated or based on improper motives, the burden of proving any such allegations rests with the applicant.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Montecillo

Entity

UNDP

Case Number(s)

UNDT/NY/2019/037

Tribunal

UNDT

Registry

New York

Date of Judgement

6 Aug 2020

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Eligibility

Termination (of appointment)

Abolition of position

Applicable Law

Staff Rules

- Rule 13.1(d)