

UNDT/2019/052, Aboua

UNAT Held or UNDT Pronouncements

UNDT held that the Applicant had not met the evidentiary burden of showing that the Administration made an express and firm commitment in writing to extend his appointment and that conversely, the evidence showed that, in accordance with its Transition Plan, the Mission had no intention of maintaining the Applicant's post and proceeded with the downsizing. UNDT held that the Report of the Advisory Committee on Administrative and Budgetary Questions did not require UNOCI to renew the Applicant's appointment, neither did it alter UNOCI's obligation to implement the phased drawdown in accordance with Security Council Resolution 2284. UNDT held that the reasons given by the Respondent for not conducting a comparative review of the Applicant's post were sound and in line with the announced Mission policy. Recalling that there was no legal notice requirement with respect to fixed-term appointments, UNDT held that notice of one month was entirely appropriate, considering the fixed-term nature and short duration of the appointment, the context of the downsizing and the fact that the Applicant was a national staff member who was not exposed to a total uprooting. UNDT held that the Applicant did not make a showing of improper motives. UNDT held that the Applicant's claim for termination indemnity had no basis. UNDT rejected the application.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to renew his fixed-term appointment after his post was abolished due to a restructuring.

Legal Principle(s)

UNDT will not interfere with a genuine organisational restructuring even though it may have resulted in the loss of employment of staff. The Administration has the duty to act fairly, justly and transparently in dealing with its staff members and any procedure adopted must be in accordance with relevant rules and policy. UN staff members have no expectation of renewal of their fixed-term appointments. The evidentiary burden of providing a legitimate expectancy of renewal lies with the applicant, who is required to show that the Administration made an express and firm commitment in writing to extend his or her fixed-term appointment. The availability of budgetary funds only authorises the Mission's expenditures in connection with certain posts but does not create a right on the part of the incumbent to have the post retained. There is no legal notice requirement with respect to fixed-term appointments, which expire automatically on the expiration date specified in the letter of appointment.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Aboua

Entity

UNOCI

Case Number(s)

UNDT/NBI/2016/81

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

9 Apr 2019

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Non-renewal

Burden of proof

Reason(s)

Separation from service

Expiration of appointment (see also, Non-renewal)

Applicable Law

Staff Rules

- Rule 4.13(c)