

UNDT/2016/002, Cordoba Ruiz

UNAT Held or UNDT Pronouncements

The UNDT found that MINUSTAH erred when it excluded the Applicant from the comparative review process. The UNDT found that process should have included all staff for all available posts at the Mission after retrenchment, which was not done in this case. The UNDT found that the Applicant's rights were breached in that she was not reviewed by the comparative review panel against all the remaining posts in the new mission structure. The UNDT found, however, that the Applicant's contract expired and was not terminated. The UNDT found that the decision to separate the Applicant was lawful since it was not possible to extend her contract against a post which was being abolished at the expiration of her appointment. The unlawful decision not to include the Applicant in the comparative review process had therefore no legal consequences to her contract.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of the United Nations Stabilization Mission in Haiti ("MINUSTAH"), contested the decisions (i) not to include her in a comparative review process taking place as part of a retrenchment exercise and (ii) not to extend her appointment beyond the date of abolition of her post, which coincided with the date of expiration of her contract. The UNDT found that MINUSTAH erred when it excluded the Applicant from the comparative review process. The UNDT found that process should have included all staff for all available posts at the Mission after retrenchment, which was not done in this case. The UNDT found that the Applicant's rights were breached in that she was not reviewed by the comparative review panel against all the remaining posts in the new mission structure. The UNDT found, however, that the Applicant's contract expired and was not terminated. The UNDT found that the decision to separate the Applicant was lawful since it was not possible to extend her contract against a post which was being abolished at the expiration of her appointment. The unlawful decision not to include the Applicant in the comparative review process had therefore no legal consequences to her contract.

Legal Principle(s)

Downsizing exercise and comparative review process: The scope of the downsizing process in MINUSTAH was to identify staff to be retained in the entire new mission structure and not only in one of its sections. Non-renewal of a fixed-term appointment on abolished post: The Applicant's fixed-term appointment does not carry any expectancy for renewal and it was not possible to extend her contract for a post which was being abolished. Compensation: Not every violation will necessarily lead to an award of compensation. It has to be established that the staff member actually suffered damages. As the Applicant's contract expired and was not terminated, no prejudice was caused by the decision not to include her in the comparative review.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

No comp. ordered (but judg. for Applicant)

Full judgment

[Full judgment](#)

Applicants/Appellants

Cordoba Ruiz

Entity

MINUSTAH

Case Number(s)

UNDT/NY/2014/52

Tribunal

UNDT

Registry

New York

Date of Judgement

7 Jan 2016

Duty Judge

Judge Greceanu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-renewal

No expectancy of renewal

Separation from service

Applicable Law

Administrative Instructions

- ST/AI/2013/1

Staff Regulations

- Regulation 11.2
- Regulation 11.4
- Regulation 9.3
- Regulation 9.4
- Regulation 9.6
- Regulation 9.7

UNDT RoP

- Article 2.1(a)
- Article 7.1(a)

UNDT Statute

- Article 8.1

Related Judgments and Orders

2010-UNAT-073

2011-UNAT-182

2013-UNAT-313

2013-UNAT-335

2010-UNAT-095