

# **2022-UNAT-1308, AAG**

## **UNAT Held or UNDT Pronouncements**

As a preliminary matter, the UNAT held that the fact that the UNDT might have repeated some or most of the Respondent's arguments and language in its judgment would not be sufficient to undermine the UNDT's considerations or determinations.

Regarding the scope of the appeal, the UNAT held that since the remedy claimed in the appeal does not aim for the rescission of the reassignment, but the placement into a P-5 or D-1 post commensurate with the Appellant's skills, training, qualifications, and experience for which she has applied and which was not the subject of her initial application, the appeal could be dismissed on receivability grounds. Despite the above, the UNAT decided to examine the merits of the appeal.

The UNAT held that given the circumstances of the case, the UNDT correctly determined that the measures taken by the Organization ensured AAG's safety and was in the interest of the Organization. The UNAT reviewed the evidence relied upon by the UNDT and saw no reason to differ from its conclusions that the position in Entebbe to which the Organization assigned AAG was commensurate with her stated skills and competencies. The UNAT further disagreed with AAG that it would have been neither difficult nor costly to return AAG to Brindisi, where the projected risk to her remained high. The UNAT also found that AAG's claim that she should have been allowed to work remotely, rather than be reassigned was undermined by her prior statements that remote work was not an option. The UNAT also found that AAG's contention that she was given short notice of the reassignment and was not involved in any discussions about it, to be without merit. The UNAT concluded that the UNDT was correct that consultation with a staff member about a reassignment does not mean that the staff member must consent to the reassignment.

The UNAT held that the Appellant has failed to establish that the contested decision was tainted by improper motives or in any way unlawful. Finally, the UNAT held that

undisputed facts sufficiently demonstrate that there was a rational connection between the information available to the manager, the reasons given for the contested decisions and the purpose for which the decisions were taken.

The appeal was dismissed.

## Decision Contested or Judgment/Order Appealed

The Appellant, AAG, contested the decision to reassign her from her post of Chief of Central Service with the United Nations Global Service Centre (UNGSC) in Brindisi to the position of Chief of Section, Logistics, Transportation and Movement Integrated Control Center (TMICC), at the Regional Service Centre Entebbe (RSCE). She also contested the decision to place her on Special Leave with Full Pay (SLWFP) pending management evaluation of her challenge to her reassignment from her post in Brindisi. In its judgment No. UNDT/2021/142, the UNDT dismissed both of Appellant's applications. The UNDT concluded that the Secretary-General had properly exercised his discretion to reassign the Appellant in light of the assessments that there was a high risk to her personal safety in Brindisi and that the decision to place her on SLWFP pending management evaluation was legal and reasonable pursuant to Staff Rule 5.3 (f).

## Legal Principle(s)

It is recommended that a court or tribunal use its own language. However, even if there were some reliance on a party's contentions in the UNDT Judgment, this would not be sufficient to undermine the UNDT's considerations or determinations.

Staff Regulation 1.2(c) has established a duty of care of the Organization towards its staff members. In exercising this authority, the Secretary-General should seek to ensure that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them. The duty of care must be exercised with reasonable discretion, necessary for the managerial process to run, manage and operate the Organization. Furthermore, in case of reassignment, the staff member does not have to consent to the reassignment, especially when the Administration performs its duty of care towards a staff member whose personal security risk is considered to be "high".

The jurisprudence has established that when judging the validity of the Secretary-General's exercise of discretion in administrative matters, the UNDT determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. However, it is not the role of the UNDT to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the UNDT to substitute its own decision for that of the Secretary-General.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

AAG

## Entity

UNGSC

## Case Number(s)

2022-1646

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

30 Dec 2022

## President Judge

Judge Raikos  
Judge Sandhu  
Judge Halfeld

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNAT)  
Appeal  
Reassignment or transfer  
Discretion  
Conduct

## Applicable Law

Staff Regulations

- Regulation 1.2(c)

Staff Rules

- Rule 5.3

## Related Judgments and Orders

2020-UNAT-978  
2015-UNAT-500  
2010-UNAT-084