

UNDT/2014/137, Masylikanova

UNAT Held or UNDT Pronouncements

The UNDT found that the decision was in violation of an express written promise of renewal for three months by the head of her mission.

Decision Contested or Judgment/Order Appealed

The Applicant appealed the non-renewal of her temporary appointment alleging that it was ill-motivated.

Legal Principle(s)

Renewal of temporary appointments beyond 364 day: Pursuant to staff rule 4.12(a) and sec. 2 of ST/AI/2010/4/Rev.1, a staff member's service on a temporary appointment is normally due to come to an end upon reaching 364 days. A further extension of this type of contract is envisaged only exceptionally and under restrictive conditions, as per the terms of sec. 14 of ST/AI/2010/4/Rev.1, which require unexpected operational needs. It is for the Organization to determine if these exceptional circumstances are present. In making such assessment, the Administration is bound, inter alia, by the general principle of equal treatment to its staff members. Promise of contract renewal: By virtue of the principle of fair dealings with staff members, a decision not to extend an appointment is rendered unlawful when the Administration, by its own actions, created a legitimate expectation of renewal. A promise of renewal must be express and in writing. Provided that a promise of renewal may be withdrawn, that will require, at the very least, that the initial promise be overturned likewise and be duly communicated to its beneficiary. Authority of a head of mission: Sec. 14 of ST/AI/2010/4/Rev.1 is hardly relevant to determine the authority of a head of mission to make a promise of renewal of a temporary appointment when it is clear that such renewal was not based on unexpected operational needs but on different grounds. Even in the hypothesis that

such head of mission acted ultra vires in making a promise of renewal, a staff member that received a clear express written commitment from the head of the mission where he/she serves could legitimately believe the latter to be vested with the required powers. Hence, such a promise creates a legitimate expectation, countervailing the general absence of a right to renewal.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Both financial compensation and specific performance

Full judgment

[Full judgment](#)

Applicants/Appellants

Masyllkanova

Entity

UNAMA

Case Number(s)

UNDT/GVA/2014/15

Tribunal

UNDT

Registry

Geneva

Date of Judgement

20 Nov 2014

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Arbitrary or improper motive

No expectancy of renewal

Separation from service

Applicable Law

Administrative Instructions

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

Staff Regulations

- Regulation 4.5(b)

Staff Rules

- Rule 4.12(a)
- Rule 4.12(c)

UNDT RoP

- Article 18
- Article 18.5

UNDT Statute

- Article 10.5(a)

Related Judgments and Orders

UNDT/2012/049

UNDT/2014/029

2010-UNAT-081

2011-UNAT-138

2011-UNAT-153

2013-UNAT-309

2014-UNAT-411