

UNDT/2014/128, Applicant

UNAT Held or UNDT Pronouncements

The UNDT found that the Respondent's argument that no promise had been made was untenable. The evidence clearly indicated that UNOPS Managers knew the Applicant would rely on the statements they made to her in regards to a one year contract extension. The Respondent repeatedly disregarded its own rules and regulations in the course of completing the Applicant's performance appraisal and subsequently conducted a flawed rebuttal process which was biased and unfair and violated the Applicant's due process rights. Promises made created expectancy of renewal - It is untenable for the Administration to claim that assurances made by managers are not express or implied promises of extension or renewal of a contract where the said managers at different times had assured the Applicant in writing that she should not entertain any fears concerning her contract extension for one year.

Need for Organization to take responsibility - The efforts of the Respondent's Counsel at interpreting the communication between the parties on the issue of a year's contract extension imply that the Applicant's supervisors were engaged in doublespeak all through. This stance is wholly unnecessary as it is only proper that UNOPS takes responsibility for the assurances given and promises made by its managers. Organization must follow its own guidelines - It is clear and unequivocal that UNOPS Managers did not follow the provisions of UNOPS own PRA Guidelines in reviewing the performance of the Applicant for the performance cycle of 2010. The argument that the said guidelines were optional and non-mandatory is entirely without merit in view of the jurisprudence of both UNDT and UNAT. The failure of UNOPS to follow its own guidelines is indeed fatal to the Respondent's case.

Unfair rebuttal and lack of due process - The rebuttal process was biased and unfair and violated the Applicant's due process rights as it readily adopted most of the unfavourable views of the Applicant's supervisors without any independent assessment or reference to behavioural examples.

Conflict of interest -The rebuttal process in this case was tainted by the presence of and participation of the Global Human Resources Director of UNOPS in any capacity, who was not only a witness before the same rebuttal panel but had been part of the performance review team

for the Applicant.

Decision Contested or Judgment/Order Appealed

The Applicant is a former staff member of the United Nations Office for Project Services ("UNOPS"). She contested the decision to give her a shortened six month contract following the expiry of her one year fixed term contract and the decision of a UNOPS Rebuttal Panel to uphold her performance appraisal.

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Only financial compensation awarded.

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant

Entity

UNOPS

Case Number(s)

UNDT/NBI/2011/59

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

30 Oct 2014

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Due process

Non-renewal

Performance management

Performance evaluation

Rebuttal

Separation from service

Applicable Law

Administrative Instructions

- UNOPS Administrative Instruction Concerning Contract Renewals of Staff Members 2010 AI/HPRG/2010/02

Other UN issuances (guidelines, policies etc.)

- UNOPS Guidelines for Performance Results and Assessment

Staff Rules

- Rule 1.3

Related Judgments and Orders

UNDT/2012/049

UNDT/2014/003

UNDT/2012/116

UNDT/2009/088

UNDT/2013/142

2011-UNAT-153

2014-UNAT-411

2014-UNAT-400

2013-UNAT-298