

2012-UNAT-266, Rees

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT affirmed UNDT's finding of the unlawfulness of reassignment decision. UNAT recalled that reassignment is proper if the new post is at the staff member's grade; if the responsibilities involved correspond to his or her level; if the new functions are commensurate with the staff member's competencies and skills; and if he or she has substantial professional experience in the field. UNAT held that, in Ms Rees' case, none of these factors existed with respect to the position to which the Administration purported to reassign her. UNAT held that, in the absence of a performance appraisal, Ms. Rees' reassignment was unlawful. UNAT, however, held that the relief granted by UNDT, the rescission of the reassignment decision, was unsuitable and instead enhanced the award of moral damages. As to the non-renewal, UNAT held that UNDT had erred in finding the decision unlawful. UNAT held, given Ms Rees' consistent refusal to take up her new assignment, her refusal to report to her previous supervisor and her refusal to apply to other vacancies, that the High Commissioner properly exercised her discretionary authority in deciding not to renew Ms Rees' appointment. UNAT recalled that Ms Rees had been advised to submit a formal complaint of harassment under ST/SGB/2008/5, which she had failed to do, and held that therefore her insistence on different reporting lines was without merit. UNAT upheld the appeal in part and vacated the UNDT judgment regarding the rescission of the non-renewal decision and the award of in-lieu compensation.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decisions to reassign her and subsequently not to renew her appointment. UNDT found that the decision to reassign the staff member was not a lawful exercise of the Secretary-General's discretion as the performance evaluation procedures had not been followed. UNDT found that the circumstances of the reassignment led to the impression that the reassignment had been based on serious wrongdoing by her and as such, the decision was potentially prejudicial to

her. UNDT found that in the absence of a performance appraisal, the non-extension of the appointment based on her performance was equally unlawful. UNDT ordered the rescission of the reassignment and non-renewal decisions and in-lieu compensation, compensation for moral damages, and the removal of a performance evaluation memorandum from the Applicant's official status file and placement of copies of its two judgments therein.

Legal Principle(s)

The Secretary-General has broad discretion to reassign staff members. However, a decision to reassign a staff member must be properly motivated, and not tainted by improper motives, or taken in violation of mandatory procedures. A reassignment is proper if the new post is at the staff member's grade; if the responsibilities involved correspond to his or her level; if the new functions are commensurate with the staff member's competencies and skills; and if he or she has substantial professional experience in the field.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Rees

Entity

OHCHR

Case Number(s)

2012-291

2012-292

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Nov 2012

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Harassment (non-sexual)

Performance management

Performance evaluation

Reassignment or transfer

Discretion

Discretionary authority

Applicable Law

Administrative Instructions

- ST/AI/2002/3

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Regulations

- Regulation 1.2(c)

Related Judgments and Orders

UNDT/2011/201

UNDT/2011/156

2011-UNAT-187

UNDT/2010/107

UNDT/2011/197