

UNDT/2019/003, Tosi

UNAT Held or UNDT Pronouncements

UNDT held that the Settlement Agreement was properly before UNDT for its enforcement. UNDT noted that there was no special procedure prescribed by the UNDT Statute or Rules of Procedure or even by any of its Practice Directions for an applicant to bring an application for the enforcement of a Settlement Agreement. UNDT held that there was bad faith on part of the Respondent in regard to the Settlement Agreement by the non-renewal of the Applicant's contract. UNDT found that: a. The MONUSCO Administration exhibited bad faith during the negotiations by not informing the Applicant until after he signed the Settlement Agreement that his post was affected in the restructuring; b. The MONUSCO Administration's bad faith tainted the spirit and intent of the Settlement Agreement; c. The Respondent breached the intent of the Settlement Agreement by not renewing the Applicant's contract beyond 31 July 2015; and d. Based on the request for extension of appointment dated 20 August 20149 , which was signed by Mr. Maia and recommended an extension of the Applicant's FTA for one year from 31 October 2014, and the emails from MONUSCO HR regarding the extension of the Applicant's FTA, the Applicant's appointment should have been renewed at least until 30 October 2015. UNDT ordered the following remedies: a. Rescission of the decision not to renew the Applicant's appointment beyond 30 June 2015; b. Payment of the Applicant's net base salary from 1 August 2015 to 31 October 2015; c. Compensation in the amount of one month's net base salary for the procedural irregularity of separating the Applicant on 31 July 2015 instead of 30 October 2015; and d. Amendment of the Applicant's e-PASes in accordance with paragraph 6 of the Settlement Agreement.

Decision Contested or Judgment/OrderAppealed

The Applicant challenged the Respondent's decision not to renew his fixed-term appointment (FTA). This case was registered as Case No. UNDT/NBI/2015/095. In another application the Applicant challenged: a) the decision dated 11 September

2015 on his complaint of prohibited conduct against three senior United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo (MONUSCO) staff members; b) the decision dated 14 January 2016 on his second complaint against the former MONUSCO Special Representative of the Secretary General; and c) the decision dated 3 August 2015 taken by the Director of the Ethics Office that the Applicant did not establish a *prima facie* case of retaliation. That case was registered as Case No. UNDT/NBI/2016/023.

Legal Principle(s)

It cannot be denied that in any employment relationship between a staff member and the Organization, the staff member is the party in a weaker position especially because he/she is not privy to the considerations behind the decisions that affect him/her. In judging the validity of an exercise of discretion, the UNDT can examine, among other things, if the decision is absurd or perverse.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Tosi

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2015/95

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

9 Jan 2019

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Abuse of authority

Non-renewal

Arbitrary or improper motive

Remedies

Compensation (see also, Compensation)

Rescission

Applicable Law

UNDT RoP

- Article 15.7

UNDT Statute

- Article 8.2

Related Judgments and Orders

2019-UNAT-946