

UNDT/2017/045, Kontic

UNAT Held or UNDT Pronouncements

The Tribunal found that the Applicant's separation was lawful. Insofar as the determination that the Applicant was fit to work on the date of his separation from service had been made through the statutory mechanisms specially designed to settle sick leave related matters, and in conformity with the established procedures, the Organization was not bound, under sec. 4.9 of ST/AI/2013/1, to further extend his contract, regardless of whether he still had a balance of sick leave days. The Tribunal also held that, while there was an excessive delay in notifying the Applicant of his separation, he suffered no damage as a result of this given that he was already aware both of the abolition of his post and of the Medical Board's conclusion. Hence, since he learnt that the Medical Board had found him fit for work, he should have known that his contract would not be further extended. Duty to extend a fixed-term appointment to utilize sick leave: Sec. 4.9 of ST/AI/2013/1 does not confer a right to have one's contract extended as long as the sick leave entitlement lasts no matter the circumstances. On the contrary, the first condition set out is that the concerned staff member be "incapacitated for service by reason of an illness that continues beyond the date of expiration of the appointment". Late notification of a decision: Failure to timely inform a staff member of an administrative decision affecting him or her constitutes a breach of the obligations incumbent on the Organization. Besides, the introduction of a new ERP system cannot justify a prolonged breach of an important obligation. The Organization has a duty to expeditiously notify administrative decisions (such as a separation from service); however, compensation is warranted only if the concerned staff member sustained harm as a result of the delay.

Decision Contested or Judgment/Order Appealed

The Applicant contested his separation from service following the non-renewal of his appointment. After the Applicant being several months on sick leave, the Organization requested an external medical evaluation, which concluded that he

was fit to resume his duties part-time and be gradually phased back to full-time work. He challenged these conclusions and choose that the matter be put before a Medical Board. In the meantime, the Applicant's post had been abolished and his fixed-term appointment was being renewed for the sole purpose of completing the Medical Board procedure. The Medical Board concluded in late February-early March 2016 that the Applicant was fit to resume working part-time on 1 December 2015, and full-time as of 1 March 2016. The Applicant's appointment expired on 14 March 2016, following which he was separated from service. However, the Administration only notified the Applicant of his non-renewal/separation one month later, on 14 April 2016.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kontic

Entity

ICTY

Case Number(s)

UNDT/GVA/2016/45

Tribunal

UNDT

Registry

Geneva

Date of Judgement

23 Jun 2017

Duty Judge

Judge Bravo

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Separation from service

Applicable Law

Administrative Instructions

- ST/AI/2013/1

Staff Rules

- Rule 6.2

Related Judgments and Orders

UNDT/2017/043

UNDT/2017/013

UNDT/2010/060
2010-UNAT-042
2010-UNAT-094