

UNDT/2015/041, Maslei

UNAT Held or UNDT Pronouncements

The UNDT noted that in her 2011 and 2012 ePAD (performance document), the Applicant had received positive ratings, and that the 2013 ePAD was never finalized. The applicable performance management system (PAMS) requires the finalization of the ePAD in case of non-renewal of appointment for reasons related to performance. Accordingly, since UNHCR had failed to follow its rules with respect to performance evaluation and performance management, including mediation protocols, and, furthermore, the “alternative” process followed by UNHCR did not provide an equivalent standard of safeguards/protections, the Tribunal found that the decision not to renew the Applicant’s FTA was unlawful. It decided that the non-renewal decision be rescinded, and set an amount for compensation should the Administration elect to pay the Applicant compensation as an alternative to the rescission. It further decided that the Respondent pay the Applicant six months’ net base salary for moral damages.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of the United Nations High Commissioner for Refugees (“UNHCR”) contested the decision not to renew her fixed-term appointment beyond 31 December 2013, on the grounds of her performance, although her standard assignment length (“SAL”) had been extended until 31 December 2014.

Legal Principle(s)

Non-renewal for reasons of performance: In case of non-renewal for reasons of performance, the Administration has to make sure that the ePAD for the cycle is finalized, a proper performance improvement plan with measurable objectives is set up and that mediation protocols are respected; additionally, if applicable, the

Applicant must be given an opportunity to rebut the performance rating. UNHCR rules of performance evaluation and management provide for mediation in case of disagreements about performance, under the authority of the Reviewing Officer; meetings organized by a Representative relating to interpersonal issues are not a proper substitute for mediation under the rules. Not giving a realistic chance of making improvements referred to in mid-term assessments constitutes a breach of the implied requirement of fair dealing. Staff members can rely on a positive performance evaluation contained in their official performance evaluation documents. Expectancy of renewal: Although the renewal of a fixed-term appointment and the extension of a SAL are two separate issues, a request for a SAL extension by the Administration beyond the expiry of the appointment can give a staff member a legitimate expectation of renewal. Mutual loss of trust: The Respondent cannot, post facto, rely on a mutual loss of trust if such was not given as a reason to the staff member at the time of the decision. Also, if a staff member makes concrete proposals to improve the working relation, it is apparent that the loss of trust is not mutual. Moral damages: Although in the absence of its drafter, a medical report may not be admissible as evidence, if the Administration does not challenge a staff member's own description of his/her state of health as a result of a non-renewal decision, and the condition was accepted to be a stress-related illness sufficient to entitle him/her to sick leave as well as to an exceptional extension of his/her contract, this is enough evidence for the Tribunal to award moral damages.

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

Maslei

Entity

UNHCR

Case Number(s)

UNDT/GVA/2014/60

Tribunal

UNDT

Registry

Geneva

Date of Judgement

27 May 2015

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Fixed-term appointment

Compensation

Non-pecuniary (moral) damages

Non-renewal

Performance management

Performance evaluation

Separation from service

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNHCR IOM 087/2008-FOM 089/2008 (Policy for the Performance Management
□ Appraisal System)

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2010/107

UNDT/2011/156

UNDT/2009/025

2010-UNAT-084

2015-UNAT-500

2012-UNAT-266

2011-UNAT-188

2014-UNAT-469