

2016-UNAT-683, Featherstonet al.

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal. UNAT upheld UNDT's determination and noted that it gave a clear directive to the Administration that, upon remand, it should consider staff member's suitability for conversion to a permanent appointment "by reference to the relevant circumstances as they stood at the time of the first impugned refusal to convert her appointment" and that the Administration failed to comply with the said directive. UNAT also agreed with UNDT that the Assistant Secretary-General for Office of Human Resources Management failed to give any consideration whatsoever to what each staff member might have to offer by way of transferable skills - save the cursory reference in each decision letter that although the staff member "may have transferrable skills, [her] appointment [was] limited to service with the ICTY". 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 recognized 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 decision not to grant a permanent appointment to Ms Featherstone was flawed and, thus, upheld UNDT's rescission of the flawed decision. With respect to the moral damages, UNAT found that UNDT erred in law by not applying the amended UNDT Statute as it existed at the time the Dispute Tribunal 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 award of moral damages.

Decision Contested or Judgment/Order Appealed

Ms Featherstone contested the decision denying her a conversion of a fixed-term appointment to a permanent one. UNDT held that this decision was unlawful because she had not been given sufficient consideration. UNDT rescinded the contested decision and remanded the matter to the Assistant Secretary-General for Office of Human Resources Management for "retroactive individualized consideration of Ms Featherstone's suitability for conversion of her appointment to a permanent one", in conformity with the instructions in the UNAT judgment among others, within 90 days of the issuance of the impugned judgment. UNDT further awarded moral damages in the sum of EUR 3,000 to Ms Featherstone.

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 granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Featherstonet al.

Entity

ICTY

Case Number(s)

2016-899

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/2015/117

2013-UNAT-357

2013-UNAT-359