

UNDT/2009/096, Utkina

UNAT Held or UNDT Pronouncements

Receivability of the decision not to renew the appointment: In this case, the triggering point should have been the moment when the staff member was made aware by the Administration that there was no reasonable chance or possibility of renewal. Thus, it is the date when the applicant was notified of the termination of her contract; therefore, the application is receivable. Articles 13 and 14 of the Rules of Procedure: Since there is an ongoing management evaluation of the decision not to renew the applicant's appointment, the applicable interim measure to be ordered would be that under article 13 of the Rules of Procedure. To grant the order for a suspension of action, the Tribunal must be satisfied that all three conditions specified in article 2.2 of its Statute and article 13 of its Rules of Procedure are cumulatively met. Urgency: The applicant has provided sufficient and reasonable explanations for the delay in contesting the decision; therefore, the urgency requirement is satisfied. Prima facie unlawfulness: In order to show that the contested decision appears prima facie to be unlawful, it is not necessary to demonstrate that it was motivated solely by improper motives. As long as the applicant can demonstrate that the decision was influenced by improper considerations and was contrary to the Administration's obligations to ensure that its decisions are proper and made in good faith, the test for prima facie unlawfulness will be satisfied. The Tribunal is not satisfied that there is an arguable case that the decision was unlawful. Irreparable damage: In each case, the Tribunal has to look at the particular factual circumstances. There are many instances when the Tribunal will be able to fully compensate for any harm to professional reputation and career prospects should the applicant pursue a substantive appeal. The applicant has failed to show that the decision would cause irreparable damage if implemented. Outcome: The application is dismissed.

Decision Contested or Judgment/Order Appealed

The applicant is a programme officer in the United Nations Office for Disarmament Affairs (ODA). She is employed on a fixed-term contract expiring on 10 January 2010. However, on 5 November 2009, the applicant received a letter informing her that her contract would be terminated for financial and administrative reasons effective 31 December 2009. On 24 December 2009, the applicant filed an application for a suspension of action on the decision received on 5 November 2009. She appeals both the decisions to terminate her contract on 31 December 2009 and not to renew it beyond 10 January 2010. The respondent withdrew the decision to terminate the applicant's contract and this judgment dealt with the issue of non-renewal only.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Utkina

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2009/143

Tribunal

UNDT

Registry

New York

Date of Judgement

31 Dec 2009

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Separation from service

Termination of appointment (see also, Termination of appointment)

Applicable Law

Former Staff Rules

- Rule 104.12(b)(i)

Staff Regulations

- Regulation 9.3

Staff Rules

- Rule 109.7
- Rule 11.2
- Rule 4.13(c)
- Rule 9.4

UNDT RoP

- Article 13
- Article 14

UNDT Statute

- Article 10.5
- Article 2.2

Related Judgments and Orders

UNDT/2009/004

UNDT/2009/016

UNDT/2009/025

UNDT/2009/028

UNDT/2009/064

UNDT/2009/071

UNDT/2009/076

UNDT/2009/084

UNDT/2009/092

UNDT/2009/094

UNDT/2009/095