

UNDT/2018/031, Rehman

UNAT Held or UNDT Pronouncements

Reason for non-renewal; It is commonplace that once the Respondent gives a staff member a reason for the nonrenewal of contract, such a reason must be supported by facts (Islam 2011-UNAT-115); The fact that the Respondent conceded that he could not demonstrate the lack of funds leading to the non-renewal of the Applicant's contract leads the Tribunal to draw the negative inference that UNICEF PCO had decided not to renew the Applicant's contract based on other reasons that were disclosed neither to the Applicant nor to this Tribunal.; Furthermore, the Tribunal does not find that the fact that the Applicant's former [position] remained vacant after her contract was not renewed is, in itself, evidence of a lack of funds.; There are situations in which while there are available funds, the functions of a staff member are no longer required. That can be due to a reduction in workload in a particular department or programme, or due to the fact that the functions of a staff member have been subsumed by changes and or a restructuring process. A non-renewal decision can be justified in such a scenario (see Filippova UNDT/2016/008, Ding Order No. 88; (GVA/2014), He UNDT/2017/071 generally). However, the obligation is on the Respondent to prove the changes in the operational realities or the restructuring exercise that justify the non-renewal of a contract. There is need, for example, to provide proof of workload prognosis to support the reduction in work, thereby supporting a non-renewal decision on grounds of reduction of work or restructuring (Filippova UNDT/2016/008, He UNDT/2017/071); In exercising its discretionary authority to reorganise its priorities and restructure its workforce, the Administration must act in a fair and rational manner, which is procedurally correct and proportionate and in full compliance with the law. Any such restructuring or reorganization must also be supported by factual evidence.; Any restructuring that would lead to non-renewal of contracts should, at a minimum, be documented so as to support the reason for the non-renewal and to avoid the abuse of managerial discretion. Herein, the absence of any documentation of the restructuring exercise leads the Tribunal to question if in fact a restructuring exercise took place.; Recalling that the Administration changed the reason provided for the non-renewal from lack

of funding/funding constraints to a claim of restructuring with the Applicant's; functions no longer in need, the Tribunal finds that the latter reason is ex post facto and is equally unsupported by evidence and cannot be and, indeed, was not substantiated.; The Respondent has failed to defend and support the validity of the reason for the nonrenewal decision given to the Applicant. The Tribunal is thus constrained to reach the conclusion that the Applicant's non-renewal was unlawful. Consequently, and repeated with emphasis, the Tribunal can and will draw an adverse inference from the Respondent's actions since to provide different reasons for the administrative decision as the case moved forward is indicative of arbitrariness, lack of transparency, lack of fairness and is devoid of accountability in the decision-making process at UNICEF PCO.; Is the Applicant entitled to any remedies?; "[A]ny consideration of an award of damages for persons who are recruited on FTAs must take into account, among other things, the term of the contract and the remainder of the said term, if any, at the time of any alleged breach". It has also given consideration to the length of expectancy of renewal (Andreyev 2015-UNAT-501, Gakumba 2013-UNAT387); In assessing compensation, each case should be treated differently, taking into account the particular situation of the claimant and that this process carries "a certain degree of empiricism to evaluate the fairness of the 'in lieu compensation' to be fixed" (Mwamsaku 2012-UNAT-246); The Applicant had a reasonable expectation of the renewal of her contract for one year. Having regard to all the circumstances, the Tribunal finds it appropriate to set the amount of compensation to be paid to the Applicant in lieu of rescission of the decision not to renew her appointment in the amount of one-year net base salary.

Decision Contested or Judgment/Order Appealed

The Applicant contested the non-renewal of her fixed-term appointment ("FTA") as Programme Assistant, GS-6, in the Education Section of the United Nations International Children's Emergency Fund ("UNICEF"), Islamabad, Pakistan Country Office ("PCO"), upon its expiration due to funding constraints.

Legal Principle(s)

A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion to any other type of appointment.; The Administration has an

obligation to state the reasons for an administrative decision not to renew an appointment to assure the Tribunals' ability to judicially review the validity of such decision. Therefore, the reasons given ought to withstand the test of fairness, reasonableness, lawfulness and transparency in the decision-making process.; An international organization necessarily has the discretionary authority to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff (see Gehr 2012-UNAT-236, Pacheco 2013UNAT-281); In its judicial control of the exercise of such discretion, the Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse (Toure 2016-UNAT-660); While its role is not to substitute its decision for that of the Administration, the Tribunal can and will intervene when the Administration fails to act fairly, justly and transparently, in dealing with its staff members (see Hersh 2014-UNAT-433).

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Judgment affirmed by UNAT Judgment Rehman 2018-UNAT-882 despite UNAT's finding that the UNDT's award of moral damages was wrong in law. UNAT decided to allow the award of moral damages to stand in view that the Secretary-General did not appeal Judgment Rehman UNDT/2018/031.

Full judgment

[Full judgment](#)

Applicants/Appellants

Rehman

Entity

UNICEF

Case Number(s)

UNDT/GVA/2016/7

Tribunal

UNDT

Registry

Geneva

Date of Judgement

28 Feb 2018

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Fixed-term appointment

Non-renewal

Applicable Law

Laws of other entities (rules, regulations etc.)

Secretary-General's bulletins

- ST/SGB/2014/1

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 4.13

UNDT Statute

- Article 10.5

UNICEF Administrative Instructions

- CF/AI/2009-005

Related Judgments and Orders

2012-UNAT-261

2012-UNAT-201

2013-UNAT-311

2011-UNAT-115

2012-UNAT-236

2013-UNAT-281

UNDT/2016/008

UNDT/2017/071

2014-UNAT-433

2015-UNAT-501

2013-UNAT-387

2012-UNAT-246

2012-UNAT-254

2015-UNAT-587

2013-UNAT-309

2016-UNAT-660