

2016-UNAT-692, Gueben et al.

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal. UNAT agreed with UNDT's determination that the actual consideration afforded to Gueben et al. was minimal, inadequate, and not in accordance with the relevant instructions. Moreover, UNAT found that UNDT did not err in its interpretation of the relevant provisions in ruling that the Officer in Charge for Human Resources Management could have converted their fixed-term appointments to permanent ones without a limitation of service. Further UNAT found no merit in the Secretary-General's argument that UNDT improperly substituted its discretion for that of the Assistant Secretary-General for Human Resources Management. UNAT noted that, in adherence to classic principles of judicial review, UNDT scrutinized the conduct of the Officer in Charge for Human Resources Management to determine whether she properly arrived at her decisions and did so not only from the perspective of the appropriate statutory provisions. However, UNAT held that UNDT erred in awarding moral damages to Gueben et al. by not applying the UNDT Statute as it existed at the time UNDT rendered its judgment. UNAT further noted that a mere assertion of distress by a staff member is not sufficient evidence to support an award of moral damages. UNAT upheld the appeal as it applied to the awards of moral damages and dismissed the remainder of the appeal. UNAT affirmed UNDT's judgment, except for the awards of moral damages, which were vacated.

Decision Contested or Judgment/Order Appealed

Gueben et al. contested the decisions denying conversions of their fixed-term appointments to permanent ones. UNDT held that these decisions were unlawful, as they had not been given sufficient consideration. UNDT rescinded the contested decisions and remanded the matter to the Assistant Secretary-General for Human Resources Management for more in-depth consideration. UNDT further awarded moral damages in the sum of Euros 3,000 to each of Gueben et al.

Legal Principle(s)

The Assistant Secretary-General for Human Resources Management shall have the authority to place, in a suitable position, staff, other than staff members holding a temporary appointment, affected by the abolition of posts or funding cutbacks, when in need of placement outside the normal process. 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. A mere assertion of distress by a staff member is not sufficient evidence to support an award of moral damages.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Gueben et al.

Entity

UNAKRT

Case Number(s)

2016-922

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Oct 2016

President Judge

Judge Lussick

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

Staff Rules

- Rule 104.13

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2016/026

2013-UNAT-359

2013-UNAT-357

2013-UNAT-358

2013-UNAT-360

2016-UNAT-684