

2017-UNAT-768, Smith

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. On the issue of receivability, UNAT held that UNDT correctly determined that the Appellant challenged an administrative decision that produced direct legal consequences affecting his employment and that the application was receivable. UNAT held that there was no merit in the Secretary-General's submission that UNDT erred in law and exceeded its jurisdiction by considering matters beyond the scope of Mr Smith's request for management evaluation and the MEU'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. Smith 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 there was no merit to the Secretary-General's claim that UNDT exceeded its jurisdiction or competence in allowing evidence from Mr. Smith of events subsequent to the Management's response to his request for management evaluation. UNAT held that UNDT committed an error of law in finding that the decision to terminate Mr. Smith's permanent appointment was unlawful because he did not receive proper consideration as a permanent appointee, and that the Organisation committed material irregularities and failed to act fully in compliance with the relevant legal provisions. UNAT held that it was lawful and reasonable of the Administration to expect affected permanent staff members to cooperate fully in the restructuring process, such as applying for suitable available positions, fully cooperating and making a good faith effort in order for their applications to succeed, including a duty to apply within the deadlines and to respect formal requirements. UNAT held that Mr Smith did not make a good faith

effort to secure another position, despite being asked to apply for available posts, which he refused to do, because, being a staff representative, he did not want to take away positions from his colleagues. UNAT held that the Organisation did not have a duty to consider Mr Smith for the positions for which he applied because he either did not have the necessary qualifications, or he was not qualified. UNAT held that as the termination of Mr Smith's permanent appointment was lawful, UNDT erred in law when rescinding it and setting in-lieu compensation, and awarding compensation for emotional distress. UNAT granted the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to abolish his post and to terminate his permanent appointment. UNDT found the application receivable *ratione materiae* and that the termination was unlawful since the Organisation committed irregularities and failed to act fully in compliance with the legal framework. UNDT ordered rescission of the decision, or, as an alternative, an award of in-lieu compensation. UNDT awarded compensation for emotional distress.

Legal Principle(s)

The key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms and conditions of appointment, and the administrative decision must have a direct impact on the terms of appointment or contract of employment of the individual staff member. UNDT has the inherent power to individualize and define the administrative decision challenged by the applicant and to identify the subject(s) of judicial review. UNAT will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. In a restructuring exercise, like any other administrative decision, the Administration has the duty to act fairly, justly, and transparently in dealing with its staff members. It is lawful and reasonable of the Administration to expect affected permanent staff members to cooperate fully in the restructuring process.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Smith

Entity

DGACM

Case Number(s)

2016-1046

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

Termination

Appointment (type)

Permanent appointment

Termination (of appointment)

Abolition of position

Applicable Law

Staff Rules

- Rule 13.1
- Rule 9.6(c)(i)
- Rule 9.6(e)
- Rule 9.6(f)

Related Judgments and Orders

UNDT/2016/194