



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/086

Judgment No.: UNDT/2020/177

Date: 12 October 2020

Original: English

**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

SOHIER

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

---

**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Alan Gutman, ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant, a former Legal Officer at the P-3 level with the United Nations Mission for Justice Support in Haiti (“MINUJUSTH”) challenges the decision not to extend her fixed-term appointment beyond its expiration on 30 June 2019. In response, the Respondent submits that the application is without merit.

2. For the reasons stated below, the Tribunal finds that the decision not to renew the Applicant’s appointment was lawful and rejects the application.

## **Facts**

3. On 10 April 2018, the Security Council adopted Resolution 2410 (2018) whereby it decided that it would consider the withdrawal of MINUJUSTH and its replacement with a non-peacekeeping mission no sooner than 15 October 2019.

4. On 18 July 2018, the Applicant accepted a letter of appointment for a fixed-term contract from 1 July 2018 to 30 June 2019.

5. In March 2019, in anticipation of its closure in October 2019, MINUJUSTH adopted a drawdown plan for phased separation of its staff on, respectively, 30 June, 31 August, 14 October and, for those staff members performing post-mandate closure tasks, 31 December 2019.

6. On 12 April 2019, the Security Council issued Resolution 2466 (2019) requesting the Secretary-General to begin the gradual withdrawal of MINUJUSTH personnel in advance of the Mission’s closure on 15 October 2019.

7. On 28 May 2019, by a memorandum from the Chief of Mission Support of MINUJUSTH, the Applicant was informed that following Resolution 2466 (2019) extending the mandate for a last time until 15 October 2019, her contract would not be renewed beyond its expiration on 30 June 2019.

## **Consideration**

*Was the decision not to renew the Applicant's fixed-term appointment lawful?*

### Applicable law on non-renewal of fixed-term appointments

8. Staff regulation 4.5(c) and staff rule 4.13(c) both provide that a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal.

9. In line herewith, in *Agha* 2019-UNAT-916, at paras. 16-17, the Appeals Tribunal recapitulated its long-standing case law concerning impugned decisions not to renew fixed-term appointments, stating that it is a well-established principle that such appointments do not carry an expectation of renewal. It stated that separation as a result of expiration of a fixed-term appointment takes place automatically, without prior notice, on the expiration date specified in the letter of appointment. It recalled, however, that a decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly, or transparently with the staff member or was motivated by bias, prejudice or improper motive. The Appeals Tribunal finally recalled that it is the applicant's burden to prove such factors played a role in the administrative decision.

10. The Applicant contends that the decision to abolish her post was not rational given that her unit, the Legal Affairs Unit ("LAU"), had increased its workload due to the Mission's liquidation. She further states that the abolishment of her post was done without consultation with her or her supervisor.

11. The Respondent replies that as MINUJUSTH prepared for its withdrawal, a phased drawdown of staff was developed around three dates: 30 June, 31 August and 15 October 2019. The Respondent states that the drawdown plan used a function-based approach based on whether a position addressed critical or non-critical functions for the remaining mandate period. The plan provided for a reduction of 24% of substantive

personnel on 30 June 2019, 10% on 31 August 2019, and the remaining 66% on 15 October 2019.

12. An exchange of codes between the Special Representative of the Secretary-General (“SRSG”) of MINUJUSTH and the Under-Secretary-General for Operation Support (“USG/DOS”) of March 2019 shows that in light of the Security Council’s imminent decision to withdraw MINUJUSTH on 15 October 2019, the USG/DOS encouraged the SRSG to limit any imminent renewal of appointments to 30 June 2019. The SRSG also informed the USG/DOS that the recruitments of non-essential vacant posts had been put on hold.

13. Furthermore, contrary to the Applicant’s assertion, the evidence shows that the Chief of Staff of MINUJUSTH consulted with the Applicant and her supervisor concerning LAU’s staffing requirements. By email dated 30 March 2019, the Applicant informed the Chief of Staff that LAU would need all its current staff until 15 October 2019. On 1 April 2019, the Chief of Staff responded that, unfortunately, as the Mission was drawing down, it would not be possible to retain all of LAU’s staff until 15 October 2019. By email of 3 May 2019, the Applicant’s supervisor informed her that, against the former’s advice, it had been decided that her post would be abolished on 30 June 2019.

14. The Respondent explains that MINUJUSTH identified the Applicant’s post for drawdown within LAU because it was the least critical position in that unit with respect to the Mission’s remaining mandate. He states that the national professional officer position was required to serve as liaison with host country officers, the national general service staff member was required for archiving, and the legal officer at the P-4 level position was required to manage LAU.

15. The Tribunal is therefore satisfied that MINUJUSTH developed its staff drawdown plan in implementation of the Security Council’s decisions to withdraw

MINUJUSTH, that the drawdown was intended to implement such decisions, and that it was planned in coordination with DOS.

16. The Applicant further states that the drawdown plan was not shared with the staff of the Mission.

17. The Tribunal notes that it follows from the Office of Internal Oversight Services' report on the audit of liquidation preparedness in MINUJUSTH of 20 August 2019 that the SRSG held two townhall meetings with the staff on 13 March and 23 April 2019 to inform them on the drawdown process.

18. The Applicant further claims that she was treated unfairly compared to other staff members whose posts were scheduled for abolishment on 30 June 2019 and who were placed on special leave with full pay while she was separated from service.

19. The Respondent first clarifies that the Applicant was not eligible to be included in the comparative review that was established to compare staff members performing the same functions at the same grade level within the same section. In the Applicant's unit, LAU, there were no other staff members performing the same functions at the same level as the Applicant.

20. The Respondent further states that the Applicant was not treated differently from other staff members who were placed on special leave with full pay. He clarifies that those staff members placed on special leave with full pay had ongoing appointments that the Administration elected to honor rather than terminate. The Applicant's appointment, however, expired on 30 June 2019. Therefore, the decision to place other staff members on special leave with full pay had no impact on the legality of the decision not to renew the Applicant's fixed-term appointment beyond its normal expiration date.

21. The Tribunal is persuaded by the Respondent's explanation in this respect and notes that the Applicant herself provides evidence supporting the Respondent's

assertions in the form of a memorandum from the SRSG concerning the placement on special leave with full pay of a staff member whose post is abolished on 30 June 2019 but who holds a fixed-term appointments exceeding that date.

22. The Applicant further states that the decision not to renew her appointment was tainted by ill-motive because she had expressed her difference of opinion with MINUJUSTH management with respect to the completion of a memorandum of understanding (“MOU”).

23. The Tribunal sees no evidence of any link between the Applicant’s divergent views concerning the completion of the MOU and the decision not to renew her fixed-term appointment. To the contrary, as discussed above, the contested decision was based on operational requirements and followed the Security Council’s decisions to withdraw MINUJUSTH.

24. The Applicant further states that she had expectations of continuity in the follow-up presence in Haiti and was entitled to the Administration’s support in finding placement for staff affected by downsizing. She states that several officers told her “she was needed beyond 15 October 2019” and her pass was extended until that date.

25. The Tribunal notes that, as recalled above, in application of staff regulation 4.5(c) and staff rule 4.13(c), the Applicant had no legitimate expectation of renewal of her fixed-term appointment. In this respect, the Appeals Tribunal has consistently held that a staff member only has a legitimate expectation of the renewal of his or her appointment when the Administration has made an express promise of such renewal. The jurisprudence requires this promise at least to be in writing (see, for instance, *Igbinedion* 2014-UNAT-411, para. 26).

26. There is no evidence in this case that MINUJUSTH made such a written promise.

27. The Tribunal further notes that there is no legal provision directing the Administration to find placement for staff members at the expiry of their fixed-term appointments. Staff rule 9.6(e) provides for the retention of staff whose contracts have been terminated following the abolition of their posts in certain circumstances. Given that the Applicant's contract was not terminated but instead expired, the Administration was under no obligation to find alternative placement for her.

28. The Applicant further contends that the notice of non-renewal did not state the reasons for the decision.

29. The Tribunal notes that the 28 May 2019 memorandum, which formally communicated the non-extension of the Applicant's contract to her, clearly references Security Council Resolution 2466 (2019) and the withdrawal of MINUJUSTH. This reason is in line with previous communications between MINUJUSTH management and the Applicant concerning the abolishment of her post, as discussed above.

30. In light of the above, the Tribunal finds that the decision not to renew the Applicant's fixed-term appointment beyond its expiration was lawful.

**Conclusion**

31. In light of the above, the application is rejected.

*(Signed)*

Judge Joelle Adda

Dated this 12<sup>th</sup> day of October 2020

Entered in the Register on this 12<sup>th</sup> day of October 2020

*(Signed)*

Nerea Suero Fontecha, Registrar