

UNDT/2016/117, Auda

UNAT Held or UNDT Pronouncements

The Tribunal found no evidence of an express promise in writing sufficient to support a legitimate expectation of renewal of appointment. The Tribunal also found that the reason given for the decision was sufficiently supported by the weight of the credible evidence. The Applicant did not meet the burden of proving that the decision was motivated by bias, prejudice or discrimination.

Decision Contested or Judgment/Order Appealed

The Applicant appealed the non-renewal of his appointment, submitting that he had a legitimate expectation of renewal based on an express promise from the Under-Secretary-General, Department of General Assembly and Conference Management. He also submitted that the reason given for the decision—that he had completed the project to which he was assigned—was not supported by the facts, and that the decision was motivated by bias, prejudice and discrimination.

Legal Principle(s)

Notification of an administrative decision: Time limits exist in the system of administration of justice for reasons of certainty and the expeditious disposal of disputes. The expiry of the time limit set out in staff rule 11.2(c) extinguishes a staff member's right to submit a request for management evaluation, and therefore to challenge a decision before the Dispute Tribunal. In a case such as the present one, in which notification of a decision has been provided in writing after the Applicant was verbally informed of the decision, the Tribunal considers that the correct approach is to rely on the date of this written notification for the calculation of the time limit for requesting management evaluation (see Chollet UNDT/2015/105, para. 40, where a similar approach was taken). In the circumstances, and considering the facts of this case, I hold that where there is written notification of a decision, receipt

of which is either expressly acknowledged by the Applicant or not denied by Applicant and it is not a reiteration of a previous written decision, this will be the date of notification for the purpose of the time limit for requesting management evaluation, as a written decision is formal and usually clear and final. This allows both parties in a case to proceed with certainty. There was no legitimate expectation of renewal of his fixed-term appointment based on an alleged express promise in order for a staff member's claim of legitimate expectation of a renewal of appointment to be sustained, "it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case" (Abdalla 2011-UNAT-138, para. 24; Munir 2015-UNAT-522, para. 24). The Tribunal found that, viewing the Applicant's case in the light most favorable to his position, no evidence of an express promise or firm commitment in writing were made in this case. The reason given for the decision not to renew the Applicant's appointment was supported by the facts. The Tribunal relied on Kacan 2015-UNAT-582 to find that, in the absence of an express promise of renewal of appointment, and having failed to establish improper motives or discrimination, the decision not to renew a staff member's fixed-term appointment was a legitimate exercise of the Administration's discretion, based on the operational realities of the office concerned, and the fact that the staff member's services were no longer necessary. There was insufficient evidence that the contested decision was motivated by bias, prejudice, discrimination or other extraneous considerations. The Tribunal found that the Applicant failed to meet his burden of proving that the non-renewal of his appointment was motivated by bias, prejudice, discrimination, or other extraneous considerations in that comments made in his performance appraisal by the USG/DGACM were not sufficient to establish an improper motive, nor were the allegations regarding the delay in creating a work plan for the Applicant.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Auda

Entity

DGACM

Case Number(s)

UNDT/NY/2015/66

Tribunal

UNDT

Registry

New York

Date of Judgement

26 Aug 2016

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discrimination and other improper motives

Bias/favouritism

Non-renewal

Reason(s)

Separation from service

Applicable Law

Secretary-General's bulletins

- ST/SGB/2014/1

Staff Rules

- Rule 11

UNDT Statute

- Article 8

Related Judgments and Orders

2012-UNAT-273