

UNDT/2012/077, Adundo, et al.

UNAT Held or UNDT Pronouncements

Renewal: Although staff members do not have an automatic right to renewal, they have a right to a fair consideration for renewal and for a decision based on proper reasons. Renewal, non-renewal, and limitations under art. 10.2 of the Statute: Staff rule 9.6(b) provides that “[s]eparation as a result of ... expiration of appointment ... shall not be regarded as a termination within the meaning of the Staff Rules”. It is clear that non-renewal decisions are not covered by art. 10.2 of the Statute as they are not a form of termination. **Selection of S-1 and S-2 level staff:** There appear to be no rules in the Organization on how selection for S-1 and S-2 level positions is to be conducted. It is certainly an unsatisfactory state of affairs. The previous redactions of ST/AI/2010/3—ST/AI/2002/4 and ST/AI/2006/3—stated that “[a] separate administrative instruction will be issued for the recruitment and promotion of staff up to the G-4, S-2 and TC-3 levels” (see footnote (c) on page 5 of ST/AI/2002/4 and footnote 11 on page 5 of ST/AI/2006/3). This reference is notably absent in ST/AI/2010/3, and apparently no administrative instruction has been promulgated regarding the selection of staff up to the G-4, S-2 and TC-3 levels despite the lapse of several years. **Judicial review of restructuring exercise:** If there is a bona fide restructuring exercise, the Respondent has wide, but not unfettered, discretion in its implementation and the Tribunal would not readily intervene in such an exercise. **Prima facie unlawfulness:** Given the interim nature of the relief the Tribunal may grant under art. 10.2 of the Statute, an applicant must demonstrate only that the decision appears prima facie to be unlawful. 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 obligations to ensure that its decisions are proper and made in good faith. **Particular urgency:** Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. The Dispute Tribunal has stated in a number of rulings that the requirement of particular urgency will not be satisfied if the urgency was created or caused by the party seeking interim relief. **Irreparable damage:** It is generally accepted that mere economic loss only is not enough to satisfy the requirement of irreparable damage. Depending on the circumstances of the case, harm to professional reputation and career prospects, harm to health, or sudden loss of employment may constitute irreparable damage. **Outcome:** The decision requiring the Applicants to undergo a competitive process announced in the SSS bulletin for 6–9 April 2012 being found prima facie unlawful, the Tribunal orders suspension of the implementation of the decision to carry out the said competitive process until the present case is disposed of on the merits.

Decision Contested or Judgment/Order Appealed

A group of 25 Applicants—Security Officers serving at the S-1 and S-2 level in the Security and Safety Service, Department of Safety and Security, United Nations Secretariat—filed an application on the merits contesting the decision requiring them, as a condition of future employment, to undergo an ad hoc competitive process regardless of their contractual status. Several days later, they filed a motion for interim measures, seeking suspension of the same decision. The UNDT found that three conditions for granting of an interim measure under art. 10.2 of the Tribunal’s Statute have been met.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Adundo, et al.

Entity

UN Secretariat

Case Number(s)

UNDT/NY/2012/037

Tribunal

UNDT

Registry

New York

Date of Judgement

30 May 2012

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Non-renewal

No expectancy of renewal

Applicable Law

Administrative Instructions

- ST/AI/2002/4
- ST/AI/2006/3
- ST/AI/2010/3
- ST/AI/2010/5

Staff Rules

- Rule 9.6(b)

UNDT RoP

- Article 14

UNDT Statute

- Article 10.2

Related Judgments and Orders

UNDT/2011/032

UNDT/2011/126

2011-UNAT-159

2012-UNAT-201