

UNDT/2009/063, Kasmani

UNAT Held or UNDT Pronouncements

The first management evaluation decision dealt with the issue of the promise made to the Applicant and granted him compensation of three months salary in lieu of further performance of his contract of employment. That decision itself as mentioned earlier does not prevent the Applicant from filing an appeal in respect of the same subject matter that is the non renewal of his contract. Whereas Management has considered the express promise to the Applicant and decided that monetary compensation was sufficient remedy, the Tribunal recalls that it found the “circumstances surrounding the non-renewal [then] to be curious.” In so finding, the Tribunal relied on testimony pertaining to the workload in the Section as well the substantial overtime payments being made to meet that workload. The Tribunal was also presented with testimony as to satisfactory performance of the Applicant. In addition to the fact that the circumstances in PTSS appear unchanged, the Tribunal is troubled by the Applicant’s contention that the latter remains the only staff member within the Section to have been denied his overtime payments. As none of the facts adduced by the Applicant was challenged by the Respondent, the Court was entitled to accept the Applicant’s case as stated. In the present application, the Tribunal notes that the Applicant’s contentions in respect of the prima facie unlawfulness surrounding the Impugned Decision have not been addressed by the Respondent. There is nothing in the Respondent’s Reply which rebuts the Applicant’s contention that the latter is in fact being victimised for a personal conflict between his first and second reporting supervisors. Given the Tribunal’s previous finding on this element, and given the Applicant’s submissions that the circumstances surrounding this non-renewal are much the same as those previously adduced, the Tribunal is perplexed by the Respondent’s silence on the issues raised. The present non-renewal and the manner in which it was to be effected is most unsatisfactory and seem patently averse to the core values of the United Nations. Notwithstanding his performance within the Section, the applicant has been treated in a most humiliating manner and made to feel that he is not by any standard fit to continue in the service of the Organization. To say that damages alone can compensate the applicant who has been so victimised, would in effect be tantamount to allowing such behaviour to stand subject only to a decision on pecuniary compensation which will also be decided upon by the Respondent. Damages cannot compensate the applicant for the loss of the chance provoked in an unfair treatment meted out to him and which would be the basis of the non renewal of his contract. The Tribunal takes the view that by resorting to the services of the Applicant albeit on a temporary fixed term appointment, the Respondent was only applying a practice that is inherent in the work of the Organisation and created consequences that went beyond the bounds of the fixed-term appointment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to renew his fixed-term appointment and was previously granted a suspension of action. The exigencies of the circumstances at the time made it necessary for UNDT to rule on the motion before hearing from the Respondent. Subsequently, the Applicant filed an Application for Interpretation.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

UNDT granted the Applicant's Motion for Suspension of Action UNDT ordered the suspension of the Respondent's decision not to renew the Applicant's appointment until the substantive application was heard and determined. UNDT decided that the Application for Interpretation was moot.

Full judgment

[Full judgment](#)

Applicants/Appellants

Kasmani

Entity

UNON

Case Number(s)

UNDT/NBI/2009/67

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

4 Nov 2009

Duty Judge

Judge Laker

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Judgment-related matters

Interpretation of Judgment

Suspension of action / interim measures

Applicable Law

UNDT RoP

- Article 13.1