

2015-UNAT-506, Nwuke

UNAT Held or UNDT Pronouncements

UNAT considered both an appeal by the Secretary-General and a cross-appeal by Mr Nwuke. UNAT held that ST/AI/2003/8 was inapplicable. UNAT held that the relevant administrative instruction was ST/AI/2010/3, which integrated the recruitment, placement, promotion and mobility of staff within the Secretariat. UNAT held that, in its view, the authority to make lateral transfers to fill job openings at the same level extended to both immediate and anticipated job openings, including posts that would become vacant due to retirement. UNAT held that the impugned decision complied with the legal framework. UNAT held that UNDT erred in law when it found that the filling of the position by lateral transfer breached ST/AI/2003/8. UNAT held that it was not reasonable for UNDT to conclude that the failure to advertise the post was to prevent Mr Nwuke from applying for it, especially as Mr Nwuke's previous complaints of harassment and retaliation against the Executive Secretary had not succeeded before the same UNDT Judge. UNAT agreed with the Secretary-General that, in the absence of additional evidence, there was no basis for the same UNDT Judge to conclude that the preponderance of the evidence established that the Executive Secretary had subjected Mr Nwuke to retaliation. UNAT held that UNDT erred in placing the burden on the Secretary-General to prove that the later transfer was not intended to block Mr Nwuke from applying for the post. UNAT held that UNDT erred in concluding that the lateral move was motivated by retaliatory intent or improper motivation on the part of the Executive Secretary. UNAT allowed the Secretary-General's appeal, vacated the UNDT judgment and dismissed Mr Nwuke's cross-appeal.

Decision Contested or Judgment/Order Appealed

Mr Nwuke contested the decision to fill a position by way of a lateral transfer, without advertising it, which he considered being motivated by retaliatory intent. UNDT found in favour of Mr Nwuke.

Legal Principle(s)

The Secretary-General has broad discretion in decisions regarding promotions and appointments. The burden of proving improper motives, such as abuse of authority, discrimination, retaliation or harassment, rests with the person making the allegation.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Nwuke

Entity

ECA

Case Number(s)

2014-576

Tribunal

UNAT

Registry

New York

Date of Judgement

26 Feb 2015

President Judge

Judge Adinyira

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discrimination and other improper motives

Reassignment or transfer

Discretion

Staff selection (non-selection/non-promotion)

Selection decision

Applicable Law

Administrative Instructions

- ST/AI/2003/8
- ST/AI/2010/3

Staff Regulations

- Regulation 1.2(c)

UNAT RoP

- Article 10.1

UNAT Statute

- Article 2.5

Related Judgments and Orders

UNDT/2013/160

UNDT/2013/161

UNDT/2013/157

2012-UNAT-201

2010-UNAT-084

2011-UNAT-110

2014-UNAT-415

2013-UNAT-288