

2012-UNAT-236, Gehr

UNAT Held or UNDT Pronouncements

UNAT rejected Mr Gehr's contention that the restructuring, although a legitimate exercise of managerial discretion, had been carried out arbitrarily to marginalize him. In accordance with paragraph 2. 4 of ST/AI/2006/3, the Joint Inspection Unit (JIU), in its report, advised the Executive Director to conduct a functional review of all UNODC divisions, sections and units, and align them to the reconfirmed prioritized framework for action of the Office, including by reorienting human and financial resources if necessary. The JIU further recommended that the Executive Director take measures to improve the gender balance at the senior level and consider more candidates from developing countries. UNAT further recalled the ministrative Tribunal of the International Labour Organisation's (ILOAT) jurisprudence that a staff member who has been reassigned is entitled to be informed of the reasons for the reassignment, both for the sake of transparency and in order to permit the staff member to assess the courses of action that may be taken. UNAT held that, in the instant case, the reasons for the reassignment were to be found in the restructuring and the recommendations of the JIU Report which in no way indicated a pattern of harassment or marginalization of Mr Gehr. UNAT dismissed the appeal.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decisions to abolish his post at the UN Office on Drugs and Crime (UNODC) and to laterally reassign him to the position of Senior Legal Advisor within the Office of the Chief of the Terrorism Prevention Branch (TPB). UNDT found that the restructuring of the TPB was a valid exercise of the Secretary-General's discretion. UNDT found that the Applicant's post had not been abolished; rather, the Applicant had been reassigned against the same budgeted post and his functional title and responsibilities were eventually changed to those of Senior Legal Adviser. UNDT was satisfied that the reassignment was justified by the restructuring of the TPB which entailed a redistribution of functions. UNDT dismissed the

application.

Legal Principle(s)

i) An international Organisation necessarily has the power to restructure some or all its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff. A staff member who has been reassigned is entitled to be informed of the reasons for the reassignment. In addition to ensuring transparency in decision making, providing the reasons for the reassignment permits a staff member to assess the courses of action that may be taken, including the lodging of an appeal, and it also permits a review of the lawfulness of the decision on appeal. ii) The heads of departments/offices retain the authority to transfer staff members within their departments or offices to vacant posts at the same level as a result of the restructuring of the office.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Gehr

Entity

UNODC

Case Number(s)

2011-255

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2012

President Judge

Judge Weinberg de Roca

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Reassignment or transfer

Discretion

Restructuring

Applicable Law

Administrative Instructions

- ST/AI/2006/3

Related Judgments and Orders

UNDT/2011/142

2010-UNAT-035

2011-UNAT-134

2011-UNAT-123

2011-UNAT-101