

UNDT/2018/019, Trudi

UNAT Held or UNDT Pronouncements

On receivability: Applying the test of Gabaldon, even though all the conditions of staff rule 4.8 had not been fulfilled, the Applicant had locus standi and was legitimately entitled to similar rights as those of staff members and that the Organization must be regarded as having extended to her the protection of its administration of justice system. She held a valid contract, the scope of which must be determined when other issues are considered. The reach and application of Gabaldon is indeed limited and does not entitle the Applicant to take full benefit of the Staff Regulations regarding benefits and entitlements. To put it more succinctly, the Applicant could not be given notice of termination or paid any salary in lieu of such notice when she had not even started performing her duties under the employment contract that would entitle her to remuneration. The issuance of a Syrian visa was a implied term of the contract; the non-issuance of the Syrian visa to the Applicant in this case was a supervening event giving rise to a legal frustration of the contract and having the effect of legally discharging both parties from the employment contract. Two clear months elapsed between the refusal of visa and the withdrawal of the Applicant's contract. Even then, the Respondent's agent only acted to withdraw the contract following the Applicant's incessant inquiries on the matter. The delay was unprofessional and unwarranted. Additionally, the Tribunal accepted the Applicant's explanation that from the time she accepted the OCHA offer, she could not, in good faith, apply for different employment until the offer was withdrawn. Thus, due to the one-year appointment that she had been given, there was no possibility of her arranging other employment until 29 October 2014. At that time, she sought other employment but remained unemployed until the beginning of March 2015.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision to withdraw the letter of offer that was issued to her for appointment as a Humanitarian Affairs Officer with the Office for; Coordination of Humanitarian Affairs (OCHA) in Damascus, Syria, on grounds that the Syrian government denied the application for her visa.

Legal Principle(s)

On frustration of contract: a contract is deemed to have been automatically frustrated upon the occurrence of an extraneous event, or change in circumstances so fundamental, as to strike at the root of a contract as a whole and beyond the contemplation of the parties. In other words, there must be an extraneous event outside the control of the parties to the contract that takes place and has the effect of making performance of the contract impossible. For the doctrine of frustration to be properly applied, it must also be shown that the supervening event is unforeseen by the parties.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Applicant was entitled to compensation of two months' net base salary. With regard to the Applicant's claim that she forfeited other employment for purposes of taking up the contract of employment with OCHA, no evidence was tendered. The Tribunal could not therefore make any award on that claim.

Full judgment

[Full judgment](#)

Applicants/Appellants

Trudi
Entity
OCHA
Case Number(s)
UNDT/NBI/2015/46
Tribunal
UNDT
Registry
Nairobi
Date of Judgement
14 Feb 2018
Duty Judge
Judge Izuako
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Appointment (type)
Fixed-term appointment
Jurisdiction / receivability (UNDT or first instance)
Personal (ratione personae)
Termination (of appointment)
Applicable Law
Staff Rules

- Rule 4.8