

UNDT/2010/119, Gaskins

UNAT Held or UNDT Pronouncements

The decision to remove the Applicant from the position of Rule of Law Project Manager: The UN Charter expects all staff members to conduct themselves in accordance with the highest standards of efficiency, competence and integrity. Further, there is implied into every contract of employment a term of mutual trust and confidence between employer and employee, which means that both parties must act responsibly and in good faith. Where the employer acts unilaterally in removing an important part of the employee's functions, the employer would have repudiated the contract of employment. The conduct of UNDP Sudan in reorganizing the Applicant's duties was not done in the interests of economy and efficiency but in response to a peremptory demand by the senior judiciary in Sudan based on what appears to be an unjustified sense of grievance against the Applicant who had implemented proper financial controls in relation to the DSA payments. The decision to deny the Applicant continued employment after he had reached the age of 62: Pursuant to former staff regulation 9.5, extensions beyond the normal retirement age are limited to exceptional circumstances and are rare. Had the Applicant been able to produce cogent evidence to support his contention that assertions were made and promises given, he would have had a more realistic prospect of persuading the Tribunal that but for the intransigence of the Sudan Judiciary, he would have continued in employment beyond age 62 until the conclusion of the Rule of Law Project. UNDT held that the action taken by management to remove him from the position of Rule of Law Project Manager was not protected under staff regulation 1.2(c) and therefore, that the Applicant's due process rights were infringed. It was also held that the Applicant failed to provide sufficient evidence to support his claim of a legitimate expectation of renewal of his contract beyond the mandatory retirement age.

Decision Contested or Judgment/Order Appealed

The Applicant filed an appeal with the former Joint Appeals Board against the decision to remove him from the position of Rule of Law Project Manager and to deny him continued employment after he had reached the age of 62.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Applicant was awarded the sum of six months net base salary for the violation of his due process rights.

Full judgment

[Full judgment](#)

Applicants/Appellants

Gaskins

Entity

UNDP

Case Number(s)

UNDT/NBI/2009/031

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

12 Jul 2010

Duty Judge

Judge Meeran

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Due process

Non-renewal

No expectancy of renewal

Separation from service

Applicable Law

Administrative Instructions

- ST/AI/2003/8

Former Staff Regulations

- Regulation 9.5

Staff Regulations

- Regulation 1.2(c)