

2016-UNAT-676, Wilson

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal, specifically the question of whether Mr Wilson's circumstances were sufficient to vitiate the Assistant Secretary-General of OHRM's decision. UNAT recalled the criteria set out in Sanwidi, 2010-UNAT-084 (para. 42), according to which it can interfere with an administrative decision. UNAT found that there was no basis for UNDT to conclude that "no proper consideration was given to [Mr. Wilson's] individual circumstances and attributes that may have warranted a legitimate exception in this case." UNAT found that there was sufficient basis set out in the Assistant Secretary-General of OHRM's response for Mr Wilson, for the UNAT, on judicial review, to be satisfied that the Assistant Secretary-General of OHRM had regard to the case put for the exemption to be granted. While UNAT noted that the Assistant Secretary-General of The Office of Human Resource Management (OHRM) could have been more discursive in her response to Mr Wilson, the fact that this did not occur did not displace the rebuttable presumption of regularity attached to the decision. UNAT concluded that the Assistant Secretary-General of OHRM did not preclude the exercise of discretion, rather discretion was not exercised in his favour. UNAT upheld the Secretary-General's appeal and reversed UNDT's judgment. Mr Wilson's appeal on the quantum of damages was accordingly rendered moot and dismissed.

Decision Contested or Judgment/Order Appealed

Mr Wilson contested the Secretary-General's decision to not grant him an exception to apply for a post. UNDT held that Mr Wilson's request for an exception was not given proper consideration by the Assistant Secretary-General of OHRM and found that irrelevant factors were taken into consideration whereas relevant factors were not. UNDT awarded Mr Wilson USD 3,000 as compensation.

Legal Principle(s)

Exceptions to the Staff Rules may be made by the Secretary-General, provided that such exception is not inconsistent with any Staff Regulation or other decision of the General Assembly and provided further that it is agreed to by the staff member directly affected and is, in the opinion of the Secretary-General, not prejudicial to the interests of any other staff member or group of staff members. When judging the validity of the Secretary-General's exercise of discretion it is not the role of UNDT to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of UNDT to substitute its own decision for that of the Secretary-General.

Outcome

Appeal dismissed on merits; Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Wilson

Entity

OIOS

Case Number(s)

2016-902

2016-906

Tribunal

UNAT

Registry
New York
Date of Judgement
30 Jun 2016
President Judge
Judge Faherty
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Administrative decision
Compensation
Loss of chance
Applicable Law
Administrative Instructions

- ST/AI/2010/3/Section 6.1
- ST/AI/2010/3/Section 6.5

Staff Rules

- Rule 12.3(b)

Related Judgments and Orders

UNDT/2015/125
2014-UNAT-438
2010-UNAT-084
2014-UNAT-450
2012-UNAT-265