

# 2022-UNAT-1223, Cristina Silva

## UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General and a cross-appeal by Ms. Silva. UNAT held that UNDT committed several errors of law and fact and the decision to reassign Ms. Silva was without procedural flaws. UNAT held that UNAT's jurisprudence does not establish a need for prior consultation for every reassignment. UNAT held that UNDT had an incorrect understanding of the contested administrative decision. UNAT held that UNDT erred when it held that the reassignment decision should have been notified in formal writing as it significantly altered Ms. Silva's terms and conditions of employment. UNAT held that UNDT erred in holding that Ms. Silva was not consulted before the reassignment. UNAT held that UNDT's finding that issues of conflict of interest are typically resolved without any noteworthy operational problems was an error of law. UNAT held that by advising the Secretary-General how to resolve the conflict of interest arising from Ms. Silva's return to AAS, UNDT substituted its own decision for that of the Secretary-General. UNAT held that it was reasonable that the Secretary-General preferred to employ Ms. Silva in another section of DMSPC after the expiry of her tenure as Second Vice-President, UNSU. UNAT held that it was reasonable for the Secretary-General to assume that the conflict of interest continued even after Ms. Silva's tenure expired. UNAT held that UNDT was correct in finding that there was insufficient evidence to substantiate any findings that the reassignment decision was tainted by any ulterior or improper motivation. UNAT granted the Secretary-General's appeal and dismissed Ms. Silva's cross-appeal.

## Decision Contested or Judgment/Order Appealed

Ms. Silva contested the decision to transfer her from the Administrative and Appeals Section (AAS) in the Administrative Law Division to the Global Strategy and Policy Division (GSPD) of the Office of Human Resources (OHR) at the Department of Management Strategy, Policy and Compliance (DMSPC), following her tenure as Second Vice-President of the United Nations Staff Union (UNSU). UNDT granted the

application in part, rescinded the contested decision and awarded Ms. Silva compensation for non-pecuniary harm.

## Legal Principle(s)

A reassignment decision must be properly motivated and not tainted by improper motive or taken in violation of mandatory procedures; it can be impugned if it is found to be arbitrary or capricious, motivated by prejudice or extraneous factors, or flawed due to procedural irregularity or error of law. The accepted method for determining whether an assignment is proper is to assess whether the new post is at the staff member's grade, whether the responsibilities correspond to his or her level, whether the functions are commensurate with the staff member's competence and skills, and whether he or she has substantial experience in the field.

## Outcome

Appeal granted; Cross-appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Cristina Silva

## Entity

UN Secretariat

## Case Number(s)

2021-1542

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

18 Mar 2022

## President Judge

Judge Knierim

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Discretion

Reassignment or transfer

## Applicable Law

Administrative Instructions

- ST/AI/293

UNAT Statute

- Article 2.5

## Related Judgments and Orders

2019-UNAT-930

2010-UNAT-084