

2016-UNAT-696, Benser

UNAT Held or UNDT Pronouncements

UNAT considered the Secretary-General's appeal, specifically whether General Assembly resolutions 63/250 and 65/247 apply to staff in the General Service category, and whether Staff Rules 4.14(b) and 4.16(b) apply to staff at the General Service level. With respect to the first issue, UNAT found no error in UNDT's reasoning that Paragraph 23 of section II of General Assembly resolution 63/250 and Paragraph 50 of section VI of General Assembly resolution 65/247 include two categories of staff members in the United Nations Secretariat who have the right to be granted a continuing appointment after two years of probationary service: (a) successful candidates from national competitive recruitment examinations; and (b) staff from language services, and that it is clear that the will of the General Assembly as a legislator was for these provisions, which refer to the staff regulations and rules, to apply to all successful external candidates from the national competitive examinations and to all staff members from language services in the United Nations Secretariat. With respect to the second issue, UNAT also agreed with UNDT's finding that Staff Rule 4.14(b) applies to all appointments to posts requiring special language competence within the United Nations Secretariat, including appointments to posts at the General Service level, such as Ms Benser's post, and that Staff Rule 4.16(b)(i) is applicable to all appointments to posts at P-1 and P-2 level that are subject to the system of desirable ranges at the United Nations Secretariat and to all appointments to posts requiring special language competence within the United Nations Secretariat, including posts at the General Service level. UNAT held that the Secretary-General failed to demonstrate any error of law by UNDT and that the appeal must accordingly fail. UNAT dismissed the appeal in its entirety and affirmed UNDT's judgment.

Decision Contested or Judgment/Order Appealed

Ms Benser contested the decision not to grant her a continuing appointment. UNDT found that granting Ms Benser a continuing appointment would not lead to unlawful

and unequal treatment of other occupational groups, as asserted by the Secretary-General. UNDT ordered rescission of the decision not to grant Ms Benser a continuing appointment or, alternatively, payment of USD 5,000 to her as compensation in lieu of such an appointment. UNDT however rejected Ms Benser's request for moral damages, as she had failed to adduce any pleadings or evidence to show harm from the contested decision.

Legal Principle(s)

Paragraph 23, Section II, of General Assembly resolution 63/250 and Paragraph 50, Section VI, of General Assembly resolution 65/247 entitle successful candidates from national competitive examinations and staff from language services to be granted continuing appointments after two years of probationary service. They make no distinction between Professional level and General Service level staff. Staff Rule 4.14(b) applies to all appointments to posts requiring special language competence within the United Nations Secretariat, including appointments to posts at the General Service level. Staff Rule 4.16(b)(i) is applicable to all appointments to posts requiring special language competence within the United Nations Secretariat, including posts at the General Service level.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Benser

Entity

DGACM

Case Number(s)

2016-926

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Oct 2016

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Continuing appointment

Applicable Law

GA Resolutions

- A/RES/63/250/Paragraph 23
- A/RES/65/247/Paragraph 50

Staff Rules

- Rule 4.14(b)
- Rule 4.16(b)(i)

Related Judgments and Orders

UNDT/2016/016