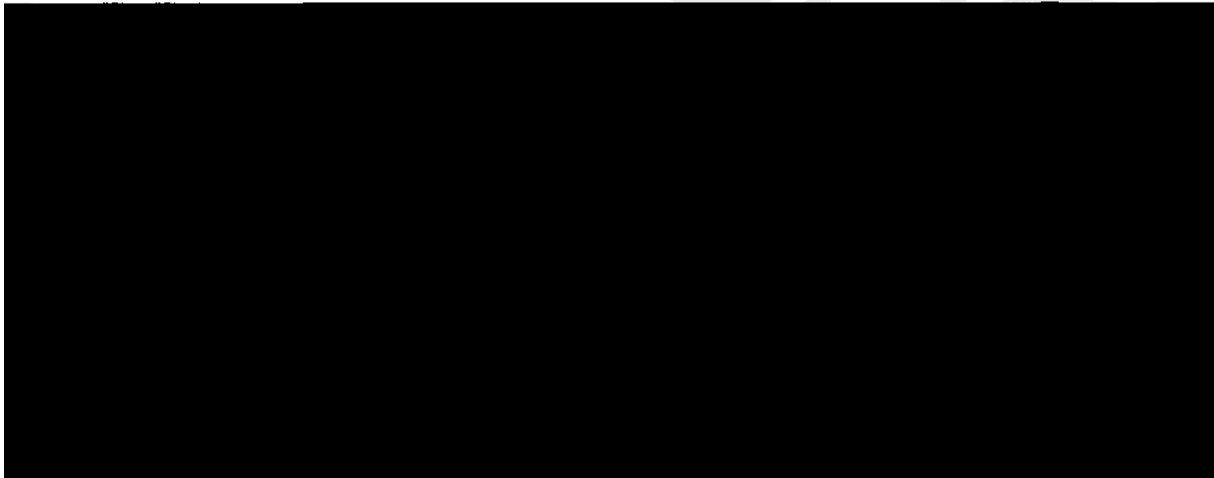




Judgment No. 2014-UNAT-418



Counsel for Respondent/Applicant: Jeffrey C. Dahl

Counsel for Appellant/Respondent: Simon Thomas

JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals filed by the Secretary-General of the United Nations against Judgment No. UNDT/2013/031 (Judgment on Liability) and Judgment No. UNDT/2013/042 (Judgment on Relief), rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York on 25 February 2013 and 4 March 2013, respectively, in the case of Guedes v. Secretary-General of the United Nations. The Secretary-General appealed both Judgments on 1 May 2013 and, on 2 July 2013, Mr. Cesar Guedes submitted an answer, which he perfected on 24 July 2013.

Facts and Procedure

2. The Dispute Tribunal made the following findings of fact, which are not contested by the parties:¹

... The Applicant began his service in December 1991 as a Privatization Specialist with the United Nations Volunteers (“UNV”) in Guyana. He held different posts over the years until March 2000 when he was appointed to a 300-series contract as a Programme and Operations Specialist.

... On 1 May 2004, the Applicant’s 300-series contract was converted to a 100-series fixed-term appointment and, on 4 August 2004, the Applicant was reassigned to the United Nations Office on Drugs and Crime (“UNODC”). The Applicant is currently the Country Representative in Bolivia for UNODC.

... From 1 July 2008 through 31 December 2008, the Applicant took SLWOP [Special Leave without Pay].

... By memorandum dated 12 June 2012, the Applicant was notified that he was not eligible to be considered for conversion to a permanent appointment due to the fact that his six months SLWOP resulted in him having not acquired five years of continuous service on a fixed-term appointment under the 100-series of the Staff Rules by 30 June 2009.

... On 10 August 2012, the Applicant requested management evaluation of the 12 June 2012 decision. On 24 September 2012, the Under-Secretary-General for Management, on behalf of the Secretary-General, affirmed the administrative decision. On 21 December 2012, the Applicant submitted his application to the [Dispute] Tribunal contesting the finding that he was not eligible for consideration to permanent appointment.

¹ The following text is taken from Judgment No. UNDT/2013/031, paras. 3-7.

3. In its Judgment on Liability, the Dispute Tribunal held that the decision to deny Mr. Guedes conversion to a permanent appointment was unlawful and it should therefore be

Staff Rules and are authoritative having been issued by OHRM. He also maintains that the six months' SLWOP that Mr. Guedes undertook did not count towards the five years' service that he was required to attain by 30 June 2009.

6. The Secretary-General also submits that there is not any inconsistency or conflict between the Guidelines and ST/SGB/2009/10 or the Staff Rules. In his view, the Guidelines

Mr. Guedes' Answer

11. Mr. Guedes submits that the Dispute Tribunal correctly concluded that SLWOP could not be used to shorten the qualifying time for eligibility for conversion to a permanent appointment, and that the Administration unlawfully used the Guidelines to interpret ST/SGB/2009/10 more restrictively than intended. The plain language of ST/SGB/2009/10 requires "five years of continuous service" without qualifying or restrictive language. The Administration's interpretation of "continuous" as "active" is without support. ST/SGB/2009/10 means only five years of uninterrupted service. Using the Guidelines to introduce a new requirement in excess of the requirements set forth in ST/SGB/2009/10 is unlawful.

12. Mr. Guedes contends that the Guidelines also exceed the dictates of Staff Rule 5.3(e). Staff Rule 5.3(e) contains a finite list of benefits; continuous service for consideration for permanent appointment is not one of them.

13. Mr. Guedes maintains that the UNDT awarded moral damages on the basis of his testimony within its discretion and the compensacOTax

Original and Authoritative Version: English

Dated this 2nd day of April 2014 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Simón

(Signed)

Judge Lussick