

FICSA LEGAL ADVISOR*

TIPS AND INFORMATION NEWSLETTER

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Reorganization and Abolition of Post

When a new executive head arrives to take up the reigns of the organization, the first step is sometimes the announcement of a reorganization, and the inevitable abolition of posts. Of course, this may occur as a matter of routine in some organizations. The good news is that staff members whose posts have been abolished are not without some protection. The decision to abolish a post is reviewable by the ILO Administrative Tribunal (ILOAT) in Geneva, Switzerland for among other things conformance with the written law of the organization.

First, as a general principle of law there must be a valid reason for the decision to abolish a post, usually evidenced by a valid written plan of reorganization (showing it was given serious consideration by management) and/or by the need to address financial difficulties. If financial needs are cited, it should result in a reduction of posts overall in the organization. If new posts with similar duties pop up like mushrooms, it is a good indication that something is amiss. Second, even if the grounds for abolishing the post are lawful, the staff regulations and rules may provide further protection. In Judgment No. 2294, the ILOAT awarded 40,000 Euros to a long-serving staff member at Interpol whose post was suppressed after a reorganization exercise. The executive head did not follow the relevant staff regulations and rules which provided that a staff member may be terminated in the event his/her post is abolished only if there is no vacant post to be filled for which the staff member has the requisite qualifications. The ILOAT found that executive head justified the decision by merely stating that there were no vacant posts for which the staff member was qualified without providing any written support or evidence. The Tribunal also faulted the administration's justifications raised during the appeal since the distinctions it had drawn were not relevant. Finally, the Tribunal also noted that with "regard to the posts which fell vacant after the material facts, the Tribunal considers that it was up to Interpol to make proposals to the complainant and to give some preference to his application. But this it did not do."

Accordingly, staff members whose posts are abolished should carefully review their own staff regulations and rules to determine what if any rights they have with respect to taking up vacant posts, and seek a staff representative for assistance.

In Other News

The ILO Administrative has posted on its website an informative paper covering the history and workings of the ILOAT written by its currently serving Registrar covering among other things the manner in which cases are handled and decided. The paper gives interesting insight into how the ILOAT views its role in deciding labour disputes between international organizations and their staff. The link to the paper is:

<http://www.ilo.org/public/english/tribunal/download/articleccenglish.pdf>.

The ILOAT is holding its 108th session from 26 October to 13 November to decide a number of cases. The rulings will be made public on 3 February 2010, and posted on its website within 2 weeks thereafter.

And in September 2009, the United Nations published material on its new justice system which took effect on 1 July 2009. In particular, it has issued a paper entitled “*A guide to resolving disputes*” describing the new system and the various steps of the dispute resolution process, from mediation and legal assistance available, to the formal system before the first level United Nations Dispute Tribunal, and final appeal to the United Nations Appeals Tribunal. (google: “un a guide to resolving disputes”). The jury is out so to speak on the new system. Given the backlog of cases from the old system, and the time it may take before the first opinions are published by the new UNAT, it may be sometime before an assessment of its performance and effectiveness in furthering the rights of international civil servants can be made.

**Laurence Fauth, FICSA’s Legal Advisor, provides counsel and advice to international civil servants and staff unions. You can visit his website for more information: www.unattorney.com. The information and content contained in this newsletter is for general information only and does not constitute legal or other professional advice. You must not rely on any information or content contained in, or omitted from, this newsletter without obtaining independent legal advice.*