

UNDT/2024/063, Margieh

UNAT Held or UNDT Pronouncements

The Tribunal held that the decision to create the Deputy Special Representative ("DSR") post did not have any direct adverse consequences for the Applicant, who remained in employment, with the same post and ToRs; in other terms, by the establishment of the DSR post, the Applicant's role, duties and responsibilities remained unaffected.

The Tribunal held that the Applicant had failed to identify a contestable administrative decision adversely affecting the terms and conditions of her appointment and that therefore her challenge of the DSR post was not receivable *ratione materiae*.

As to the decision to reassign the Applicant to a lesser post following internationalization of her post, the Tribunal noted that this decision had never been subjected to management evaluation as required under staff rule 11.2 and art. 8.3 of the Dispute Tribunal's Statute.

Decision Contested or Judgment/Order Appealed

The Applicant challenged what she describes as a decision to: reassign her to a lesser post following internationalization of her post by creation of a new post of Deputy Special Representative, which took away her main functions and duties as well as her leadership role in the organization as a member of the country office management team.

Legal Principle(s)

The decision to create a new budgeted post in the administrative structure is an exclusive prerogative of the Administration, being the way it manages and organizes

its resources in its exclusive interest.

An international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff.

The reorganization of the administrative structure is an administrative decision of a general nature, which produces no direct legal consequences affecting the staff member's contract of employment or terms of her appointment.

An administrative decision that is subject to judicial review is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences.

Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry "direct legal consequences" affecting a staff-member's terms or conditions of appointment.

The Tribunals will not interfere with a genuine organizational restructuring exercise even though it may have resulted in the loss of employment of staff.

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Margieh

Entity

UN Women

Case Number(s)

UNDT/NBI/2024/030

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

25 Sep 2024

Duty Judge

Judge Buffa

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Management Evaluation

Reassignment or transfer

Subject matter (ratione materiae)

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Staff Rules

- Rule 11.2

UNDT Statute

- Article 8.3

Related Judgments and Orders

2014-UNAT-460

2014-UNAT-457

2014-UNAT-404

2015-UNAT-592

2010-UNAT-058