

# UNDT/2021/068, Varona

## UNAT Held or UNDT Pronouncements

Staff rule 4.9(a) provides that inter-organization movements shall be governed by an inter-organization agreement, and UN Women agreed to release the Applicant on secondment in accordance with the Inter-Organization Agreement. Therefore, the terms and conditions of the Inter-Organization Agreement apply in this case. Under the Inter-Organization Agreement, the Applicant had the rights of employment upon her return from secondment, which means that she had the right and the obligation to resume work at UN Women upon return from her secondment. Such rights were not respected when she was forced to compete for a post to resume her employment with UN Women. UN Women's argument that the non-renewal decision was valid because the Applicant agreed to the terms and conditions of secondment which required her to compete for a post to continue her employment with UN Women was rejected. The terms imposed by the individual memorandum have no legal basis in that they breach the definition of secondment as set in the Inter-Organization Agreement, which states that a staff member "will retain his or her rights of employment in the releasing organization" and having not been included expressly in the letter of appointment nor by reference to any promulgated rules or policies. As remedies, the Tribunal ordered the rescission of the non-renewal decision and the reinstatement. The Tribunal set the amount of in lieu compensation at one year's net-base salary at the time of her separation on the basis that the Applicant's fixed-term appointment would have been renewed and she would have received the salary and allowances that she was entitled to upon her return from secondment had the illegality not occurred.

## Decision Contested or Judgment/Order Appealed

Non-renewal of fixed-term appointment following completion of secondment on the basis that she failed to successfully apply for a post at UN Women after the end of her secondment.

## Legal Principle(s)

Under Staff rule 4.9(a), inter-organization movements are defined in and shall be governed by an inter-organization agreement among the organizations applying the United Nations common system of salaries and allowances. Under staff rule 4.1, the terms and conditions of the employment contract of a staff member are set forth in the letter of appointment and its express incorporation by reference of the Organization's Regulations and Rules and all pertinent administrative issuances. In this regard, the employment contract of a staff member subject to the internal laws of the United Nations is not the same as a contract between private parties. When the contested decision concerns the "appointment, promotion or termination", the Tribunal is obligated, pursuant to art. 10.5(a) of its Statute, to set an amount of compensation that the Respondent may elect to pay as an alternative to the rescission of the contested decision. In-lieu compensation, an alternative to rescission, should be as equivalent as possible to what the person concerned would have received, had the illegality not occurred. The amount of in-lieu compensation will essentially depend on the circumstances of the case and due deference shall be given to the trial judge in exercising his or her discretion in a reasonable way following a principled approach.

## Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Varona

Entity

UN-WOMEN

Case Number(s)

UNDT/NY/2020/022

Tribunal

UNDT

Registry

New York

Date of Judgement

10 Jun 2021

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Separation from service

Expiration of appointment (see also, Non-renewal)

Applicable Law

Other UN issuances (guidelines, policies etc.)

Staff Rules

- Rule 4.1

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2015/002

2014-UNAT-463

2019-UNAT-899