

UNDT/2010/197, Bowen

UNAT Held or UNDT Pronouncements

The early termination of his contract was not based on a proper or lawful evaluation of the Applicant's performance. In the absence of a comprehensive and fair performance evaluation done at the time, the reasons given by the Respondent cannot be regarded as cogent or reliable because the Applicant did not have an opportunity to refute, answer or rebut them. They therefore represent just one side of the story and, however strongly felt by the Respondent, are not a reliable basis for a lawful termination of the contract before its expiry date. This is not a question of improper motivation. There is no evidence that the Respondent was motivated by anything other than a desire to have the project functioning efficiently. The Respondent's failure was in not treating the Applicant in a fair and lawful manner in accordance with the Staff Rules and UNDP procedure. The Applicant had no legitimate expectation of his contract lasting more than the one year to which he agreed when he signed his offer of appointment. The Applicant did suffer harm as a consequence of the termination of his contract.

Decision Contested or Judgment/Order Appealed

The Applicant has challenged the Secretary-General's decision to terminate his employment on an appointment of limited duration with the United Nations Development Programme (UNDP) in March 2004. The termination was effected three months before the expiry of his contract on grounds of poor performance.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

i. The Respondent's decision to terminate the Applicant's contract on 23 March 2004 is rescinded. ii. Payment to the Applicant of the salary and other entitlements he would have received until the end of his contract on 24 June 2004 less the payments in lieu of notice. iii. Payment of two years' net-base salary at the rate which applied at the time of the termination of his contract. iv. Interest on the sums in orders ii and iii at 5.25 per cent, accruing from the date from 24 March 2004 to the date of this order. v. This Judgment shall be executed within 30 days of the expiry of the time provided for appeal. Failure to execute this Judgment within the stipulated period, will result in a further five (5) per cent of interest accruing on order iv above.

Full judgment

[Full judgment](#)

Applicants/Appellants

Bowen

Entity

UNDP

Case Number(s)

UNDT/NBI/2010/09/UNAT/1582

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

19 Nov 2010

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Due process

Non-renewal

No expectancy of renewal

Performance management

Performance evaluation

Termination (of appointment)

Applicable Law

Former Staff Rules

- Rule 301.4
- Rule 309.2

Other UN issuances (guidelines, policies etc.)

- UNDP Results and Competency Assessment Guidelines (RCA)

Staff Rules

- Rule 301
- Rule 304.4

UNAT Statute

- Article 10.5