

UNDT/2010/060, Sina

UNAT Held or UNDT Pronouncements

The applicant was entitled to be immediately informed or placed in the same position as he would have been had he been immediately informed. The failure to give timely notice, given the history of the case, gave rise to the legitimate expectation that the contract would be renewed. Outcome: Held that the applicant had no legitimate expectation of renewal of his contract and that decision not to renew was based on proper grounds and was not affected by irrelevant considerations. Held also that the applicant was entitled to be informed of the decision that he was regarded by the Organization as fit for duty and nominal compensation of USD500 awarded. The applicant was entitled to have been informed of the recommendation of the ABCC immediately upon its occurrence; compensation awarded equivalent to the sum he would have been paid for the nineteen days for which notification was delayed. A legitimate expectation giving rise to contractual or legal obligations occurs where a party acts in such a way, by a representation of deeds or words, that is intended or is reasonably likely to induce the other party to act in some way in reliance upon that representation and that other party does so. The decision not to renew a contract is an administrative decision which does not, in any significant respect, differ in its legal character from any other administrative decision made under the contract of employment. The requirements of good faith and fair dealing that are implied in employment contracts must be complied with. Observation that a fair suspicion based upon reasonable grounds that the applicant had brought the mortar shell into his residence (which he had denied) was so serious a matter as to entitle the decision-maker to decline to take the risk of re-employing the applicant in that work. The test of responsibility for problematic conduct in disciplinary proceedings differs from the test that is applicable in considering whether to renew a contract; in the latter case, the decision-maker is entitled and bound to take into account all relevant matters and, providing the decision-maker acts reasonably and rationally, having regard to the question in issue, there will be no error in law. Where an entitlement of a staff member depends upon a particular finding by or decision of an official (in this case the finding that the applicant was fit for duty), the staff member must be informed. The Organization is not entitled to keep to itself information that is crucial to the staff member's knowledge of his or her rights and the ability to enforce them. The obligation of disclosure derives from the existence of the entitlement and the necessity for a finding or decision or as a requirement of good faith. It was completely unreasonable to separate the applicant on the same day on which he was notified of the outcome of the ABCC.

Decision Contested or Judgment/Order Appealed

Some months before the expiry of his contract, the applicant was seriously injured in an explosion. An initial investigation suggested that the applicant may have been to blame for the explosion. Further investigation found that no conclusion could be drawn that the applicant was responsible. The applicant was placed on sick leave, which was extended a number of times, following medical assessments and awaiting the recommendation of the UN Advisory Board on Compensation Claims (ABCC). The Medical Services Division concluded that the applicant was fit for work, though he was not informed of this decision. He was informed of the recommendations of the ABCC over two weeks after they were made, on the day upon which he was separated, without notice, from the Organization. The applicant argued that he had a legitimate expectation of renewal because of statements made of the likelihood of a continuing need for his services and that the adverse findings of the earlier investigation wrongly influenced the decision not to renew his contract. He also contended that he was entitled to be told of the conclusion that he was fit for work and the lack of notice of his separation was unfair and a breach of due process.

Legal Principle(s)

A legitimate expectation giving rise to contractual or legal obligations occurs where a party acts in such a way, by a representation of deeds or words, that is intended or is reasonably likely to induce the other party to act in some way in reliance upon that representation and that other party does so. The decision not to renew a contract is an administrative decision which does not, in any significant respect, differ in its legal character from any other administrative decision made under the contract of employment. The requirements of good faith and fair dealing that are implied in employment contracts must be complied with. Observation that a fair suspicion based upon reasonable grounds that the applicant had brought the mortar shell into his residence (which he had denied) was so serious a matter as to entitle the decision-maker to decline to take the risk of re-employing the applicant in that work. The test of responsibility for problematic conduct in disciplinary proceedings differs from the test that is applicable in considering whether to renew a contract; in the latter case, the decision-maker is entitled and bound to take into account all relevant matters and, providing the decision-maker acts reasonably and rationally, having regard to the question in issue, there will be no error in law. Where an entitlement of a staff member depends upon a particular finding by or decision of an official (in this case the finding that the applicant was fit for duty), the staff member must be informed. The Organization is not entitled to keep to itself information that is crucial to the staff member's knowledge of his or her rights and the ability to enforce them. The obligation of disclosure derives from the existence of the entitlement and the necessity for a finding or decision or as a requirement of good faith. It was completely unreasonable to separate the applicant on the same day on which he was notified of the outcome of the ABCC.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Sina

Entity

UNDP

Case Number(s)

UNDT/NY/2009/051/JAB/2008/098

Tribunal

UNDT

Registry

New York

Date of Judgement

9 Apr 2010

Duty Judge

Judge Adams

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Sick leave

Compensation

Non-renewal

No expectancy of renewal

Applicable Law

Former Staff Regulations

- Regulation 4.4