

UNDT/2020/024, Icha

UNAT Held or UNDT Pronouncements

The fact that the Applicant had only a few months left to reach full retirement age and that if she had been allowed to reach mandatory retirement age her terminal benefits would have been better than what she received on termination, or the fact that the Field Staff Union intervened to have her granted a brief extension, or that she was afforded less days' official notice before termination do not constitute valid grounds for alleging that the abolition of her post was irregular. These were not relevant matters that the Administration was obliged to consider. The Respondent conceded that one similarly situated staff member was placed in a post after taking into account objective selection criteria that included, gender, bearing in mind that the post was in a security risk area and it was preferable to assign a man rather than a woman. This explanation met the standard of proof that the selection was regular. The Applicant did not rebut the presumption by adducing evidence to show that the selection of Mr D R-B instead of her was irregular. The Applicant did not show how she met all the requirements for conversion to a continuing appointment and that her EOD was changed without her knowledge. The Applicant failed to adduce any evidence to connect the decision of abolition of the post to her vocal participation in the staff union. The Respondent's advice to the Applicant and other staff members facing termination to take proactive steps to ensure their continued employment satisfied the duty of care of ensuring that staff members may be considered for alternative positions. The onus was on the Applicant to show an interest and apply for a position for which she was suited. This was not the Respondent's responsibility.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to terminate her fixed-term appointment.

Legal Principle(s)

The Secretary-General may terminate the appointment (temporary, fixed-term or continuing appointment) of a staff member if the necessities of service require abolition of the post or reduction of the staff (staff regulation 9.3). The Administration need only minimally show that due process was followed in the exercise leading to the decision to the abolition of post. A just decision is one that is fair, reasonable, legal, rational, procedurally regular, devoid of bias, capriciousness, or arbitrariness and proportionate. The Dispute Tribunal's role is to review the administrative decision to abolish a post against the standards set out in the jurisprudence to ensure that in arriving at the decision the administration did not abuse its discretionary power.

Outcome

Dismissed on merits

Outcome Extra Text

The application was dismissed because the Applicant failed to prove with clear and convincing evidence that the abolition of her post and non-placement on a suitable position were marred by irregularities.

Full judgment

[Full judgment](#)

Applicants/Appellants

Icha

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2018/027

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

7 Feb 2020

Duty Judge

Judge Sikwese

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Reassignment or transfer

Separation from service

Termination (of appointment)

Applicable Law

Other UN issuances (guidelines, policies etc.)

- MONUSCO Comparative Review Process Guidelines (2017)

Security Council Resolutions

- S/RES/2348

Staff Rules

- Rule 9.6(e)

Related Judgments and Orders

2020-UNAT-1077