

# 089 (NY/2024), Houssaini

## UNAT Held or UNDT Pronouncements

The Tribunal was satisfied that the Applicant had met all the requirements for a suspension of action by showing that the contested decision appeared *prima facie* to be unlawful, that this was a case of particular urgency, and that implementation of the decision would cause irreparable damage.

## Decision Contested or Judgment/Order Appealed

The Applicant, a staff member of the Economic Commission for Africa (“ECA”) based in the Sub-Regional Office for North Africa (“SRO-NA”) in Rabat, Morocco, filed an application seeking the suspension, pending management evaluation, of the decision to laterally reassign her to the ECA’s Sub-Regional Office for Central Africa (“SRO-CA”) in Yaoundé, Cameroon.

## Legal Principle(s)

The Tribunal recalled that under the consistent jurisprudence of the Appeals Tribunal, it is well established that while the Secretary-General has broad discretionary authority in administrative matters, such authority is not unfettered and is subject to judicial review. (See, for instance, *Farhadi* 2022-UNAT-1203 and *Samamdarov* 2018-UNAT-859.) Moreover, “[w]hen judging the validity of the Secretary-General’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate”. The Dispute Tribunal “can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse”. (*Sanwidi* 2010-UNAT-084, para. 40.) As the Appeals Tribunal has also stated, “[t]he Administration has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee are implied in every contract of employment. Both parties must act reasonably and in good faith”. (*Mancinelli* 2023-UNAT-1339, para. 60.)

The Appeals Tribunal has established that the Administration owes a duty of care to staff members to ensure their safety and security. In AAG 2022-UNAT-1308, for instance, the Appeals Tribunal held that “Staff Regulation 1.2(c) establishes a duty of care of the Organization towards its staff members. It stipulates the authority of the Secretary-General to assign staff members to any of the activities or offices of the United Nations. In exercising this authority, the Secretary-General should seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them.

## Outcome

Suspension of action granted

Outcome Extra Text

The Tribunal observed that the Administration has an obligation to act reasonably and in good faith towards staff members. The relationship between employer and employee must be based on mutual trust and confidence. These values are undermined when the Administration acts unilaterally, without adequate consultation, and merely presents the staff member with a *fait accompli*.

Full order

[Full order](#)

Individual Party

Houssaini  
Entity  
ECA  
Case Number(s)  
UNDT/NY/2024/035  
Tribunal  
UNDT  
Registry  
New York  
Date of Order  
23 Aug 2024  
Duty Judge  
Judge Adda  
Language of Order  
English  
Issuance Type  
Order  
Categories/Subcategories  
Suspension of action / interim measures  
Applicable Law  
Secretary-General's bulletins

- ST/SGB/2019/2

#### Staff Regulations

- Regulation 1.2(c)

#### UNDT RoP

- Article 13.1

#### UNAT Statute

- Article 2.2

#### Related Judgments and Orders

2022-UNAT-1203  
2018-UNAT-859  
2010-UNAT-084  
2023-UNAT-1339  
2019-UNAT-930  
2021-UNAT-1118  
2022-UNAT-1223  
2015-UNAT-568  
2022-UNAT-1308  
UNDT/2011/212