

UNDT/2011/185, Helminger

UNAT Held or UNDT Pronouncements

The Tribunal concludes that the decision appears *prima facie* to be unlawful. The instant case meets the requirement of urgency. The Tribunal accepts the Applicant's assessment of the potential irreparable harm the implementation of the break in service would cause, particularly in light of the visa implications and his children's educational needs. The Tribunal orders suspension, during the pendency of the management evaluation, of the implementation of the decision requiring the Applicant to take a mandatory break in service after the expiration of his fixed-term contract and prior to a temporary appointment.

Decision Contested or Judgment/Order Appealed

The decision requiring the Applicant to take a mandatory break in service after the expiration of his fixed-term contract and prior to a temporary appointment.

Legal Principle(s)

There is no obligation to require a response from the Respondent before deciding the request. For staff on fixed-term appointments who are being reappointed under temporary appointments following the expiration of their fixed-term appointments, there is no requirement, in law, to take a break in service—be it 1 day or 31 days—prior to the temporary appointment. For the *prima facie* unlawfulness test to be satisfied, it is enough for an applicant to present a fairly arguable case that the contested decision was influenced by some improper considerations, was procedurally or substantively defective, or was contrary to the Administration's obligation to ensure that its decisions are proper and made in good faith".

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Helminger

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2011/082

Tribunal

UNDT

Registry

New York

Date of Judgement

31 Oct 2011

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Suspension of action / interim measures

Irreparable damage

Particular urgency

Prima facie unlawfulness

Applicable Law

Administrative Instructions

- ST/AI/2010/4/Rev.1

Secretary-General's bulletins

- ST/SGB/2009/4

Related Judgments and Orders

UNDT/2011/176

UNDT/2011/126