

UNDT/2021/046, Andreeva

UNAT Held or UNDT Pronouncements

Non-renewal of the Applicant's fixed-term appointment due to the lack of funding The proffered reason for the non-renewal is supported by evidence. The post encumbered by the Applicant was funded by funds received under service level agreements, and the Applicant's salary in 2016-19 were fully covered by a specific service level agreement, whose contributions were reduced to the extent that they were insufficient to cover the Applicant's salary. The Applicant questioned why other staff members were not affected by the reduction of funding, but none of the other staff members' salary was fully covered by this specific fund in question and, therefore, other staff members' situations are irrelevant to this case. The Applicant argued that the contested decision was tainted by ulterior motives, but she did not present any evidence to show that. Decision to find the Applicant ineligible for home leave entitlement It was decided that the Applicant's contract would not be renewed and thus her contract was not expected to continue at least six months from the date of her return from proposed home leave, which is one of the eligibility criteria for home leave entitlement. The Applicant argues that the Administration failed to inform her accurately regarding her home leave entitlement, causing her to incur certain costs for home leave. However, even though the Applicant's home leave was not approved and the Director specifically advised her that there was a question as to whether she had a home leave entitlement at the time, she decided not to wait and to travel to her home country. Therefore, the Applicant's argument that Administration failed to inform her accurately regarding her home leave entitlement and that she was somehow misled to incur costs for home leave was rejected.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision not to renew her fixed-term appointment beyond 30 June 2020 due to the lack of funding and the decision to find the Applicant ineligible for home leave entitlement.

Legal Principle(s)

A fixed-term appointment does not carry any expectancy of renewal and expires automatically without prior notice on the expiration date pursuant to staff regulation 4.5(c) and staff rules 4.13(c) and 9.4. 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. 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. If the applicant claims that the decision was ill-motivated or based on improper motives, the burden of proving any such allegations rests with the applicant. A staff member shall be eligible for home leave provided that the staff member's service is expected by the Secretary-General to continue at least six months beyond the date of his or her return from any proposed home leave.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Andreeva

Entity

UNDP

Case Number(s)

??UNDT/GVA/2020/037??

Tribunal

UNDT

Registry

Geneva

Date of Judgement

29 Apr 2021

Duty Judge

Judge Hunter Jr.

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Home leave

Burden of proof

Non-renewal

Applicable Law

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 4.13(c)
- Rule 9.4

Related Judgments and Orders

2011-UNAT-115

2012-UNAT-201

2013-UNAT-311

2014-UNAT-433

2014-UNAT-450

2015-UNAT-592

2010-UNAT-084

2010-UNAT-081