

2021-UNAT-1082, Kanbar

UNAT Held or UNDT Pronouncements

UNAT agreed and found the evidence on the record supports the UNDT finding that the administrative action was lawful and rational in furtherance of the operational needs of the Organization. Second, UNAT also found no error in the UNDT conclusion that the administrative decision was not tainted by improper motives, and that the staff member had failed to meet her burden of proof of proving otherwise. Finally, UNAT found no error in the UNDT conclusion that the additional commute of 17 km was not overly onerous, yielding to a disproportionate measure by the Administration.

Decision Contested or Judgment/Order Appealed

A staff member providing language services was reassigned to a different duty station within a Mission, due to operational necessity. The staff member's contract specified that she was to provide language services throughout the area of operation of the Mission, and not just the original duty station where she was assigned. The new placement involved an additional commute of 17 km for her. She challenged the reassignment decision at the UNDT, which dismissed her application finding the contested decision lawful, rational, procedurally correct, and proportionate, and thus, a lawful exercise of discretion.

Legal Principle(s)

The Administration has the discretion to appoint, transfer and promote staff, provided that it acts fairly, justly, and transparently. The staff member has the burden of proof to show administrative wrongdoing. The Administration can reassign staff members out of operational necessity and can transfer staff members to different duty stations if allowed under the terms and conditions of employment, and provided that the action is lawful, rational, procedurally correct, and proportionate.

An additional commute of 17 km is not particularly burdensome and as such not a disproportionate measure by the Administration.

Outcome

Appeal dismissed on merits

Outcome Extra Text

UNAT dismissed the appeal and affirmed the UNDT judgment.

Full judgment

[Full judgment](#)

Applicants/Appellants

Kanbar

Entity

UNFIL

Case Number(s)

2020-1400

Tribunal

UNAT

Registry

New York

Date of Judgement

19 Mar 2021

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Discrimination and other improper motives

Bias/favouritism

Reassignment or transfer

Discretion

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Staff Regulations

- Regulation 1.2(c)

UNAT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2020/046

2016-UNAT-669

2018-UNAT-849

2018-UNAT-829

2010-UNAT-084

2018-UNAT-884

2018-UNAT-870

2014-UNAT-483

2016-UNAT-685