

UNDT/2018/068, Afeworki

UNAT Held or UNDT Pronouncements

The complaint concerning the receivability of the decision not to grant the Applicant a continuing appointment was dismissed on two grounds. It was not receivable because the Applicant did not request management evaluation and secondly, because the Applicant was not in active service throughout the period of consideration as required by the provisions of section 2.6 of ST/AI/2012/3. The Tribunal found that the civilian staffing review conducted by the RSCE, resulting in the reduction of several posts, was conducted for a bona fide reason and its proposals were endorsed by the General Assembly. The decision to conduct the comparative review by comparing staff with the same functions, regardless of service line or office, as indicated by RSCE Circular, dated 3 March 2015, was an appropriate principle guiding the review and properly within the discretion of the Administration. Moreover, the fact that the Applicant was not part of the review process was not due to any discrimination or desire to subject her to less favourable treatment but because all the posts at FS-4 level in the Travel Unit, which included the Applicant, were abolished. The record shows that all staff affected by the retrenchment exercise were similarly treated in the communications received and the opportunities that were made available for consideration of alternative job offers including, in particular, opportunities in other peacekeeping missions. As for the various allegations of discrimination, favouritism and bias it was for the Applicant to show that she was subjected to any form of discriminatory treatment. The Applicant having made these bold allegations has failed to produce any evidence in support thereof.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision not to renew her fixed-term appointment beyond 30 June 2015; she also complained about the decision not to grant her a continuing appointment.

Legal Principle(s)

It is well established that a staff member with a fixed-term appointment has no expectation of renewal of that contract. In order for a staff member's claim of legitimate expectation of a renewal of appointment to be sustained, it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case. Our jurisprudence places the burden on the staff member to show a legitimate expectancy of renewal or that the non-renewal of his fixed-term appointment was arbitrary or motivated by bias, prejudice or improper motive against the staff member.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Afeworki

Entity

UNS

Case Number(s)

UNDT/NBI/2016/2/R1

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

26 Jun 2018

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Appointment (type)

Fixed-term appointment

Separation from service

Expiration of appointment (see also, Non-renewal)

Applicable Law

Administrative Instructions

- ST/AI/2012/3
- ST/AI/2013/1

Staff Regulations

- Regulation 4.5

Staff Rules

- Rule 9.4

Related Judgments and Orders

UNDT/2017/011

2017-UNAT-794