2017-UNAT-765, Fasanella

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held the UNDT correctly determined that Mr Fasanella was affecting an administrative decision that produced direct legal consequences affecting his employment. UNAT held that there was no merit to the complaint that UNDT erred in law and exceeded its jurisdiction by considering matters beyond the scope of Mr Fasanella's request for management evaluation and the Management Evaluation Unit's response, on the basis that it was the role of UNDT to adequately interpret and comprehend the application and that UNDT had the inherent power to individualise and define the administrative decision. Specifically, noting that the Secretary-General presented evidence of acts taken after the issuance of the notice, UNAT held that the Administration may not produce evidence of events subsequent to the management evaluation on one hand and then object to Mr Fasanella offering rebuttal evidence on the other. UNAT further held that, due to the unusual circumstances of the case, wherein the notice of termination was given months in advance of the termination, it would have been inappropriate for UNDT to refuse to admit evidence of events after the issuance of the notice of termination. UNAT held that UNDT correctly concluded that Mr Fasanella's status as a permanent staff member provided him with additional legal protections and guarantees. UNAT held that UNDT correctly concluded that while the Administration had the authority to terminate Mr Fasanella as a permanent appointee provided it is lawfully done, i. e. , that relevant conditions concerning preferential retention are satisfied, but that the Administration did not comply with Staff Rule 13. 1(d) in terminating him. UNAT agreed with UNDT that the termination was unlawful, albeit for different reasoning to UNDT. UNAT held that the Administration did not meet its burden of showing that it complied with the Staff Rules in terminating Mr Fasanella. UNAT held that, 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 him or her and this was not done. Therefore, the decision to terminate Mr Fasanella was unlawful. UNAT held that UNDT erred in reducing Mr

Fasanella’s in-lieu compensation by the amount of his termination indemnity paid by the Administration. UNAT held that as the staff member was awarded damages for emotional stress on the basis of his testimony alone, this should be reversed. UNAT granted the appeal in part, affirmed the UNDT judgment as to the rescission of the termination of Mr Fasanella’s appointment, modified the alternative compensation to rescission award to two years’ net base salary without any reduction for termination indemnity, and reversed the award of USD 7,000 as compensation. Judge Knierim dissented.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to abolish his post and terminate his permanent appointment. UNDT found that the application was receivable and that the decision was unlawful as the Organisation committed material irregularities and failed to act fully in compliance with the legal framework by subjecting the Applicant to the requirement of competing for available posts against other, non-permanent staff members. UNDT ordered rescission, or as an alternative to the rescission, an award of in-lieu compensation, and awarded compensation for emotional distress.

Legal Principle(s)

UNDT has the inherent power to individualize and define the administrative decision challenged by the party and to identify the subject of judicial review. The Administration may terminate the permanent appointment of a staff member whose post has been abolished or due to reduction of staff, provided it complies with the relevant regulations and rules. The concerned staff member’s testimony by itself is not sufficient to establish that he or she suffered compensable harm.

Outcome

Appeal granted in part

Full judgment

Full judgment

Applicants/Appellants

Fasanella

Entity

DGACM

Case Number(s)

2016-1043

Tribunal

UNAT

Registry

New York

Date of Judgement

14 Jul 2017

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post
Termination
Appointment (type)

Permanent appointment
Compensation
Evidence of harm
In-lieu compensation
Jurisdiction / receivability (UNDT or first instance)
Termination (of appointment)
Abolition of position

Applicable Law

Staff Rules

- Rule 13.1(a)
- Rule 13.1(d)
- Rule 13.1(e)
- Rule 9.3(a)(i)
- Rule 9.6(e)

UNDT Statute

- Article 10.5(a)

Related Judgments and Orders

UNDT/2016/193