

# UNDT/2021/055, Caucci

## UNAT Held or UNDT Pronouncements

The Respondent's argument that the Applicant did not request management evaluation of the contested decision within 60 days was rooted in the erroneous belief that the MOU, which expressly states that it constituted notice that the Applicant's appointment would not be renewed beyond 29 February 2020 and that she would be separated as a result, related to the Applicants general right to be reabsorbed into MINUSMA. The right to a general lien is intrinsic to a secondment, meaning that it is inalienable and so the Applicant could not have contracted herself out of it. The notice of separation and the waiver under section 4(d) which barred the Applicant from bringing a claim over the terms of the MOU only related to her right to a specific lien against any MINUSMA post (which she was not contesting), and not to the general right of employment she retained with the releasing organization. The Applicant did not (and could not contract) herself out of her general right to return to MINUSMA, but only contracted herself out of her right to a special lien on any post at MINUSMA. As the Applicant did not relinquish her general right to return to MINUSMA, the MINUSMA Administration was under an obligation to fulfil its duties of re-absorbing her or finding suitable alternatives posts for her.

## Decision Contested or Judgment/Order Appealed

The Applicant was challenging the Administration's decision to separate her from the United Nations Multidimensional Integrated Stabilization Mission in Mali ("MINUSMA") following completion of a loan to the Secretariat - Department of Peace Operations ("DPO").

## Legal Principle(s)

It is the characteristic feature of a secondment that—contrary to what is the case for an inter-organization transfer—the "service lien" or the "contractual relationship" between the seconded staff member and the releasing organization remains, and said staff member retains a right to employment in the releasing organization at the end of his/her secondment. This must not be confused with an entitlement to a lien on a specific post, which—unlike for an inter-organization loan of staff—is not intrinsic to a secondment. The plain meaning of the term "rights of employment" generally indicates that the seconded staff member will be reabsorbed, and it does not suggest that it entails further conditions like that of the staff member having to secure a vacant position at his/her releasing organization. Even if the term "rights of employment" were not to be interpreted as an entitlement to mandatory re-absorption, it entails, at the very least, not less than what is due to a staff member holding a permanent appointment in case his post is abolished (under staff regulation 9.3), that is, the Organization must make good faith efforts to identify a post for the staff member.

## Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal found that as the Applicant did not relinquish her general right to return to MINUSMA, the MINUSMA Administration was under an obligation to fulfil its duties of re-absorbing her or finding suitable alternatives posts for her.

Full judgment

[Full judgment](#)

Applicants/Appellants

Caucci

Entity

MINUSMA

Case Number(s)

UNDT/NBI/2020/039

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

17 May 2021

Duty Judge

Judge Tibulya

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Non-renewal