

# UNDT/2021/107, Kilauri

## UNAT Held or UNDT Pronouncements

Therefore, the facts resulting from this investigation were not established to a sufficient standard that would permit the Administration to later rely on them to act against the Applicant once he became a staff member. Accordingly, the Tribunal is not satisfied that Administration acted as a reasonable decision maker in deciding to terminate the Applicant's fixed-term appointment and finds the contested decision unlawful and decides to rescind it. The contested decision is rescinded. Under art. 10.5(a) of its Statute, the Respondent may elect to pay the Applicant compensation in lieu of the rescission of the unlawful decision in the amount of the net-based salary for the remainder of his fixed-term appointment, minus the one-month salary and the termination indemnity already paid to the Applicant. The Applicant did not provide evidence of harm, therefore, no damages are awarded under art. 10.5(b) of the Tribunal's Statute.

## Decision Contested or Judgment/Order Appealed

Termination of the Applicant's fixed-term appointment pursuant to staff regulation 9.3(v) regarding facts anterior to him being appointed.

## Legal Principle(s)

While the Secretary-General enjoys a wide discretion in administrative matters, such discretion has limits. In reviewing the Administration's exercise of its discretion, the role of the Dispute Tribunal was to determine if the decision is legal, rational, procedurally correct, and proportionate. Before taking action against a staff member, the Administration was required to respect his or her right to due process, fairness and transparency by adequately appraising the staff member of any allegations against them and affording them a reasonable opportunity to make representations before the action was taken. In matters of termination of appointment for facts anterior to it, the Dispute Tribunal is not required to carry out its own investigation of an applicant's guilt or innocence of the facts relied upon by the Administration to terminate the staff member's contract for facts anterior to his/her appointment. Yet, the Tribunal concluded that three cumulative conditions must be met for the Tribunal to satisfy itself that the Administration had acted as a reasonable decision-maker: (a) was the applicant afforded due process; (b) was there sufficient evidence to support a factual finding that the applicant had engaged in the alleged conduct and (c) were these facts directly relevant to an assessment of the applicant's suitability under the standards established in the Charter of the United Nations and was it reasonable to conclude that, had these facts been known at the time of the appointment, they should have precluded the appointment. The very purpose of in lieu compensation is to place the staff member in the same position in which he or she would have been, had the Organization complied with its contractual obligations. The award for compensation in lieu shall be an appropriate substitution for rescission or specific performance in a given and concrete situation.

## Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Kilauri

Entity

UNDP

Case Number(s)

UNDT/NY/2021/32

Tribunal

UNDT

Registry

New York

Date of Judgement

19 Sep 2021

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Reason(s)

Performance management

Applicable Law

Other UN issuances (guidelines, policies etc.)