

# **2014-UNAT-428, Kulawat**

## **UNAT Held or UNDT Pronouncements**

UNAT considered an appeal by the Secretary-General. UNAT held that UNDT did not properly review the impugned administrative decision to determine whether the Administration had given full and fair consideration to staff members' suitability for conversion. UNAT held that the Administration had fully complied with Section 1 of ST/SGB/2009/10 and paragraph 5 of the Guidelines, as it must when considering whether a staff member is eligible for conversion. UNAT held that UNDT had made a significant error of law in concluding that the impugned decision was unlawful. UNAT held that UNDT had erred in law when it refused to apply the Guidelines, which the staff member had not challenged before UNDT. UNAT held that, in not applying the guidelines, UNDT had interfered with the Administration's exercise of its discretion under the Bulletin. UNAT held that UNDT had exceeded its competence by reconsidering the information in the staff member's personnel record and making purported findings of the "facts" underlying her 2006 separation or break in service. UNAT held that since the staff member's rights had not been infringed, UNDT had erred in law in awarding moral damages to her. UNAT upheld the appeal and vacated the UNDT judgment.

## **Decision Contested or Judgment/OrderAppealed**

UNDT Judgment: The Applicant contested the decision that she was ineligible for consideration to be converted to a permanent appointment because she did not have five years of continuous service as of June 2009, due to a break in service from 31 August to 9 September 2006. UNDT issued Judgment No. UNDT/2013/058, finding that the Applicant's "break in service occurred at the insistence of the Organization", rather than the Applicant "acting on her own free will". UNDT concluded that it was not lawful for the Administration to consider the break-in service when evaluating the Applicant's eligibility for conversion to a permanent appointment and the break-in service that took place in 2006 should not be taken into account for the purposes of consideration for conversion to a permanent

appointment. UNDT rescinded the impugned decision and ordered the Administration to give the Applicant full and fair consideration for conversion and awarded the Applicant compensation.

## Legal Principle(s)

Judicial review of an administrative decision requires the Tribunal to examine whether the Administration reached its decision in a “reasonable and fair, legally and procedurally correct” manner. The right of a staff member is not to the granting of a permanent appointment but, rather, to be fairly, properly, and transparently considered for permanent appointment.

## Outcome

Appeal granted

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Kulawat

## Entity

UNMIBH

## Case Number(s)

2013-485

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

27 Jun 2014

## President Judge

Judge Chapman

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Appointment (type)

Permanent appointment

Compensation

Non-pecuniary (moral) damages

Jurisdiction / receivability (UNAT)

Manifest excess of jurisdiction

## Applicable Law

Other UN issuances (guidelines, policies etc.)

- Guidelines on consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered as at 30 June 2009

Secretary-General's bulletins

- ST/SGB/2009/10

Staff Rules

- Rule 104.12(b)(iii)
- Rule 104.13

## Related Judgments and Orders

UNDT/2013/058

2014-UNAT-415

2013-UNAT-357

2010-UNAT-084