

2017-UNAT-759, Hassanin

UNAT Held or UNDT Pronouncements

UNAT vacated UNDT's compensation orders in the cases in which staff members had secured alternative employment, finding that the applications had become moot. In the remaining cases, UNAT considered that any permanent staff member facing termination due to abolition of post must show an interest in a new position (for which he or she is suitable and qualified) by timely and completely applying for that position. However, once the application process is completed, the Administration is required by Staff Rule 13. 1(d) to consider the permanent staff member on a preferred or non-competitive basis for the position in an effort to retain the permanent staff member, which the Administration failed to do in this case. Accordingly, UNAT upheld UNDT's findings that the termination decisions were unlawful in cases in which the respective staff members had complied with the aforementioned requirement to apply for alternative positions and vacated UNDT's findings in cases where the staff members had failed to submit timely and complete applications for positions for which they were suitable and qualified. In the former cases, UNAT upheld the award of in-lieu compensation, albeit, unlike UNDT, not reducing the total amount by the termination indemnity paid but vacated the award of moral damages for lack of evidence of harm; in the latter cases, UNAT vacated UNDT's order of in-lieu compensation and moral damages.

Decision Contested or Judgment/Order Appealed

Several former staff members in the Publishing Division of the Department for General Assembly and Conference Management (DGACM) filed applications before UNDT challenging the decision to terminate their permanent appointments following the abolition of posts in DGACM. UNDT held that the Administration had failed to act fully in compliance with Staff Rules 9. 6 and 13. 1 by subjecting permanent staff members to the requirement of competing for available posts against other non-permanent staff members and by failing to reassign permanent staff members as a matter of priority to another post matching their abilities and grade. UNDT ordered,

in all cases in which staff members had not secured another position with the Organisation at the time of their application with UNDT, rescission of the termination decision or, in lieu of rescission, two years' net base salary minus any termination indemnity paid to him or her. In addition, UNDT awarded compensation for emotional distress.

Legal Principle(s)

The Organisation has the obligation to give priority consideration to permanent staff members facing termination due to abolition of post. Staff members, on the other hand, have the obligation to timely submit completed applications for positions for which they are suitable and qualified.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Hassanin

Entity

DGACM

Case Number(s)

2016-1036

Tribunal

UNAT

Registry

New York

Date of Judgement

14 Jul 2017

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Alternative appointment

Priority consideration

Appointment (type)

Permanent appointment

Termination (of appointment)

Abolition of position

Applicable Law

Staff Regulations

- Regulation 9.3

Staff Rules

- Rule 13.1
- Rule 9.6

UN Charter

- Article 101.3

Related Judgments and Orders

UNDT/2016/181