

UNDT/2018/071, Belkhabbaz

UNAT Held or UNDT Pronouncements

The decision not to renew the Applicant's fixed-term appointment

The Tribunal found that there were no good reasons to depart from the principle of renewal pending completion of a rebuttal process. The Tribunal found that the Applicant's performance was not fairly evaluated, notably during the third and fourth evaluation cycles. Thus, these performance appraisals could not be relied upon to justify a decision not to renew the Applicant's fixed-term appointment. As a consequence, the Tribunal found that the third reason for not renewing the Applicant's fixed-term appointment, namely that she only partially met expectations for two consecutive years, was not adequately supported by the evidence and could not stand.

Is the decision not to renew the Applicant's appointment supported by any of the four other allegedly non-performance-related reasons?

The Tribunal found that none of the four additional reasons set out in the letter of 15 May 2013 examined by the Tribunal supported the decision not to renew the Applicant's fixed-term appointment. With the exception of the last one, these reasons were all reflected in the Applicant's performance appraisals and shall thus be considered as performance-related. Based on the foregoing, the Tribunal concluded that both the decision not to renew the Applicant's fixed-term appointment upon expiry and the decision not to extend her appointment pending the outcome of the rebuttal process were unlawful.

Remedies

In respect of the decision not to renew the Applicant's fixed-term appointment, the Tribunal ordered the Secretary-General to pay the Applicant compensation equivalent to 21 months' net base salary, as pecuniary damages. It reasoned that the non-renewal of the Applicant's appointment based on poor performance and the difficulties to get references from OSLA made her job search particularly difficult.

She was pregnant at the time and was the main breadwinner of her family. She was unemployed for a year and was only partly employed in the second year after the termination of her contract. The Tribunal accordingly took the view that she should be compensated for loss of income from her separation on 5 April 2014 until the end of 2016. The Tribunal further ordered compensation equivalent to half the Applicant's net base salary, plus post adjustment, for eight months and 13 days, as pecuniary damages for the loss of income resulting from her placement on sick leave with half pay from 22 July 2013 to 4 April 2014. The Tribunal also ordered payment of USD40,000 as compensation for non-pecuniary damages arising from the significant stress the Applicant experienced as a result of the non-renewal of her contract, which resulted in her having to leave Geneva to return to difficult circumstances in the United States of America (USA) while she was pregnant with twins. She lost her medical insurance and her husband had to leave his employment in Morocco to assist her in the USA. Medical reports corroborated that the Applicant suffered significant psychological harm caused by the non-renewal of her contract. With regard to the decision not to extend the Applicant's appointment pending the outcome of the rebuttal process, the Tribunal awarded the Applicant compensation equivalent to half her net base salary, plus post adjustment, for seven months and five days, as pecuniary damages. This award was intended to compensate the Applicant for being placed on half-pay from 21 July 2013 until the issuance of the rebuttal report on 27 February 2014. The Tribunal ordered that this amount be set off against the award for pecuniary damages made in relation to the non-renewal of her contract. The Tribunal also ordered payment of USD10,000 for the non-pecuniary harm the Applicant suffered as a direct result of the decision not to extend her appointment pending completion of the rebuttal process. In this regard, the Tribunal found that she had suffered infringement of dignitas as a result of being treated differently from other staff members whose appointments are normally extended pending the completion of a rebuttal process and that this caused additional stress.

Accountability referral: the Tribunal referred the Applicant's FRO for accountability to the Secretary-General pursuant to art. 10.8 of the Dispute Tribunal's Statute in respect of the breaches of confidentiality and the directions given to the Applicant in respect of the conduct of her cases, which constituted a failure to meet or maintain the requisite level of professionalism.

Decision Contested or Judgment/Order Appealed

The Applicant, a former Legal Officer with the Office of Staff Legal Assistance (“OSLA”), contested: a) the decision not to renew her fixed-term appointment pending the outcome of the rebuttal process in respect of her performance appraisal for the period 20122013; and b) the decision not to extend her contract beyond its expiration on 11 June 2013, taken on 9 May 2013 by the former Executive Director, OAJ.

Legal Principle(s)

It is settled law that a fixed-term appointment does not bear any expectancy of renewal (Syed 2010-UNAT-061, Appellee 2013-UNAT-341). A non-renewal decision can be challenged on the grounds that the Administration did not act fairly, justly or transparently, or if the decision is motivated by bias, prejudice or improper motive against the staff member. The staff member has the burden of proving that such factors played a role in the administrative decision (Said 2015-UNAT-500; Assale 2015-UNAT-534; Obdeijn 2012-UNAT-201; Asaad 2010-UNAT-021). When a particular justification is given for an administrative decision it must be supported by the facts (Islam 2011-UNAT-115). A staff member whose performance was rated as ‘partially meeting performance expectations’ had no legitimate expectancy of renewal of his contract” (Dzintars 2011-UNAT-176). Non-renewal of an appointment on the ground of poor performance must be justified by the evidence and “[i]t is incumbent on the Secretary-General to provide sufficient proof of incompetence, usually on the basis of a procedurally fair assessment or appraisal establishing the staff member’s shortcomings and the reasons for them” (Sarwar 2017-UNAT-757, Ncube 2017-UNAT-721). Staff members have a fundamental right to exercise their rights under the rules, notably by challenging administrative decisions that affect their terms or conditions of employment, in the Organization’s internal justice system.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

This judgment was partially upheld and remedies modified by the Appeals Tribunal in its Judgment Belkhabbaz 2018-UNAT-895.

Full judgment

[Full judgment](#)

Applicants/Appellants

Belkhabbaz

Entity

OAJ

Case Number(s)

UNDT/GVA/2013/039

UNDT/GVA/2013/057

Tribunal

UNDT

Registry

Geneva

Date of Judgement

27 Jun 2018

Duty Judge

Judge Downing

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Abuse of authority

Retaliation

Non-renewal

Performance management

Rebuttal

Referral for accountability

Applicable Law

Administrative Instructions

- ST/AI/2010/5
- ST/AI/2013/1

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Regulations

- Regulation 4.5

Staff Rules

- Rule 4.13

UNDT Statute

- Article 10.5

Related Judgments and Orders

2010-UNAT-061

2013-UNAT-341

2015-UNAT-500
2015-UNAT-534
2012-UNAT-201
2010-UNAT-021
2011-UNAT-115
2013-UNAT-298
2011-UNAT-153
2017-UNAT-757
2017-UNAT-721
UNDT/2012/110
UNDT/2013/045
UNDT/2012/111
UNDT/2014/004
2015-UNAT-518
UNDT/2013/044
2014-UNAT-420
UNDT/2018/016
2013-UNAT-282
2017-UNAT-742
2017-UNAT-787
2018-UNAT-810