

# **UNDT/2020/038, Loose**

## **UNAT Held or UNDT Pronouncements**

Non-renewal of the Applicant's FTA Given the financial situation, the Tribunal finds that the challenged decision is not ultra vires, being for the administration to evaluate the opportunity to renew temporary contracts according to the financial situation of that time. The lawfulness of the non-renewal decision must be evaluated with reference to the situation of the moment in which the decision was taken. However, in presence of a contract whose effects remain for a longer period, and which do not require non-renewal notices, the reason constituting the ground of the administrative decision should persist till the end of the contract, thus continuously supporting the reasons of the Administration's choice. It is also reasonable that a determination on the availability of funds to finance the Applicant's post can only be made at the end of the financial year, following a comprehensive assessment of Member States' contributions and not on an evaluation of the financial situation made earlier, months before the expiration of the contract, like in this case. The Tribunal cannot avoid, therefore, to consider the developments of the situation that occurred after the date of the contested decision. If, as underlined by UNAT in Nouinou 2019-UNAT-902 (para. 69), any further extension of a fixed-term contract is subject to available funding at the material time of the expiration of the contract, it is true also that the non-renewal for financial reasons can be justified if based on a financial situation assessed with reference to the material time of the expiration of the contract. In other terms, during the time period between the notice of non-renewal and the expiration of the contract of the Applicant, that is between September 2017 and the end of December 2017, the Administration was under an obligation to verify whether the financial constraints precluding the renewal of the Applicant's appointment continued to exist, not limiting itself in relying in old financial projections irrespectively of the more recent economic results. The approval of an operational budget is really relevant because it was taken after the UNODA Director expressed her view about the absolute difficulties to renew contracts for 2018. The Administration was under an obligation to verify whether the financial constraints precluding the renewal of the Applicant's appointment

continued to exist, specifically taking into account the more recent measures adopted by the CCW's HCPs on 24 November 2017 to address the financial deficit and ensure the continuity of the affected Unit. The express reference in the official Report of the CCW to the costs for a P-3 Position for activities related to two different meetings for 6 months each, undoubtedly influenced the legitimate expectation of the Applicant to have her contract renewed before its expiration notwithstanding the previous notice of non-renewal. The Tribunal is also aware that one thing is a budgetary provision, although assessed as operational, and another thing is the concrete and effective availability of the funds to be used to cover staff costs. In this case, however, the Respondent, who bears on this issue the burden to prove the specific and concrete financial situation, gave no evidence at all about the alleged cash problems or inconsistency of the budget. In the present case, the Administration failed in evaluating promptly and considering the evolution of the financial situation before the expiration of the Applicant's FTA in the last months of the contract, thus failing to balance those results with the previous one, and the position expressed by the Member States on the staffing of the ISU and its cost. The said developments and facts could have influenced the decision by the Administration not to renew the contract, which is consequently unlawful. The remedy of rescission of an administrative decision generally entails the undoing of the decision. The Tribunal has found that the Organization failed to justify the nonrenewal of the contract of the Applicant and that the decision to separate her from service was therefore flawed. The Tribunal considers it appropriate to order the rescission of the decision to separate the Applicant from service. In accordance with art. 10.5(a) of its Statute, the Tribunal will set an amount of compensation that the Respondent may elect to pay as an alternative to the rescission of the decision. Considering the budget provision contained in the above-mentioned Report for the whole year 2018, the Tribunal sets this amount at twelve months' net base salary.

**Applicant's non-selection decision** Following careful review of the facts as they appear in the file and the accompanying documentary evidence, the Tribunal is unable to conclude that the presumption of regularity in the selection process has been or should be rebutted. There is nothing to suggest that the Organization acted improperly in the selection process or that the Applicant's non-selection was motivated by extraneous factors. On the evidence before it, the Tribunal can only conclude that the Applicant was given full and fair consideration by the hiring manager and that the selection decision was both proper and lawful. Consequently, the Applicant's claim on this point has to be dismissed. Non-granting of SLWOP The Tribunal shares the view of the Respondent, finding that none of the reasons given

by the Applicant and in particular the one related to having more time to apply for jobs as an internal candidate, can be considered as a valid reason for the granting of SLWOP according to staff rule 5.3. In addition, in this particular case, granting SLWOP was not in the interest of the Organization, which considered the fact that the fixed-term contract of the Applicant expired before the beginning of the period of the requested leave without pay. The Applicant's claim related to the refusal of her request for SLWOP is therefore illfounded.

## Decision Contested or Judgment/Order Appealed

The Applicant challenges the decisions: a) not to renew her fixed-term appointment beyond 31 December 2017 b) the decision not to select her for a P-4 position in the Conference on Disarmament team ("CD team"), UNODA and c) the decision not to grant her Special Leave Without Pay ("SLWOP") pending resolution of funding problems.

## Legal Principle(s)

Non-renewal of the Applicant's FTA Pursuant to staff rule 4.13(c), an FTA does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service. Applicant's non-selection decision The Secretary-General is vested with wide discretion to select staff members for positions within the Organization. It is within the discretionary authority of the Secretary-General to evaluate candidates' qualifications for positions. In matters of selection of staff, the role of the Tribunal is to review the challenged selection process to determine whether a candidate has received full and fair consideration, whether discrimination and bias are absent, if proper procedures have been followed, and whether all relevant material has been taken into consideration. The Tribunal will not substitute its own judgment for that of the Secretary-General in these matters. There is always a presumption that official acts have been regularly performed, although this presumption is a rebuttable one. If the Organization can minimally show that a candidature was given full and fair consideration, then the presumption of law stands satisfied. Thereafter, the burden of proof shifts to an applicant/appellant who must show through clear and convincing evidence the denial of a fair chance of promotion. The presumption of regularity is rebutted by evidence of a failure to follow applicable procedures, bias in the decision-making process, and consideration

of irrelevant material or extraneous factors.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Loose

## Entity

UNODA

## Case Number(s)

UNDT/GVA/2018/026

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

10 Mar 2020

## Duty Judge

Judge Buffa

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Benefits and entitlements-45

Non-renewal

Staff selection (non-selection/non-promotion)

## Applicable Law

Administrative Instructions

- ST/AI/2010/4/Rev.1

Staff Regulations

- Regulation 5.2

Staff Rules

- Rule 4.13(c)
- Rule 5.3

UNDT Statute

- Article 10.5(a)

## Related Judgments and Orders

UNDT/2016/008

2019-UNAT-902

2012-UNAT-200

2014-UNAT-419

2015-UNAT-547

2015-UNAT-595

2015-UNAT-603

2016-UNAT-642

2016-UNAT-640