

2019-UNAT-930, Chemingui

UNAT Held or UNDT Pronouncements

As a preliminary issue, UNAT held that the new evidence attached to the cross-appeal by the Respondent (the Appellant on Cross-Appeal and the Applicant before UNDT) was not admissible. On the receivability of the cross-appeal, UNAT held that it was not receivable since the Respondent was the prevailing party at the first instance level and he does not claim to broaden the order of UNDT, but just to maintain it by means of an additional argument that has already been rejected by UNDT. UNAT held that UNDT did not err in its judgment, although UNAT differed in its reasoning. UNAT held that the discretionary power of reassigning the Respondent to the other post was not exercised in a reasonable manner. UNAT held that (1) the funding source of a temporary post to which a staff member is being assigned was part of the legitimate considerations by which it is possible to evaluate the lawfulness of a reassignment decision and that the reassignment to a temporary appointment was consequential to the Respondent's job security; (2) there was no post to which the Respondent could be assigned, just a name of a position yet to be established; and (3) the TJO was not established in accordance with ST/AI/2010/4/Rev. 1, under which a TJO is created to respond to an unexpected emergency, meet a seasonal or peak work requirement, or for a special project with a finite mandate. UNAT considered the circumstances reinforced the finding that the TJO was created for no valid operational purposes, but rather to serve as a pretext to reassign the Respondent, who would have no right to return to his original post. On the claim of improper motives in the reassignment, UNAT partially disagreed with the UNDT's finding that this specific ground of appeal was both vague and unsupported by evidence. However, UNAT found no evidence of the alleged improper motives that could justify an award of compensation for harm. UNAT held that UNDT did not err in its finding that the decision to reassign the Respondent was unlawful and should be rescinded. UNAT dismissed the appeal, held that the cross-appeal was not receivable, and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested a decision to reassign him laterally to another post. UNDT found that the reassignment decision was unlawful and ordered its revocation. It determined that the reassignment carried significant risks and disadvantages for the Applicant and it did not satisfy the Rees test as a proper assignment. However, UNDT rejected for lack of evidence the Applicant's claim that the reassignment decision was a retaliatory measure and was tainted by improper motives.

Legal Principle(s)

A party should not be allowed to submit additional evidence to the Appeals Tribunal, which was available to it while its case was pending before UNDT. A party should not argue a different position on appeal than in the first instance. While the Secretary-General has broad discretion in staff management, including reassignment or transfer, such discretion is not unfettered. A reassignment decision must be properly motivated, and not tainted by improper motive, or taken in violation of mandatory procedures. A reassignment decision may be impugned if it is found to be arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Chemingui

Entity

ESCWA

Case Number(s)

2019-1226

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Jun 2019

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Reassignment or transfer

Discretion

Applicable Law

Administrative Instructions

- ST/AI/2010/3
- ST/AI/2010/4/Rev.1

GA Resolutions

- A/RES/63/250

Staff Regulations

- Regulation 1.2(c)

UNAT RoP

- Article 9

Related Judgments and Orders

UNDT/2018/112