

UNDT/2023/132, Naji

UNAT Held or UNDT Pronouncements

The Tribunal finds that the Applicant is challenging an administrative decision that is alleged to be in non-compliance with his terms of appointment or his contract of employment and is not challenging the legitimacy of General Assembly resolution 66/234. The application is accordingly receivable.

The General Assembly resolution, Staff Rules, and the ICSC principles and guidelines are clear and unambiguous. These rules stipulate that GS staff wishing to apply for a professional post must first pass the G to P exam unless exceptional approval for a waiver is granted.

Staff at level FS-5 and below must pass the G to P exam to be eligible for a professional post. The Applicant's claim of eligibility for the professional position without passing the competitive examination or obtaining exceptional approval for a waiver from the relevant authority is not legally valid.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision deeming him ineligible for selection to the post of Human Resources Officer, P-3, with the United Nations Human Settlements Programme.

Legal Principle(s)

When reviewing the Secretary-General's discretion in administrative matters, the Dispute Tribunal checks if the decision is legal, rational, procedurally correct and proportionate. It can also see if relevant or irrelevant matters are considered, and if the decision is unreasonable or illogical.

The Dispute Tribunal does not judge the Secretary-General's choice among different options. Nor does it replace the Administration's decision with its own.

In interpreting the applicable legal provisions, the Tribunal will follow "current international practice, which is to interpret an instrument in accordance with the "ordinary meaning" to be given to the terms of the instrument".

The Tribunal's first duty when interpreting and applying the law is to try to give its words their natural and ordinary meaning in their context. Its role is to take the law as it is and explain its words according to their natural sense.

The technique of interpreting laws known as the "plain rule of interpretation" involves understanding the words of the statute in their literal or dictionary meaning. It is noted that when the words of the law are clear and unambiguous, they must be interpreted and should first be understood in their natural and ordinary sense.

The grammatical meaning of the word must be respected in this rule of interpretation. There is no need to look for the legislative intent or purpose unless the law is ambiguous. If the law is plain and definite, the Tribunal must apply it and cannot change its scope to match the real or assumed intention of the lawmaker.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Naji
Entity
UNIFIL
Case Number(s)
UNDT/NBI/2023/062
Tribunal
UNDT
Registry
Nairobi
Date of Judgement
1 Dec 2023
Duty Judge
Judge Waktolla
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Temporary appointment
Subject matter (ratione materiae)
Eligibility
Appointment (type)
Jurisdiction / receivability (UNDT or first instance)
Staff selection (non-selection/non-promotion)
Applicable Law
Administrative Instructions

- ST/AI/2012/2/Rev.1

Laws of other entities (rules, regulations etc.)
Other UN issuances (guidelines, policies etc.)

- A/72/30

Staff Rules

- Rule 4.16(b)(ii)

UNDT RoP

- Article 2.1(a)

UNAT Statute

- Article 2.1(a)

UNDT Statute
Related Judgments and Orders
2013-UNAT-304
UNDT/2020/151