

UNDT/2018/003, Batamuliza

UNAT Held or UNDT Pronouncements

From both the testimonies and the documentary evidence before the Tribunal, it found as established that the dire financial situation at UNDP KCO, as it related to the “11888 fund”, was the reason for the non-renewal of the Applicant’s contract. The Applicant did not produce any evidence allowing the Tribunal to conclude that at the time of the contested decision, the “11888 fund” still had funds to allow the Organization to renew her contract. While it is not contested that an incident occurred during the mission to Rwanda in 2014, the Tribunal does not find that the testimonies and documentary evidence support a conclusion that the RR/RC was biased towards the Applicant. Two of the Applicant’s witnesses testified that the working relationship between the Applicant and the RR/RC changed after the Rwanda mission. The Tribunal does not find that such a change in the working relationship can, in itself, lead to a finding of improper motives in the case at hand. Although the P-4 Advisor position was open for competitive recruitment, the Tribunal finds that the entire process, as expressed in the evidence, was geared towards ensuring that the Applicant was appointed to the position. The Tribunal concludes that the Applicant did not discharge the burden of proof to establish that the contested decision was based on ulterior motives. The Tribunal notes that the vacancy announcement clearly indicated that the duration of the position and the assignment was limited to one year. UNDP KCO could have extended the Applicant’s contract, had there been funds and most importantly, if after one year, the functions of the job were still needed, irrespective of the initial specific duration of the position for one year. It is unsettling that the Applicant argues that if indeed the post was for one year, it should have been a temporary rather than a fixed-term appointment. The Tribunal concludes that the Applicant did not have any legitimate expectancy of renewal of appointment.

Decision Contested or Judgment/Order Appealed

The Applicant challenges the decision not to renew her fixed-term appointment.

Legal Principle(s)

To determine the lawfulness of a non-renewal decision, the Dispute Tribunal must assess (1) whether the Administration abused its discretion (2) whether the decision was based on discriminatory or other improper considerations (3) or whether the Administration made an express promise creating an expectancy for the appointment’s renewal (Ahmed 2011-UNAT-153). A fixed-term appointment does not carry any expectancy, legal or otherwise of renewal or conversion to any other type of appointment (Syed 2010-UNAT-061). The burden of proving that the grounds for non-renewal were unlawful or that there is improper motivation in the non-renewal decision lies with the staff member contesting the renewal decision (Hepworth 2015-UNAT-503). In Munir 2015-UNAT-522, the Appeals Tribunal held that a legitimate expectation of renewal has to be based on more than just verbal assertions but on a firm commitment to renew based on the circumstances of the case. The Secretary-General has discretion to renew or not to renew contracts based on the needs of the Organization.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Batamuliza

Entity

UNDP

Case Number(s)

UNDT/GVA/2016/012

Tribunal

UNDT

Registry

Geneva

Date of Judgement

11 Jan 2018

Duty Judge

Judge Downing

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Fixed-term appointment

Non-renewal

Applicable Law

Secretary-General's bulletins

- ST/SGB/2014/1

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 4.13

Related Judgments and Orders

2010-UNAT-061

2011-UNAT-153

2015-UNAT-503

2015-UNAT-522