

UNDT/2021/039, Cardines

UNAT Held or UNDT Pronouncements

Scope of the review The original decision not to grant the Applicant a permanent appointment was notified to her in January 2019. The communications between the Applicant and the Administration in this regard in April-May 2020 were merely reiterations of a challenge and of the original decision. These communications did not reset the clock with respect to statutory timelines. The Applicant failed to challenge the decision made in January 2019 within the statutory time limit and, therefore, the Tribunal rejects the application with respect to the Administration's refusal to grant a permanent appointment as not receivable *ratione materiae*. The Administration's decision was not to renew the Applicant's appointment on its expiration date and there was no administrative decision to terminate the Applicant's fixed-term appointment prior to its expiration. Non-renewal of the Applicant's fixed-term appointment due to abolition of post The Applicant claims that her post was reclassified, not abolished, and, yet, the Administration failed to comply with the reclassification process. However, the Administration has discretion to choose which way to restructure its departments or units, and here the Administration chose to abolish the Applicant's post, not to reclassify her post. The Applicant does not present any argument or evidence that the Administration should reclassify the post when a new post is created at the same time an old post is abolished. Regarding the Applicant's claim that her post was needed under the new structure and the abolition of her post would lead to lower productivity, the Tribunal observes that the Tribunal's role is to decide whether the contested decision is legal, rational, procedurally correct, and proportionate, not whether the Organization's choice was correct among the various available courses of action. Even if the abolition of her post was an unwise decision, it is not a valid ground to interfere with the Organization's decision. The Applicant claims that the contested decision was unlawful due to the Administration's failure to keep its promises and to meaningfully consult with her regarding the contested decision. However, even if the Administration's failure to keep its promises is considered a procedural violation, it is not a substantial procedural irregularity rendering an administrative decision unlawful, considering several consultation sessions held during the reorganization process, the consultation mechanisms provided to staff members, and the lack of any mandatory individual consultation requirement in the WMO Standing Instructions. Also, consultations are not negotiations and the Administration does not need to secure the consent or agreement of the consulted parties. Finally, certain provisions in the WMO Standing instructions only apply in case of termination of contract and thus do not apply to the Applicant's case whose contract was set to expire. Accordingly, the Applicant's arguments in the issue at hand are also rejected.

Decision Contested or Judgment/Order Appealed

The Applicant contested the Administration's decision not to renew her fixed-term appointment beyond 31 October 2020 and the decision not to grant her a permanent appointment.

Legal Principle(s)

The reiteration of a challenge to an administrative decision does not reset the clock with respect to the statutory timelines; rather, the time starts to run from the date the original decision was made. The separation as a result of termination initiated by the Secretary-General in cases of abolition of posts or reduction of staff differs substantially from the separation as a result of expiration of a fixed-term appointment, which takes place automatically, without prior notice, on the expiration date specified in the letter of appointment. A fixed-term appointment does not carry any expectancy of renewal and expires automatically, without prior notice, on the expiration date. The Administration is, nevertheless, required to provide a reason for such a non-renewal upon the affected staff member's request or the Tribunal's order. When a justification is given by the Administration

for the exercise of its discretion it must be supported by the facts. It is also well settled jurisprudence that an international organization necessarily has power to restructure some or all of its departments or units, including through the abolition of posts. The Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, like with any other administrative decision, the Administration has the duty to act fairly, justly and transparently in dealing with staff members. When judging the validity of the exercise of discretionary authority, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General. Only substantial procedural irregularities can render an administrative decision unlawful.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Cardines

Entity

WMO

Case Number(s)

UNDT/GVA/2020/050

Tribunal

UNDT

Registry

Geneva

Date of Judgement

21 Apr 2021

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Notification

Non-renewal

Reason(s)

Applicable Law

Staff Regulations

Related Judgments and Orders

2010-UNAT-079

2012-UNAT-196

2015-UNAT-546

2015-UNAT-557

2019-UNAT-902

2011-UNAT-115

2012-UNAT-201

2013-UNAT-311

2014-UNAT-433

2014-UNAT-450
2015-UNAT-592
2010-UNAT-084
2015-UNAT-568
2020-UNAT-978