

UNDT/2011/134, Berger

UNAT Held or UNDT Pronouncements

Prima facie unlawfulness Having reviewed the Applicant's performance evaluations, the Tribunal had doubts as to whether the Applicant's direct supervisors were indeed consulted before the lieutenants finalized and gave to the Applicant the performance evaluation forms on 9 June 2011. Absent an explanation from the Respondent on this particular point, these doubts had a direct impact on the lawfulness of the contested decision. If indeed the Administration did not follow its accepted and reasonable practice, the decision not to extend the Applicant's appointment due to his poor performance might be tainted by procedural flaws, which cast serious doubts on its lawfulness. **Urgency** The prerequisite of urgency was satisfied since the Applicant's contract would expire on 31 July 2011, in just three days from the delivery of this Judgment. In addition, the Applicant was notified of the decision on 12 July 2011. He filed his request for management evaluation a week later on 20 July and submitted his application to the Tribunal on 25 July 2011, almost two weeks after having received notification of the contested decision. Thus, even though he could have shown greater diligence in submitting his application for suspension of action, the latter was still timely filed since the Respondent was not prevented from filing a reply in due time. **Irreparable damage** In a number of cases, the Tribunal has taken into consideration, for the purpose of determining whether the implementation of the contested decision would cause irreparable damage to the applicants, the fact that they would soon be reaching the statutory age of retirement. Given the Applicant's age, his chances of being reemployed are slim. The implementation of the contested decision, which was based on poor performance, would therefore result in irreparable damage to his career prospects as well as to his professional reputation. In view of the foregoing, the Tribunal ordered the suspension, during the pendency of the management evaluation, of the contested decision.

Decision Contested or Judgment/Order Appealed

The Applicant requested the Tribunal to suspend, during the pendency of the management evaluation, the implementation of the decision not to extend his appointment beyond its expiration date on 31 July 2011.

Legal Principle(s)

In accordance with article 2.2 of its Statute, the Tribunal may suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision where the decision appears to be prima facie unlawful, the matter is of particular urgency and the Applicant would suffer irreparable damage if the decision in question is not suspended. The prerequisite of prima facie unlawfulness does not require more than serious and reasonable doubts about the lawfulness of the contested decision. The unlawfulness may result from the fact that the contested decision was influenced by some improper considerations, was procedurally or substantively defective, or was contrary to the Administration's obligations to ensure that its decisions are proper and made in good faith. Temporary appointments do not carry any expectancy of renewal or conversion. Whenever the Administration decides not to extend an appointment on the grounds of poor performance, the Tribunal has to verify if the Administration complied with the relevant procedures. The Administration is bound by its own rules. Mere financial loss is not enough to satisfy the requirement of irreparable damage; however, harm to professional reputation and legitimate career prospects could constitute such damage.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Berger
Entity
UNOG
Case Number(s)
UNDT/GVA/2011/040
Tribunal
UNDT
Registry
Geneva
Date of Judgement
28 Jul 2011
Duty Judge
Judge Laker
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Appointment (type)
Temporary appointment
Non-renewal
Arbitrary or improper motive
Suspension of action / interim measures
Applicable Law
Administrative Instructions

- ST/AI/2010/4

Staff Regulations

- Regulation 4.5(b)

Staff Rules

- Rule 4.12(c)

UNDT Statute

- Article 2.2

Related Judgments and Orders

UNDT/2009/071
UNDT/2011/126
UNDT/2010/133
UNDT/2010/213
UNDT/2009/004
UNDT/2011/122
UNDT/2011/051