

UNDT/2018/083, Haroun

UNAT Held or UNDT Pronouncements

The context of the impugned decision was important because it was central to the Applicant's case that the decision to exclude her from the comparative review exercise which led to her separation, was made in bad faith, and that it stemmed from the conflict surrounding the decision to transfer her from the CAS Office to the Supply Section. The Applicant's case was that she was unlawfully excluded from the comparative review pool for Warehouse Assistants. The Applicant was transferred to the Supply Section despite her repeated protests and the explanation given was that the move was made to improve her career prospects. In other words, the conflict which was the subject of her previous application resulted in the Respondent's decision to exclude her from the comparative review process. The Respondent admitted that the non-inclusion was an error. The Applicant, however, contended that the decision to exclude her from the comparative review exercise was not done in error but was rather ill-motivated. The Tribunal underscored the unnecessary and embarrassing somersaults, of the managers in this case. Their first reaction to the application was to claim that the Applicant was not qualified to be included in the comparative review which was to determine which staff members would be retained in the Kuwait duty station of UNAMI following the restructuring. Subsequently, and despite not obtaining the Applicant's updated PHP, the Respondent admitted in amended pleadings that the Applicant was excluded in error; but that even if she had been included in the comparative review, she would not have scored highly enough to warrant her retention. Before the Tribunal, the decision-maker, the Mission's Chief of Administrative Services, challenged the concession and admission of her principal, the Respondent, that the Applicant was excluded from the process in error. This was scandalous behavior which betrayed the extent of the decision-maker's personal bias against the Applicant. It was also curious that counsel for the Respondent did not think it necessary to have this point addressed in the re-examination of the witness. The Tribunal found it necessary to comment on the conduct of the Chief of Administrative Services, both as a manager within the Organization and a witness before this Tribunal. She fell short of her duties and responsibilities as a manager within the International Civil Service, and made decisions that showed little regard for the "dignity and worth of the human person and respect for the equal rights of men and women of nations great and small." Her poor judgment in her managerial decisions reflected poorly on an Organization committed to upholding the highest standards of efficiency, competence and integrity of its staff members in the discharge of their functions as international civil servants.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision not to renew her fixed-term appointment beyond 26 January 2015.

Legal Principle(s)

The exercise of discretion is integral to being a manager. When a manager makes an administrative decision, he/she must exercise his/her discretion judiciously and therefore lawfully. In other words, the latitude of choice open to a manager in decision-making is not unfettered. In Contreras UNDT/2010/154, this Tribunal noted that "discretion" is not synonymous with "power." The Tribunal stated further that discretion while being the power or right to act according to one's judgment, by its nature involves the ability to decide responsibly. It also held that power cannot be exercised for its own sake or for other extraneous reasons but only in furtherance of the institution's interest.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

6 months net base salary awarded as compensation. Increased to 24 months on appeal.

Full judgment

[Full judgment](#)

Applicants/Appellants

Haroun

Entity

UNAMI

Case Number(s)

UNDT/NBI/2015/51

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

28 Aug 2018

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Termination

Appointment (type)

Fixed-term appointment

Discrimination and other improper motives

Bias/favouritism

Separation from service

Expiration of appointment (see also, Non-renewal)

Related Judgments and Orders

UNDT/2016/058

2019-UNAT-909