

2021-UNAT-1088, Geegbae

UNAT Held or UNDT Pronouncements

The Secretary-General appealed arguing that the Organization had no obligation to make all reasonable efforts to place the staff member in available suitable posts, as he only had an FTA and that such obligation was meant only for those who had continuing or permanent appointments. UNAT disagreed and found that staff members should be “retained” in an order of priority favouring, first, those with continuing appointments; second, holders of FTAs of more than two years’ duration who were recruited competitively; and third and finally, other FTA holders. In the instant case, UNAT found because the staff member’s FTA was prematurely terminated, he was subject to the Staff Rule 9.6(e) exception, although he would still be in the lowest priority category for retention of his post. The Organization had failed to apply those priority considerations to the particular job vacancy for which he applied and in which the Organisation purported to require him to compete with all-comers and to undergo a written test. Finally, UNAT also found that the staff member was entitled to rely on the advice of his superior, who told him he did not need to sit for a written test. As such, the staff member was acting upon the advice from the Organization’s representative or agent, and he could not be penalized for complying with such advice.

Decision Contested or Judgment/Order Appealed

A staff member was serving on a fixed-term appointment (FTA) for the period of 1 July 2017 to 30 June 2018. On 25 August 2017, following a reduced budget for the mission where the staff member served, the Administration informed him that his FTA would be terminated with effect from 30 September 2017. While he was still employed, the staff member applied for three job openings at the FS-4 level, for which he was rostered, but he was not selected for any of these roles. He filed an application with the UNDT challenging the administrative decision to terminate his FTA, and he also claimed that the Organization did not fulfil its obligation to make a good faith effort in accordance with Staff Rule 9.6(e) to find him an alternative

available post.; The UNDT found that pursuant to Staff Regulation 9.3(a)(i) and Staff Rule 9.6(c)(i), the Secretary-General may terminate the appointment of a staff member following the abolition of posts. Turning to the second issue whether the Organization complied with its obligations to make all reasonable efforts to place the staff member in available suitable posts as per Staff Rule 9.6(e), the UNDT found that the Administration had failed to consider the applicant on a preferred or non-competitive basis for one of the posts he had applied for. As a result, the UNDT found the contested administrative decision to be unlawful and rescinded it. As an alternative to reinstatement, it ordered the Administration to pay the staff member the sum equivalent to five months and 15 days' net-base salary.

Legal Principle(s)

The Secretary-General may terminate the appointment of a staff member following the abolition of posts. The Organization has an obligation to make all reasonable efforts to place a staff member whose post has been abolished in available suitable posts as per Staff Rule 9.6(e), in an order of priority favouring, first, those with continuing appointments; second, holders of FTAs of more than two years' duration who were recruited competitively; and third and finally, other FTA holders. A staff member who is entitled to Staff Rule 9.6(e) cannot be required to compete with all applicants. A staff member following the advice of his superior to not participate in a test cannot be later penalized for following such advice, since the superior was acting as an agent or representative of the Organization.

Outcome

Appeal dismissed on the merits; Cross-appeal dismissed on the merits

Outcome Extra Text

The Secretary-General's appeal is dismissed and the staff member's cross-appeal for additional compensation and moral damages is also dismissed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Geegbae

Entity

MONUSCO

Case Number(s)

2020-1406

Tribunal

UNAT

Registry

New York

Date of Judgement

19 Mar 2021

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Alternative appointment

Priority consideration

Appointment (type)
Fixed-term appointment
Termination (of appointment)
Abolition of position

Applicable Law

Administrative Instructions

- ST/AI/1998/9

Staff Regulations

- Regulation 4.5(c)
- Regulation 9.3(a)(i)

Staff Rules

- Rule 11.2
- Rule 4.13(c)
- Rule 9.4
- Rule 9.6

UNAT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2020/061
2015-UNAT-592
2014-UNAT-450
2014-UNAT-433
2012-UNAT-201
2010-UNAT-081
2018-UNAT-847