

UNDT/2021/006, Silva

UNAT Held or UNDT Pronouncements

Even though the relevant legal framework provides no guidance on the procedure to be followed for a transfer decision, the general principle of good faith and fair dealings dictates that a staff member should typically—and at a minimum—be consulted about such transfer before the final decision is made and priorly be provided with a genuine opportunity to comment thereon --As a matter of good faith and fair dealings, an administrative decision that significantly alters the terms and conditions of a staff member's employment should be notified to this person in a formal written decision --It is trite law that the Administration must provide a reason (or reasons) for an administrative decision that is being challenged by a staff member and that such reason(s) must be proper, be based on correct facts and not lead to an unreasonable result --It is nowhere stipulated in the relevant legal framework governing the Applicant's employment with the United Nations Secretariat that a former UNSU representative cannot assume or return to a position with AAS, or, for that matter, with any other specific entity of the United Nations --A disciplinary investigation could concern matters of such serious nature that this would reasonably inhibit a potentially involved staff member from working in AAS, or a similar entity handling questions related to the internal justice system, at least until the case is (possibly) decided in her/his favor --A transfer decision does not pertain to appointment, promotion and/or termination.

Decision Contested or Judgment/Order Appealed

The decision to transfer the Applicant from the Administrative and Appeals Section ("AAS") in the Administrative Law Division to the Global Strategy and Policy Division ("GSPD")

Legal Principle(s)

Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review, and may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed. The Administration enjoys broad discretion in staff management, including reassignment or transfer, but “such discretion is not unfettered and the principle of good faith and fair dealings still applies. This means that a reassignment decision must be properly motivated, and not tainted by improper motive, or taken in violation of mandatory procedures, and such decision can be impugned if it is found to be arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law. An administrative decision can be challenged on the grounds that the Administration has not acted fairly, justly or transparently, and the staff member has the burden of proving such factors played a role in the administrative decision. When judging the validity of the Administration’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate, and the first instance Judge can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. It is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Administration amongst the various courses of action open to it[nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Administration because when the Dispute Tribunal (and the Appeals Tribunal) conducts a judicial review, it does not engage in a merit-based review.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Rescission of the contested administrative decision Applicant is awarded USD3,000 in compensation under art. 10.5 of the Dispute Tribunal’s Statute

Full judgment

[Full judgment](#)

Applicants/Appellants

Silva

Entity

OHRM

Case Number(s)

UNDT/NY/2019/072

Tribunal

UNDT

Registry

New York

Date of Judgement

2 Feb 2021

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Disciplinary matters / misconduct

Disciplinary measure or sanction

Investigation

Reassignment or transfer

Applicable Law

Staff Regulations

- Regulation 1.2(c)

UN Charter

- Article 101.1

UNDT RoP

- Article 10.5(b)