



UNITED NATIONS APPEALS TRIBUNAL

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300 series of the Staff Regulations and Ru

... On 1 February 2013, the Applicant filed an application with the Tribunal in the present case, and on 6 March 2013 the Respondent filed his reply.

3. The UNDT issued its Judgment on 18 November 2013. The UNDT held that UNDP had erred in allowing Ms. Carrabregu to be placed on special leave without pay so that she could take up a 300-series ALD appointment in Bonn. As a result, UNDP could not take her September 2009 resignation into account for the purpose of determining her eligibility for a permanent appointment. The UNDT concluded that Ms. Carrabregu must be considered to have met the requirement of continuous service and therefore ordered the rescission of the contested decision.

#### Submissions

##### The Secretary-General's Appeal

4. The Secretary-General contends that the UNDT erred in concluding that Ms. Carrabregu was eligible to be considered for a permanent appointment. Ms. Carrabregu's resignation and separation from UNDP Kosovo constituted a break in service. Her subsequent appointment to UNV Bonn could not be considered a reinstatement, as there was no stipulation to that effect in her letter of appointment. Moreover, Ms. Carrabregu was fully aware that her annual leave from her appointment in Kosovo was not carried over to her appointment in Bonn, which was also indicative of a break in service.

5. Ms. Carrabregu interrupted the continuity of her service voluntarily when she resigned in October 2007. She did not object to the requirement of her resignation. Accordingly, only the period of service of her appointment in Bonn could be counted towards the five-year requirement and it did not reach the five years as at 30 June 2009.

6. The Secretary-General contends that where this fundamental requirement for conversion was not fulfilled, the UNDT could not confer eligibility on Ms. Carrabregu because of the existence of a UNDP policy that she never challenged and that in any event had no impact on the contested decision.

7. The UNDT erred in law and fact in holding that Ms. Carrabregu's decision to resign resulted entirely from irregularities committed by UNDP. The UNDT based its conclusion on a determination that Ms. Carrabregu "in asking to go to Bonn, was simply availing herself of a policy in force at UNDP at the time", which the UNDT found unlawful.

8. Ms. Carrabregu's first ALD appointment was indeed governed by the UNDP Policy. The Policy was developed in order to facilitate the career development of national staff. One way in which this was done was to grant special leave for limited periods of time to enable national staff members to take advantage of short-term opportunities outside of the duty stations where they were locally recruited whilst providing them stability by allowing them to maintain a lien on their post for the purpose of returning to the country office after the limited appointment abroad had ended.

9. However, the fixed-term appointment in Bonn that Ms. Carrabregu was subsequently offered was not a temporary or limited opportunity and did therefore not fall under the UNDP Policy. Her fixed-term appointment in Bonn was entirely unrelated to her first temporary ALD.

10. Furthermore, the requirement for a locally-recruited staff to resign from the duty station where he or she was recruited before accepting another locally-recruited General Service position in another duty station does not arise from the UNDP policy; rather, this requirement is applied throughout the Organization and is based on the Staff Rules which provide that General Service positions are subject to local recruitment. A transfer of a locally-recruited General Service staff member to another locally-recruited General Service position would entail the payment of benefits applicable to international recruitment.

11. The Secretary-General further submits that the UNDT erred in law in holding that the UNDP Policy was unlawful. The UNDT provides no reasoning and merely states that the Staff Rules did not authorize the placement of a UNDP Kosovo staff member on special leave without pay for the purpose of allowing him or her to take up another appointment with UNV on a local basis under the 300 series. Contrary to the UNDT's conclusion, paragraph 11(d) of the Policy specifically provides for special leave without pay for up to two years, which, the Secretary-General contends, is consistent with former Staff Rule 105.2(a)(i).

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country. The UNDP Policy is not consistent with former Staff Rule 105.2(a)(i). The latter does not state that special leave may be granted to staff members to be placed on another post with the Organization, nor is there any act or promulgation that would sanction the granting of special leave for such purpose. Finally, the fact that UNDP issued an inter-office memorandum in May 2009 strictly prohibiting such practice is an implicit acknowledgment of its prior irregularity and unlawfulness.

17. Ms. Carrabregu requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

18. The requested oral hearing was not granted since the issues for decision were clearly defined in the parties' written submissions. The Appeals Tribunal also rejects Ms. Carrabregu's motion seeking leave to file additional evidence as she has not presented exceptional circumstances justifying her motion.

19. The main issue to determine in the present appeal is whether or not Ms. Carrabregu was eligible to be considered for a permanent appointment. The UNDT concluded in the affirmative and granted the staff member's application, an outcome contested by the Administration.

20. This Tribunal holds that the UNDT erred in concluding that Ms. Carrabregu fulfilled all the requirements to be eligible for conversion to permanent appointment, because there was indeed a break in her service which prevented her from reaching five years of continuous service as required under the UNDP Policy.<sup>2</sup>

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<sup>2</sup> Paragraph 10(b) and (c) of the Policy reads as follows (internal footnotes omitted):

b) A break in service of any duration prior to the date on which the staff member reached the five years of qualifying service will interrupt the continuity of service. This principle also applies to the case where a UNDP staff member has resigned from his/her UNDP 100-series appointment to take up another 100-series appointment with UNDP and has been administratively separated from the former appointment;

c) Breaks in service after the date on which the staff member reached five years of qualifying service will not automatically disqualify staff members from being considered for a PA. Their situation will be reviewed taking into account the specific facts of each case[.]

21. It is uncontested that in December 2006, Ms. Carrabregu obtained special leave without pay from her position in Kosovo, for the period of one year effective 7 February 2007 in order to take up an ALD in Bonn, under the former 300 Series of the Staff Regulations and Rules, starting 12 February 2007. Both positions were within the UNDP.

22. If Ms. Carrabregu had returned to her post in Kosovo, after the expiry of her one-year leave, no interruption of service would have take]TJ-23ot



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