

# **UNDT/2013/151, Hepworth**

## **UNAT Held or UNDT Pronouncements**

Legitimate expectation: The Tribunal held that while a legitimate expectation can be created by an express promise on the part of the Organization, given the special nature of fixed-term contracts within the Organization an expectation of contract renewal may also be based on the surrounding circumstances, including the practices of the Organization. In view of the foregoing, the Tribunal concluded that since there was a practice of renewing the Applicant's fixed-term appointment, he was entitled to expect its continued renewal unless there was a legitimate reason for not renewing the appointment. Extraneous factors: The Tribunal concluded that the Respondent failed to establish by a preponderance of probabilities that he was not motivated by extraneous factors in not renewing the contract of the Applicant. The absence of reasons for the contested decision together with the circumstantial evidence led the Tribunal to find that the non-renewal decision was vitiated by improper motivation, namely a desire to move the Applicant out of Bonn to placate the German Federal Environment Ministry. Validity of transfer/reassignment: The Tribunal concluded that whether or not a person chooses to accept another position within the Organization may be a relevant consideration in deciding whether to renew a fixed-term appointment. However, for it to be the sole consideration would constitute an abuse of authority or arbitrariness because it has, subject to evidence to the contrary, little, if anything, to do with the existing role in question or the staff member's ability to continue to perform the functions associated with that role. The fact that a staff member refuses a transfer to another position does not, ipso facto, mean that he or she is no longer suitable for the position currently occupied. Additionally, the Tribunal held that the personal concerns of the applicant, though they may be of a genuine nature, cannot by themselves justify a refusal to accept a transfer unless they are such as to amount to hardship that cannot be mitigated.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contested the decision of the Executive Director of the United Nations Environment Programme (UNEP), not to renew his fixed-term appointment as Executive Secretary of the Convention on Migratory Species (CMS). The Applicant alleged unlawful extraneous motivation for the non-renewal decision in the form of political pressure from the German Government.

## Legal Principle(s)

N/A

## Outcome

Judgment entered for Applicant in full or in part

## Outcome Extra Text

Applicant was awarded financial compensation only.

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Hepworth

## Entity

UNEP

## Case Number(s)

UNDT/NBI/2012/9

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

29 Nov 2013

## Duty Judge

Judge Boolell

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Disciplinary matters / misconduct

Discrimination and other improper motives

Non-renewal

Reassignment or transfer

## Applicable Law

Former Staff Rules

- Rule 104.12(b)(ii)

## Related Judgments and Orders

UNDT/2009/017

UNDT/2010/108

UNDT/2010/193

UNDT/2011/156

2010-UNAT-061

2011-UNAT-153

2011-UNAT-178

2012-UNAT-266

2013-UNAT-341

UNDT/2010/107