

2012-UNAT-234, Gehr

UNAT Held or UNDT Pronouncements

UNAT held that UNDT had correctly found that the alignment policy constituted an organisational measure aimed at simplifying administrative procedures in relation to staff appointments at UNODC. UNAT agreed with UNDT that, as a result of the Secretary-General's broad discretion in relation to decisions on internal management, the issuance of the policy by a "Message of the Day" was subject to limited review by the Tribunal. UNAT affirmed UNDT's finding that the Appellant had failed to demonstrate that the application of the alignment policy to his case was motivated by improper motives and unfairness compared to other staff members. UNDT held that there was no error in UNDT's conclusion that it was open to the Administration to extend the appointment of Appellant for less than one year. UNAT held that the Appellant's complaint regarding UNDT's rejection of his request to grant access to the Organisation's premises in Vienna for the public to attend the Geneva hearing via video-link was unreasonable in the light of the provisions of the UNDT RoP. Regarding the Appellant's submission that UNDT erred by declining to hear three witnesses proposed by him, UNAT held that UNDT had the discretion to decide whether the presence of witnesses was required. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to renew his appointment for only 11 months. UNDT rejected the application. UNDT found that, in accordance with the legal framework, there was no minimum duration for the renewal of a fixed-term appointment. UNDT found that, under ST/SGB/1997/5 and ST/SGB/2004/6, the Director of the UNODC Division for Management did have authority to decide and adopt the alignment policy, for the purpose of "managing the human resources of the United Nations Secretariat entities in Vienna"; and could do so by way of "Messages of the day". UNDT rejected the Appellant's submission that there was legal uncertainty because the decisions reflected in the "Messages of the Day" were taken based on the former Staff Rules which were abolished effective 1 July 2009. UNDT also found that the alignment policy adopted by UNODC was properly and fairly implemented with respect to the Appellant. UNDT rejected the Appellant's allegation of unequal treatment. UNDT found that the Secretary-General provided sufficient reasons to explain the differences in contractual situations and the Appellant failed to show that the application of the alignment policy to his case was unfair or tainted by improper motives. The Applicant appealed.

Legal Principle(s)

The burden of proving allegations that the contested administrative decision was tainted by improper motives, discrimination, arbitrariness, retaliation, etc. , lies with the staff member contesting the decision. UNAT defers to the determination of facts before UNDT and would only interfere if it is satisfied that UNDT considered irrelevant matters or ignored relevant matters placed before it by the parties.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Gehr

Entity

UNODC

Case Number(s)

2011-252

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2012

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Fixed-term appointment

Burden of proof

Non-disciplinary

Discrimination and other improper motives

Standard of review (judicial)

Applicable Law

Secretary-General's bulletins

- ST/SGB/1997/5
- ST/SGB/2004/6

Staff Rules

- Rule 4.13(b)

UNDT RoP

- Article 16.6
- Article 17.1
- Article 17.6
- Article 18.5

Related Judgments and Orders

UNDT/2011/150

2011-UNAT-101

2011-UNAT-123

2010-UNAT-081

2011-UNAT-178

2010-UNAT-051