

2018-UNAT-847, Timothy

UNAT Held or UNDT Pronouncements

UNAT held that UNDT was correct in concluding that the Administration's decision to terminate the staff member was unlawful since it did not fully comply with its obligations under Staff Rule 9. 6(e) and (f) to take all reasonable and bona fides efforts to consider her for available suitable posts, as an alternative to the abolished one. UNAT noted that the phrase "suitable posts" is not defined in the Staff Rules and that nothing in the language of Staff Rule 9. 6(e) and (f) indicates that the obligation of the Administration to consider the redundant staff member for suitable posts, vacant or likely to be vacant in the future, is limited to the staff member's grade level. UNAT held that the Administration is under an obligation to make proper, reasonable, and good faith efforts to find an alternative post for the displaced staff member at his or her grade level or even at a lower grade, if, in the latter case, the staff member concerned has expressed an interest. Thus, UNAT concluded that the staff member should have been considered not only for suitable posts at the same level as her abolished G-7 post in New York but also for all the lower available suitable posts in New York, for which she had expressed her interest by way of application thereto. Nonetheless, UNAT held that UNDT made several errors of law: a) UNDT erred in finding that it sufficed, in order for the staff member to be retained in service, to have a relative competence for the new suitable post. UNAT held that if the redundant staff member was not fully competent to perform the core functions and responsibilities of an alternative suitable post, the Administration had no duty to consider him or her for the post; b) UNDT erred in finding that the staff member should have been considered for available suitable posts covering the entire parent organisation, including but not limited to her duty station, because she had passed the exam for the Professional level. UNAT held that it was immaterial whether or not the staff member had passed the exam for the Professional level at some point since the abolished post she was encumbering at the critical time fell into the General Services category and not into the Professional category; c) UNDT erred in finding that an affected staff member had a right to be retained in suitable positions occupied at the date of abolition by staff members

having a lesser level of protection under Staff Rule 9. 6(e). UNAT held that the Administration was bound to consider the redundant staff members only for suitable posts that were vacant or likely to become vacant in the future; and d) UNDT further erred in finding that the staff members were entitled to be retained without having to apply for vacant job openings. UNAT held that a staff member holding a continuing or indefinite appointment facing termination due to abolition of his or her post was obliged to fully cooperate by applying for suitable posts that were vacant. UNAT ordered rescission of the contested decision; alternatively, the Secretary-General was ordered to pay 12 months' net base salary as compensation in lieu of rescission. UNAT vacated UNDT's award of compensation for moral damages as the staff member did not present evidence of any harm.

Decision Contested or Judgment/Order Appealed

The staff member, who held an indefinite appointment at the GS-7 level, contested the decision to separate her from service. UNDT found that the decision to terminate her appointment for abolition of post and to separate her from the Organisation had not been taken in line with the mandatory legal framework and was unlawful. UNDT ordered rescission of the contested decision and awarded the staff member three months' net base salary as compensation for moral damages.

Legal Principle(s)

The Administration is under an obligation to make proper, reasonable, and good faith efforts to find an alternative suitable post for a redundant staff member holding an indefinite appointment at his or her grade level or even at a lower grade, if, in the latter case, the staff member concerned has expressed an interest. Staff members holding a continuing or indefinite appointment facing termination due to abolition of post are obliged to fully cooperate by applying for suitable vacant posts.

Outcome

Appeal granted in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Timothy

Entity

UNHCR

Case Number(s)

2017-1135

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Jun 2018

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Appointment (type)

Continuing appointment
Permanent appointment
Termination (of appointment)

Applicable Law

Staff Rules

- Rule 9.6(e)
- Rule 9.6(f)

UN Charter

- Article 101.3

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2017/080
2017-UNAT-742
2017-UNAT-787
2010-UNAT-042
2015-UNAT-505
2015-UNAT-534
2014-UNAT-483
2012-UNAT-225
2017-UNAT-765
2017-UNAT-768
2017-UNAT-730
2010-UNAT-088
2016-UNAT-688
2016-UNAT-626
2015-UNAT-592
2014-UNAT-450
2014-UNAT-433/Corr.1