

UNDT/2011/032, Obdeijn

UNAT Held or UNDT Pronouncements

The UNDT drew an adverse inference from the Respondent's failure to disclose the reasons to the UNDT and declared that the contested decision was arbitrary, capricious, and therefore unlawful. The UNDT further found that the Administration breached its obligation to disclose the reasons for the contested decision to the Applicant. The UNDT ordered (i) compensation in the amount equivalent to six months' net base salary and entitlements at the P-5 grade, VI step, with retroactive interest, for actual economic loss suffered, and (ii) USD8,000 as compensation for emotional distress. Applicable law: It is generally accepted that the employment relationship of international civil servants with the organisation for which they work is governed by the internal law prevailing within the organisation. National labour laws do not as such constitute part of the internal law of the Organisation. The contract of employment is normally the source of rights and obligations, together with the various regulations, rules, and administrative issuances upon which employment and other rights are conferred. In the adjudication of employment disputes that come before them, international administrative tribunals may rely on, among other sources, general principles of law—including international human rights law, international administrative law and labour law—which may be derived from, inter alia, international treaties and international case law. Further, in many cases international administrative tribunals may find guidance by reference to the case law of counterpart tribunals, ILO Conventions and Recommendations, as well as Digests of Decisions of specialized committees and Reports of the Committee of Experts on the Application of Conventions and Recommendations of the ILO, all of which, even though they may not be obligation-creating, are standard-setting and standard-defining and create international norms. Nature of an administrative decision: Any administrative decision entails a reasoned determination arrived at after consideration of relevant facts since there is a duty and requirement on institutions to act fairly, transparently and justly in their dealings with staff members. Nature of decision not to renew (nature of non-renewal): A decision not to "renew" a staff member's contract is a decision not to extend the duration of an

existing contract. Such decision falls under art. 2.1 of the Statute as it necessarily affects the staff member's terms of appointment. It would not differ, in any significant respect, in its legal character from any other administrative decision made under the contract of employment and will be subject to the usual standards of review. The contested decision in such case would be not the decision to set a certain expiration date, made at the time of the entry into contract, but the later decision not to extend his appointment beyond its original expiration date.

Effect of non-disclosure of reasons to the Tribunal: When a staff member brings a case against the Administration alleging that a decision he or she is contesting was improper, and the Administration fails to rebut the staff member's allegations, the Tribunal is entitled to draw negative inferences from the Administration's position.

Review of decision not to renew: Even though a staff member does not have a right to an automatic renewal of a fixed-term contract, a decision not to renew it may not be taken for improper motives and the Tribunal is required to consider whether the motives were proper or whether any countervailing circumstances existed that may have tainted such decision with illegality. When considering an appeal against such decision, the Tribunal will apply the same standards that apply to any other administrative decision. Like any other administrative decision, a decision not to renew a staff member's contract must be reasoned, as a decision taken without reasons would be arbitrary, capricious, and therefore unlawful.

Disclosure of reasons for non-renewal to the staff member: Reasons must generally be disclosed at the time of the notification of the decision, and they must be disclosed when requested by the staff member. Staff members are not required to satisfy some arbitrary threshold set by the Respondent when requesting reasons for administrative decisions. Further, reasons must be made available at the management evaluation stage (or, in the former system of justice, administrative review stage). Management evaluation of a decision must take into account the true reasons for it. For the right to appeal to be meaningful, when a staff member seeks reasons for the decision not to extend his or her appointment, these reasons must be provided in sufficient detail to enable her or him to decide whether to proceed with a formal appeal. Refusal to disclose the reasons frustrates the staff member's right of an appeal against administrative decisions under art. 2.1 of the Statute of the Dispute Tribunal. This is a fundamental right of every staff member and it must be allowed to be exercised meaningfully.

Requirements of good faith and fair dealing and disclosure of reasons not to renew: A decision not to renew a contract is subjected to the requirements of good faith and fair dealing, which are accepted as part of the contract of employment between the Organisation and its staff. The

Organisation must ensure that staff members have reasonable and effective means to contest administrative decisions. Both parties must be on equal footing when it comes to appeals against decisions affecting their legal rights. Compensation for emotional distress: To be recompensed for emotional distress, the applicant must establish the grounds for his claims.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to extend his fixed-term contract with the United Nations Population Fund (“UNFPA”) beyond its expiration date of 2 April 2009.

Legal Principle(s)

Applicable law: It is generally accepted that the employment relationship of international civil servants with the organisation for which they work is governed by the internal law prevailing within the organisation. National labour laws do not as such constitute part of the internal law of the Organisation. The contract of employment is normally the source of rights and obligations, together with the various regulations, rules, and administrative issuances upon which employment and other rights are conferred. In the adjudication of employment disputes that come before them, international administrative tribunals may rely on, among other sources, general principles of law—including international human rights law, international administrative law and labour law—which may be derived from, inter alia, international treaties and international case law. Further, in many cases international administrative tribunals may find guidance by reference to the case law of counterpart tribunals, ILO Conventions and Recommendations, as well as Digests of Decisions of specialized committees and Reports of the Committee of Experts on the Application of Conventions and Recommendations of the ILO, all of which, even though they may not be obligation-creating, are standard-setting and standard-defining and create international norms. Nature of an administrative decision: Any administrative decision entails a reasoned determination arrived at after consideration of relevant facts since there is a duty and requirement on institutions to act fairly, transparently and justly in their dealings with staff members. Nature of decision not to renew (nature of non-renewal): A decision not to “renew” a staff member’s contract is a decision not to extend the duration of an existing contract. Such decision falls under art. 2.1 of the Statute as it necessarily

affects the staff member's terms of appointment. It would not differ, in any significant respect, in its legal character from any other administrative decision made under the contract of employment and will be subject to the usual standards of review. The contested decision in such case would be not the decision to set a certain expiration date, made at the time of the entry into contract, but the later decision not to extend his appointment beyond its original expiration date.

Effect of non-disclosure of reasons to the Tribunal: When a staff member brings a case against the Administration alleging that a decision he or she is contesting was improper, and the Administration fails to rebut the staff member's allegations, the Tribunal is entitled to draw negative inferences from the Administration's position.

Review of decision not to renew: Even though a staff member does not have a right to an automatic renewal of a fixed-term contract, a decision not to renew it may not be taken for improper motives and the Tribunal is required to consider whether the motives were proper or whether any countervailing circumstances existed that may have tainted such decision with illegality. When considering an appeal against such decision, the Tribunal will apply the same standards that apply to any other administrative decision. Like any other administrative decision, a decision not to renew a staff member's contract must be reasoned, as a decision taken without reasons would be arbitrary, capricious, and therefore unlawful.

Disclosure of reasons for non-renewal to the staff member: Reasons must generally be disclosed at the time of the notification of the decision, and they must be disclosed when requested by the staff member. Staff members are not required to satisfy some arbitrary threshold set by the Respondent when requesting reasons for administrative decisions. Further, reasons must be made available at the management evaluation stage (or, in the former system of justice, administrative review stage). Management evaluation of a decision must take into account the true reasons for it. For the right to appeal to be meaningful, when a staff member seeks reasons for the decision not to extend his or her appointment, these reasons must be provided in sufficient detail to enable her or him to decide whether to proceed with a formal appeal. Refusal to disclose the reasons frustrates the staff member's right of an appeal against administrative decisions under art. 2.1 of the Statute of the Dispute Tribunal. This is a fundamental right of every staff member and it must be allowed to be exercised meaningfully.

Requirements of good faith and fair dealing and disclosure of reasons not to renew: A decision not to renew a contract is subjected to the requirements of good faith and fair dealing, which are accepted as part of the contract of employment between the Organisation and its staff. The Organisation must ensure that staff members have reasonable and effective means to contest administrative

decisions. Both parties must be on equal footing when it comes to appeals against decisions affecting their legal rights. Compensation for emotional distress: To be recompensed for emotional distress, the applicant must establish the grounds for his claims.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Obdeijn

Entity

UNFPA

Case Number(s)

UNDT/NY/2009/099/JAB/2009/044

Tribunal

UNDT

Registry

New York

Date of Judgement

10 Feb 2011

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-pecuniary (moral) damages

Non-renewal

Standard of review (judicial)

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNFPA Policies and Procedures Manual, Disciplinary Framework

UN Charter

- Preamble

UNDT Statute

- Article 2.1

Related Judgments and Orders

UNDT/2009/025

UNDT/2009/051

UNDT/2009/058

UNDT/2009/075

UNDT/2009/092

UNDT/2009/096

UNDT/2010/005

UNDT/2010/006

UNDT/2010/007

UNDT/2010/009

UNDT/2010/039

UNDT/2010/044

UNDT/2010/060
UNDT/2010/119
UNDT/2010/140
UNDT/2010/161
UNDT/2010/181
UNDT/2010/190
UNDT/2010/193
UNDT/2010/194
UNDT/2010/200
UNDT/2010/210
UNDT/2011/020
UNDT/2011/023
2010-UNAT-009
2010-UNAT-030
2010-UNAT-034
2010-UNAT-036
2010-UNAT-059
2010-UNAT-084
2010-UNAT-093