

UNDT/2017/085, Asensi Monzo

UNAT Held or UNDT Pronouncements

The Tribunal found that the standard of review in Kulawat, though it was applied in a case regarding conversion to a permanent appointment, can also be applicable *mutatis mutandis* to cases of continuing appointments because to be considered for either of the types of appointments staff members must fulfil certain eligibility requirements laid down in bulletins and administrative instructions. The Tribunal stressed that the existence of an “expectation of re-appointment” between two short-term contracts does not in itself create “a continuous service” in a staff member’s employment. The Tribunal noted that the Applicant separated from the Organization on 31 October 2008 and was reappointed on 10 November 2008 on another short-term appointment. When the Applicant’s appointment expired on 31 October 2008, she seemingly had options regarding her annual leave balance: either get paid for the leave days (commutation), or have the leave days carried forward, or lose the annual leave days altogether. In the end, she was not paid her accrued annual leave before commencing her new appointment but was allowed to carry them over to the new appointment. The Tribunal considered that the simple act of carrying forward of annual leave or other entitlements does not create a contractual relationship, but rather confirms the existence of an outstanding obligation owed to a staff member that is to be fulfilled by the Organization within a certain period. The Tribunal noted that carrying forward of annual leave days within the Organization is not an uncommon practice, especially, if this is agreed upon by the parties and is documented. However, it does not lead to a legal fiction that the contract, which was interrupted through a break-in-service, was continuous. Therefore, since during the nine-day period, no contractual relationship existed, the Tribunal found that the Applicant’s continuity of service was broken. The Tribunal examined whether the Applicant’s situation fell within the exception provided for under sec. 2.13 of ST/AI/2012/3, namely, that service prior to breaking of continuity of service can count towards the five years if the staff member is reinstated pursuant to staff rule 4.18. The Tribunal found that the Applicant did not fall under this exception, because during her separation on 31 October 2008, she held a short-term contract under the

300 series of appointment and, when she was re-appointed on 10 November 2008, she was reappointed to another 300 series short-term contract. She did not hold a fixed-term appointment or a continuing appointment, but rather a 300 series short-term appointment. Therefore, the Tribunal found that she was not reinstated pursuant to sec. 2.13 of ST/AI/2012/3. The Tribunal did not find that the email of 31 October 2014 from the Senior Human Resources Officer, HRMS, UNOG to the Applicant created any legitimate expectation of eligibility for the Applicant since the process of consideration and granting of continuing appointments is an exercise that is monitored and implemented by the continuing appointment team in OHRM. Therefore, the Senior Human Resources Officer's interpretation of the provisions regarding continuing appointments could bind the Organization. The Tribunal further found that the doctrine of contra proferentem was not applicable in this case since the legal framework clearly stated the requisite of continuous appointments and leaves no room for interpretation on account of ambiguity.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to find her ineligible for conversion of her fixedterm appointment into a continuing appointment due to a break in service.

Legal Principle(s)

In reviewing an administrative decision regarding a staff member's eligibility for conversion, the right of a staff member is not to the granting of a permanent appointment but, rather, to be fairly, properly, and transparently considered for permanent appointment (Kulawat 2014-UNAT-428). The decision to impose a break-in-service is intrinsically linked to the staff member's contract, as it commences immediately after the end of the contract and continues for some time prior to the staff member's becoming eligible and/or being granted a new appointment (Rockcliffe UNDT/2012/033). Whatever the duration of a break-in-service, it has the effect of interrupting a staff member's continuous appointment with the Organization (Dunda UNDT/2013/034).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Asensi Monzo

Entity

UNOG

Case Number(s)

UNDT/GVA/2016/110

Tribunal

UNDT

Registry

Geneva

Date of Judgement

7 Nov 2017

Duty Judge

Judge Bravo

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Continuing appointment

Applicable Law

Administrative Instructions

- ST/AI/2012/3

Secretary-General's bulletins

- ST/SGB/2011/9

Related Judgments and Orders

2014-UNAT-428

UNDT/2012/033

UNDT/2013/034

UNDT/2012/167

UNDT/2010/147