

UNDT/2013/055, Leclercq

UNAT Held or UNDT Pronouncements

The UNDT found that the reason provided by the Administration for the non-renewal was not supported by the facts and that the decision was indeed based on extraneous factors. The decision of the ITC Senior Management Committee to merge several existing programs was never really implemented. A generic P-4 post was advertised in early 2012 under the new program, and funded through budget lines already available when the decision not to extend the Applicant's appointment was taken. The available evidence shows that the real motive of the decision was the fact that the Applicant's supervisor wanted to get rid of the Applicant, on the basis of alleged but undocumented bad performance. The Tribunal found the decision was illegal and ordered that the Applicant be paid CHF 8000 as moral and twelve months gross base salary as material damages.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member at the P-4 level, appealed the non-renewal of his fixed-term appointment beyond 31 December 2011, which he argued was based on extraneous factors and not on the non-availability of project funds, as alleged by the Respondent.

Legal Principle(s)

Non-renewal reason to be supported by evidence: If the Administration provides a reason for the non-renewal of a fixed-term appointment that reason must be supported by the evidence. The Administration cannot argue that a staff member's contract is not extended on the grounds of unavailability of funds if immediately after the non-renewal a new post, at the same level, with a generic post description, is opened and financed from sources already available at the moment the decision not to renew the Applicant had been taken. Burden of proof and extraneous factors:

The burden of proof to establish that the decision was based on extraneous factors falls on the Applicant. If the motive provided by the Administration is not supported by the facts and the available evidence shows that the Administration had already earlier manifested its intention not to renew the Applicant's contract, on grounds of alleged but not documented bad performance, the Tribunal cannot but conclude that the real motive behind the decision is the Administration's intention to get rid of the Applicant, for improper motives.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Only financial compensation

Full judgment

[Full judgment](#)

Applicants/Appellants

Leclercq

Entity

ITC

Case Number(s)

UNDT/GVA/2012/56

Tribunal

UNDT

Registry

Geneva

Date of Judgement

19 Mar 2013

Duty Judge

Judge Cousin

Language of Judgment

French

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Fixed-term appointment

Non-renewal

Performance management

Separation from service

Applicable Law

Staff Regulations

- Regulation 4.5

Related Judgments and Orders

UNDT/2012/007

2011-UNAT-115

2011-UNAT-184