

UNDT/2022/105, Nega

UNAT Held or UNDT Pronouncements

The Applicant was found suitable for available positions. Indeed, for one job opening, he was one of the eight candidates short-listed and convoked to interview. By shortlisting him, the Administration tacitly acknowledged that he was deemed suitable for the position; per Timothy UNDT/2017/080, as a continuing appointment holder facing termination, the Administration was obliged from that point to consider his candidacy on a preferred, non-competitive basis.

The Tribunal found that the Administration failed in its obligation to make good faith efforts to absorb the Applicant into a new post after it decided to abolish his existing post.

The Applicant held roster memberships for various D-1 posts which meant that he met the requirement or possessed the specific qualifications for the related job opening. This obviated the requirement for him to express interest in available positions, but not necessarily applying to them but also responding favourably to offerings by the Administration.

The Tribunal held that the determination of the compensation *in lieu* between the minimum and the maximum provided in its Statute must take into account the specific circumstances of the case, and in particular the type and duration of the contract held by the staff member, the length of his/her service, and the issues at the base of the dispute. The compensation *in lieu* is not related to the economic loss suffered and to the salary of the staff member. There can be compensation *in lieu* also in a case where no economic damage has been suffered.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the Administration's refusal to "make good faith efforts to absorb him on to a new post after it decided to abolish his existing post.

Legal Principle(s)

The Organization shall not terminate the appointment of a staff member whose post has been abolished, at least if he or she holds an appointment of indeterminate duration, without first taking suitable steps to find him/her alternative employment. Compliance with this rule is relevant in assessing the lawfulness of the termination decision

When an organisation must abolish a post held by a staff member who, like the complainant in the instant case, holds a contract for an indefinite period of time, it has a duty to do all that it can reassign that person as a matter of priority to another post matching his or her abilities and grade. Furthermore, if the attempt to find such a post proves fruitless, it is up to the organisation, if the staff member concerned agrees, to try to place him or her in duties at a lower grade and to widen its search accordingly.

Simply advertising posts and requiring the concerned staff member to apply and compete for the same does not discharge the burden of the Administration. The Administration is bound to assign the affected staff members holding continuing or indefinite appointments on a preferred basis in the order of preference prescribed in Staff Rule 9.6.

Compensation *in lieu* per art. 10.5 is not compensatory damages based on economic loss, but only the amount the administration may decide to pay as an alternative to rescinding the challenged decision or execution of the ordered performance.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Nega

Entity

UNAMID

Case Number(s)

UNDT/NBI/2021/071

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

7 Oct 2022

Duty Judge

Judge Buffa

Language of Judgment

English

Appeal Status

Appealed

Issuance Type

Judgment

Categories/Subcategories

Alternative appointment
Priority consideration
Abolition of position
Abolition of post
Termination (of appointment)

Applicable Law

Former Staff Rules
Staff Rules

- Rule 109.1(c)
- Rule 13.1
- Rule 9.6

Related Judgments and Orders

UNDT/2020/032
UNDT/2016/204
UNDT/2016/193
UNDT/2017/080
UNDT/2022/047
2014-UNAT-469
2019-UNAT-899