

2019-UNAT-934, Kauf

UNAT Held or UNDT Pronouncements

UNAT held that UNDT did not make any errors of law and fact when it concluded that the Administration, having issued the offer of appointment on the basis of a factual error to an ineligible candidate who was legally barred from being recruited, had a duty to withdraw the offer, as soon as the mistake was discovered; and that the Administration was legally precluded from issuing a letter of appointment to the Appellant. UNAT held that, on the basis that it had concluded that UNDT did not make any errors of law and fact, it was unnecessary to examine the other grounds of appeal advanced by the Appellant. UNAT did not endorse the UNDT's reasoning that the contract concluded was void ab initio since it was a clear contradiction within the applicable law or that there was a de facto contractual relationship for services rendered between the Appellant and the Organisation. Applying the maxim that he that comes to equity must come with clean hands, UNAT held that the Appellant could not be allowed to knowingly breach the rules, engage in an activity which was unlawful, and then seek compensation. UNAT held that the Appellant's conduct was self-serving and unlawful, that he knew or ought to have known the law when he applied for the position, and that he breached the law. UNAT held that the Organisation could not be made liable and that the Appellant could not be awarded damages. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the withdrawal of his offer of appointment after having taken up his new function. UNDT found that the withdrawal of the appointment was lawful since the Applicant was not eligible to have been appointed under the relevant rules which restricted the reemployment of a former consultant for six months following the end of his or her consultancy service.

Legal Principle(s)

Pursuant to the principle of legality of the Administration, where the Administration commits an irregularity or error in the exercise of its competencies, then, as a rule, it falls to the Administration to take such measures as are appropriate to correct the situation and align itself with the requirements of the law, including the revocation of the possibly illegal administrative act. Candidates for a public post are presumed to know the rules applicable to the employing public corporation. He that comes to equity must come with clean hands.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kauf

Entity

ECE

Case Number(s)

2019-1230

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Jun 2019

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Staff selection (non-selection/non-promotion)

Eligibility

Applicable Law

Administrative Instructions

- ST/AI/2013/4

UNAT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2018/121