

UNDT/2021/017, Barud

UNAT Held or UNDT Pronouncements

The Tribunal finds that, contrary to the Respondent's submissions, the Applicant's allegation that she was performing Administrative Assistant functions at the relevant time is supported by her 2016-2017 and 2017-2018 e-PASes, Personal History Profile and Letters of Appointment which were the relevant documents for purposes of the comparative review process ("CRP"). The Applicant has successfully rebutted the presumption of regularity by proving through clear and convincing evidence that the CRP was unlawful. The administration violated its own regulations and rules governing its conduct. The Applicant was unfairly reviewed in breach of the CRP regulations and rules and also although not a specific criteria for CRP review, the United Nations Secretary-General's Gender Parity Initiative which sets targets for equal representation of men and women in the United Nations and also advises on recruitment and retention practices. The Applicant asks the Tribunal to refer certain staff members for accountability for abuse of authority. The Tribunal is not competent to make any determination on this request without affording the named parties their due process. The Applicant has argued that due to the violation of her contract of employment she has suffered harm. She has not adduced any evidence to support this claim. This claim is denied.

Decision Contested or Judgment/Order Appealed

The Applicant is contesting the United Nations Hybrid Operation in Darfur's ("UNAMID") decision not to renew her fixed-term appointment beyond its expiration on 30 June 2019 ("the contested decision").

Legal Principle(s)

The Administration has the duty to follow its own Regulations and Rules in matters of staff selection. In reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration. Failure to follow and apply its own regulations and rules renders the decision unlawful.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The contested decision is rescinded. The Applicant shall be reinstated in her position from the date of separation. Pursuant to art.10 of the Tribunal's Statute, the Respondent may elect to pay compensation in lieu of rescission. The compensation is set at one years' net base pay salary.

Full judgment

[Full judgment](#)

Applicants/Appellants

Barud

Entity

UNAMID

Case Number(s)

UNDT/NBI/2019/066

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

3 Mar 2021

Duty Judge

Judge Sikwese

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discrimination and other improper motives

Non-renewal

Separation from service

Expiration of appointment (see also, Non-renewal)

Applicable Law

Staff Regulations

- Regulation 1.2(c)
- Regulation 4.1

UN Charter

- Article 101

UNDT Statute

- Article 10