

2016-UNAT-682, Marcussen et al.

UNAT Held or UNDT Pronouncements

UNAT considered the appeals of both the Secretary-General and Marcussen et al. UNAT upheld UNDT's determination that the Assistant Secretary-General for Office of Human Resources Management did not give meaningful individual consideration to the staff members' requests for conversion to permanent appointments and noted that UNAT gave a clear directive to the Administration that, upon remand, it should consider the staff members' suitability for conversion to permanent appointments "by reference to the relevant circumstances as they stood at the time of the first impugned refusal to convert their appointments" and that the Administration failed to comply with this directive. UNAT held that the failure of the Administration to do this, and to give any meaningful consideration to this criterion, of itself, was sufficient to vitiate the contested decisions. Moreover, UNAT found no merit in the Secretary-General's argument that UNDT improperly substituted its discretion for that of the Assistant Secretary-General for Office of Human Resources Management. UNAT noted that UNDT recognised that the Assistant Secretary-General for Office of Human Resources Management was entitled to take into consideration ICTY's finite mandate and downsizing situation, and appropriately referenced former Staff Rule 104.13 and Section 2 of ST/AI/2009/10 as the legal bases for giving due weight to "all the interests of the Organisation". However "all the interests of the Organisation", shall encompass the interests of ICTY, as an institution established by the General Assembly, not merely as a downsizing entity, in maintaining in its employ staff members who meet the "highest standards of efficiency, competence, and integrity established in the Charter" in order for it to carry out its mandate. UNAT upheld UNDT's finding that the Administration's decisions not to grant permanent appointments to the staff members were flawed and, thus, upheld UNDT's rescission of the flawed decisions. Marcussen et al. argued that UNDT wrongly held that the Assistant Secretary-General for Office of Human Resources Management must be asked for a third time to conduct a non-discriminatory review. They urged that the fundamental breaches in the present case warranted interference by UNAT with the exercise of administrative discretion and that they

should be awarded either permanent appointments or termination indemnities. UNAT found that UNDT did not err in this remand and found it to be the most effective and equitable of the remedies. UNAT upheld UNDT's remand of the staff members' applications for conversion to permanent appointments to the Assistant Secretary-General for Office of Human Resources Management and to expect strict adherence to UNAT directives and instructions of individual consideration each staff member's respective qualifications, competencies, conduct, and transferrable skills rather than overwhelming weight to the consideration of the finite mandate of ICTY/MICT. Further, both the Secretary-General and the staff members appealed UNDT's award of moral damages. UNAT vacated the awards of moral damages, concluding that UNDT erred in law by not applying the amended UNDT Statute as it existed at the time the UNDT rendered its judgment which requires the staff member to present evidence to sustain an award of moral damages. UNAT dismissed the Secretary-General's appeal of the merits and granted the Secretary-General's appeal of the awards of moral damages. UNAT remanded Marcussen et al.'s appeal of UNDT's remedy of remand to the Assistant Secretary-General for Office of Human Resources Management and dismissed the quantum of the awards of moral damages.

Decision Contested or Judgment/Order Appealed

Marcussen et al. contested the decisions denying conversions of their fixed-term appointments to permanent ones. UNDT found that these decisions were unlawful. UNDT rescinded the contested decisions and remanded the matter to the Assistant Secretary-General of the Office of Human Resources Management. UNDT further awarded moral damages in the sum of EUR 3,000 to each of Mancussen et al.

Legal Principle(s)

The Assistant Secretary-General for Human Resources Management shall have the authority to place in a suitable position the following staff members when in need of placement outside the normal process: (a) Incumbents, other than staff members holding a temporary appointment, of positions reclassified upward for which an applicant other than the incumbent has been selected; (b) Staff, other than staff members holding a temporary appointment, affected by abolition of posts or funding cutbacks, in accordance with Staff Rule 9. 6 (c) (i); (c) Staff members who return

from secondment after more than two years when the parent department responsible concerned has made every effort to place them. Where the appointment of a staff member is limited to a particular department/office, the staff member may be granted a permanent appointment similarly limited to that department/office. If the staff member is subsequently recruited under established procedures including review by a central review body for positions elsewhere in the United Nations Secretariat, the limitation is removed.

Outcome

Appeal dismissed on merits; Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Marcussen et al.

Entity

ICTY

Case Number(s)

2016-891

2016-892

2016-893

2016-894

2016-895

2016-896

2016-897

2016-898

2016-909

2016-910

2016-911

2016-912

2016-913

2016-914

2016-915

2016-916

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Jun 2016

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Permanent appointment

Compensation

Non-pecuniary (moral) damages

Applicable Law

Administrative Instructions

- ST/AI/2010/3/Section 11.1

Secretary-General's bulletins

- ST/SGB/2009/10

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2015/116

2016-UNAT-622

2013-UNAT-357