

2022-UNAT-1207, Michelle Rockcliffe

UNAT Held or UNDT Pronouncements

UNAT disagreed and found the background of the prior retaliation against the Staff Member affects the principle of the presumption of regularity. In light of the circumstances of this particular case, UNAT found the Administration bore the obligation to justify the lawfulness of its decision to cancel the Job Opening. UNAT thus found the UNDT erred by not requiring the Administration to establish its justification in law for the cancellation of the Job Opening. The administrative decision to cancel the Job Opening was rescinded, and the Tribunal set in lieu compensation at two years' net base salary.

Decision Contested or Judgment/Order Appealed

Contested Decision The Ethics Office found a case of retaliation against a Staff Member and recommended that the Administration consider her on a preferred or non-competitive basis for any position she may apply for at the P-4 level within the Pension Fund. The Staff Member applied for a post at the P-4 level (a regular budget post / permanent post), but the Administration did not consider her on a preferred basis for that post and instead offered her three P-4 posts, which were temporary in nature. She declined. The Administration cancelled the Job Opening for the permanent P-4 Post. She contested the cancellation of the Job Opening. The UNDT found the cancellation of Job Opening was lawful and there was no evidence that the decision was ill-motivated. The tribunal credited the reasons of the Administration and agreed that the cancellation of the post was part of a genuine restructuring exercise. The UNDT also concluded that the Staff Member bore the burden to prove any ill-motivation on the part of the Administration to cancel the Job Opening.

Legal Principle(s)

When there is a finding of retaliation against a Staff Member, subsequent administrative actions affecting the terms of employment of that Staff Member may not necessarily be presumed to be regular. In certain circumstances, the burden will shift to the Administration to prove that its actions were lawful.

Outcome

Appeal granted

Outcome Extra Text

The appeal was granted, and Judgment No. UNDT/2020/212 was set aside. The administrative decision was rescinded, and the Tribunal set in lieu compensation at two years' net base salary.

Full judgment

[Full judgment](#)

Applicants/Appellants

Michelle Rockcliffe

Entity

UNJSPF

Case Number(s)

2021-1516

Tribunal

UNAT

Registry

New York

Date of Judgement

18 Mar 2022

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-disciplinary

Bias/favouritism

Retaliation

Burden of proof

Discrimination and other improper motives

Ethics office

Applicable Law

Staff Rules

- Rule 13.1(d)
- Rule 9.6(e)

UNAT Statute

- Article 9.1(a)