

UNDT/2016/212, Faust

UNAT Held or UNDT Pronouncements

The Tribunal noted that the relinquishment of the Applicant's post was not imposed upon her by the Administration. It occurred at her own initiative and of her free will. It found that the termination decision was lawful and rejected the application.

Termination of an FTA: The FTA of a staff member who signed an agreement relinquishing the lien on his/her regular post and, hence, who has no post to return to, can be terminated on the basis of that agreement. The Administration has no duty to make good faith efforts to place that staff member against a suitable post beyond the terms of the agreement.

Extraneous factors: The burden of proving that the decision was motivated by extraneous factors falls on the Applicant.

Decision Contested or Judgment/Order Appealed

The Applicant appealed the decision to terminate her fixed-term appointment. She had been recruited against a G-5 position at UNFCCC, and was subsequently temporarily assigned against a P-2 post at the Interim Secretariat of the Green Climate Fund (ISGCF), which was at that time part of UNFCCC. The Applicant received a Special Post Allowance at the P-2 level. In August 2013, the Applicant wrote to UNFCCC, requesting to release the lien she had kept on her G-5 post and expressing, inter alia, that she was not interested to return to it. On 28 August 2013, she signed an agreement with UNFCCC, according to which, since she had no post to return to, UNFCCC could terminate her FTA at the expiration of her temporary assignment with the ISGCF, if she were not selected for any post within UNFCCC, despite her proactively searching for one. The Applicant's assignment with the ISGCF came to an end when the latter became an independent entity on 1 January 2014. The Applicant had not been selected to any post within UNFCCC at that time. However, UNFCCC offered her temporary assignments, which she accepted, to G-5 positions within UNFCCC, until 28 February 2015. Thereafter, UNFCCC decided to terminate her FTA, which was due to expire on 30 November 2015, on the basis of the 28 August 2013 agreement signed with the Applicant.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Faust

Entity

UNFCCC

Case Number(s)

UNDT/GVA/2015/138

Tribunal

UNDT

Registry

Geneva

Date of Judgement

6 Dec 2016

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Fixed-term appointment

Separation from service

Termination (of appointment)

Agreed termination

Applicable Law

Staff Regulations

- Regulation 9.3(a)(i)

Staff Rules

- Rule 9.6

UNDT Statute

- Article 10.5(b)

Related Judgments and Orders

UNDT/2016/102

UNDT/2016/204

2014-UNAT-455

2014-UNAT-487