

UNDT/2011/020, Omondi

UNAT Held or UNDT Pronouncements

The Tribunal held that the presence of bad faith in some of the Respondent's actions concerning the Applicant stood out in bold relief. There was no doubt that the bad blood between the Applicant and her immediate supervisor created a ripple effect and alienated her from the Chief of ICTS. The testimony on why and how the recruitment process for VA 421846 had to be overhauled clearly reflected a blatant manipulation of the selection process set out in ST/AI/2006/3; a subversion and clear breach of United Nations Staff Rules. The Applicant did not make out a case with regard to her allegations of discrimination on the basis of her pregnancy and/or maternity leave. Although the Applicant had a reasonable expectation to return to her original position upon her resumption to work from maternity leave, she was not so entitled as the Respondent had the discretionary authority to reassign her. This authority was however not utilized but only invoked before this Tribunal to explain the unprofessional relegation of the Applicant to an idle desk. This put her in a situation where she had to ask other colleagues for work, and tended to reinforce her feelings of alienation and prejudice. The Respondent's decision not to renew the Applicant's contract beyond 31 December 2009 was informed by a poor working relationship in which there was no love lost between her and her immediate supervisor and was correspondingly based on bad faith and improper motive. The Applicant would be normally entitled to an extension of her temporary fixed-term contract until the post she encumbered as an Administrative Assistant was filled through a competitive process. The Respondent did not lead evidence to show that the situation which informed the urgent recruitment of the Applicant in November 2008 had abated by December 2009 when they still had not recruited a replacement for the post. The Applicant was entitled to a full and fair consideration of her application to the post of Administrative Assistant. However, the re-initiated interview process was tainted by manipulation and retaliatory considerations. In view of these, the Respondent violated the Applicant's right to due process.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to summarily dismiss her from service.

Legal Principle(s)

A fixed term appointment lapses at the end of the period stipulated in the contract. The exercise of the Respondent's broad discretionary authority must not be tainted by forms of abuse of power, bad faith, prejudice, arbitrariness or other extraneous factors, the presence of which contribute to a flawed administrative decision. A decision not to renew a fixed-term contract that is informed by prejudice, bias or other extraneous factors has no legal force and shall be vitiated. Retaliation is defined as any direct or indirect detrimental action recommended, threatened or taken because an individual engaged in an activity protected by the present policy. When established, retaliation is by itself misconduct. Appearance before the Tribunal is a protected activity. The Tribunal has a duty to protect persons appearing before it from being retaliated against no matter how subtle the retaliation. The Management Evaluation system is an administrative process, designed to afford the Secretary-General the opportunity to remedy a situation in which an administrative grievance has been caused. Both the Statute and Rules of the Dispute Tribunal make it mandatory for a staff member to first approach the MEU to have his or her grievance addressed in cases such as the instant one.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Omondi

Entity

UNON

Case Number(s)

UNDT/NBI/2009/75

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

25 Jan 2011

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Temporary appointment

Due process

Non-renewal

Arbitrary or improper motive

No expectancy of renewal

Applicable Law

Administrative Instructions

- ST/AI/2006/3

Staff Regulations

- Regulation 1.2(c)