

# 2021-UNAT-1179, Moncef Khane

## UNAT Held or UNDT Pronouncements

UNAT made several findings on the appeal. First, UNAT held that UNDT did not err when it did not hold a case management or substantive hearing on the issues. UNAT agreed that the first instance Judge is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and to do justice to the parties. Second, UNAT agreed with the UNDT that the administrative action was not a disguised disciplinary sanction. UNAT also found that the USG had the authority to transfer the appellant to a different unit to address a political situation. However, UNAT disagreed with the UNDT and found that the post to which the staff member was transferred to was not commensurate with his skills, competencies and experiences. The Tribunal explained although the SPMO position was at the same level (P-5), it appeared to be a fictitious or non-existent post. UNAT pointed to the fact that no job description was initially provided to the staff member and the Terms of Reference also appeared vague. The post also stayed vacant for a long time. Hence, UNAT granted the appeal in part and rescinded the reassignment decision. However, because the staff member did not hold on to the post he was transferred to (the SPMO position), his claim for loss of salary and entitlements was dismissed.

## Decision Contested or Judgment/Order Appealed

A staff member previously served as a P-5 Senior Political Affairs Officer in the role of Secretary of the Third Committee to the General Assembly. Following an incident at a meeting of the Third Committee during which the staff member and the Representative of a Member State got into a disagreement, the staff member was summoned to the office of the USG/Department for General Assembly and Conference Management (DGACM). After the staff member met with the USG on two occasions, the USG decided to resolve the matter by reassigning the staff member to the post of Senior Programme Management Officer (SPMO), which was at the same P-5 level but located in a different unit within DGACM. The staff member disagreed with the reassignment. He went on sick leave and then on special leave

without pay but never reported for duty to his newly assigned role. The staff member challenged the reassignment at the UNDT, which found the administrative action to be lawful considering that the post the staff member was transferred to was properly commensurate with his skills, competencies and experiences. The UNDT also ruled that the transfer decision was not a disguised disciplinary sanction and that the staff member had no performance issues.

## Legal Principle(s)

The Secretary-General has broad discretion to assign, as well as reassign, staff members to undertake certain functions at any of the offices of the United Nations. The Secretary-General has the authority to transfer a staff member to a different unit to address a political situation. The administrative discretion, however, is conditioned upon the role to which a staff member is transferred to must be commensurate with his skills, competencies and experiences. The newly assigned role can not be a fictitious or made up post. In order to be eligible for damages, the staff member must hold on to the post he has been reassigned to. He cannot abandon the post or decide to not show up and then challenge the reassignment.

## Outcome

Appeal granted in part

## Outcome Extra Text

The appeal is granted in part. The decision to transfer the staff member is rescinded, but the claim for damages is dismissed.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Moncef Khane

## Entity

UNS

## Case Number(s)

2020-1481

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

29 Oct 2021

## President Judge

Judge Neven

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Reassignment or transfer

Discretion

Remedies

Rescission

## Applicable Law

## Administrative Instructions

- ST/AI/2010/3

## Staff Regulations

- Regulation 1.2(c)

## Staff Rules

- Rule 1.2
- Rule 1.2(e)

## UN Charter

- Article 100

## Related Judgments and Orders

UNDT/2020/159