

UNDT/2009/017, Kasmani

UNAT Held or UNDT Pronouncements

The contested decision was prima facie unlawful for the following reasons: i) there was a promise of renewal by the officer-in-charge that created a legitimate expectation of renewal, which placed on the Respondent a duty to consider whether it was not in the interest of the organisation that the expectation of the renewal of the employment should be fulfilled; and ii) the decision not to renew the contract of the Applicant appeared to be in breach of the Organization's Rules and amounted to an abuse of discretion. On the question of urgency, the Applicant had been informed that his contract would not be renewed and would be terminated on 3 September 2009. The Respondent, in his oral and written submissions, conceded this element of the test. With respect to irreparable damage, the Applicant's expectation of renewal was dashed by the unilateral decision of the Respondent. This kind of loss could not be quantified by damages only. On the other hand, it could also be argued that the Respondent was in a situation to make good the damage by compensating the Applicant. It seemed however that the odds were equally balanced. Under these circumstances, it was better to preserve the status quo on a balance of convenience. Damages would not compensate him for the frustration, unhappiness and dissatisfaction that would be caused to him for the loss of the chance to acquire more experience and improve so as to increase the likelihood that he may accede to a better position in his career. The Respondent had notice of the Applicant's intention to call a witness and the identity of that witness. It was up to him to prepare his case in response accordingly. The non-renewal decision was suspended pending management evaluation.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision to not renew his fixed-term appointment.

Legal Principle(s)

The language of art. 13.1 of the Rules of Procedure is clear and straightforward. The use of the word “and” at the beginning of the third requirement of irreparable damage clearly indicates that the whole sentence starting with the word “where” and ending with the words “irreparable damage” should be read conjunctively. Thus, an application must satisfy the following requirements before the Tribunal can grant a suspension of the implementation of the contested decision: (a) the decision appears prima facie to be unlawful; (b) there’s particular urgency; and (c) implementation of the decision will cause irreparable damage. A staff member under a fixed-term appointment is entitled to be treated fairly according to due process and rule of law principles. It is not open to dispute that a fixed term appointment dies a natural death at the end of the period of the contract. But there may be circumstances that where the non renewal may be due to factors that adversely affect a staff member to such an extent that monetary compensation is no answer. Whilst management has discretion not to renew, that discretion must be used judiciously and in good faith. Where damages can adequately compensate an applicant, if he is successful on the substantive case, an interim measure should not be granted. But a wrong on the face of it should not be allowed to continue simply because the wrongdoer is able and willing to compensate for the damage he may inflict. Monetary compensation should not be allowed to be used as a cloak to shield what may appear to be a blatant and unfair procedure in a decision-making process. As explained by the European Court of Human Rights a party should be given an adequate and proper opportunity to challenge and question a witness against him either at the time the witness was making his statement or at some later stage of the proceedings.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The suspension of action was granted; the Respondent was ordered to proceed with the renewal of the Applicant’s appointment pending management evaluation.

Full judgment

[Full judgment](#)

Applicants/Appellants

Kasmani

Entity

UNON

Case Number(s)

UNDT/NBI/2009/36

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

11 Sep 2009

Duty Judge

Judge Boolell

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Separation from service

Expiration of appointment (see also, Non-renewal)

Suspension of action / interim measures

Applicable Law

UNDT RoP

- Article 13
- Article 14