

2012-UNAT-214, Fradin De Bellabre

UNAT Held or UNDT Pronouncements

UNAT held that the contentions against judgment No. UNDT/2009/004 were not receivable since only appeals against judgments on merits are receivable. Regarding the contentions against judgment No. UNDT/2011/080, UNAT held that there was no need to produce further documents. UNAT held that UNDT had correctly applied Article 10. 5 of the UNDT Statute in ordering compensation in lieu and that the Appellant had no right to request UNAT to order his reinstatement. UNAT noted that the non-renewal was based on a tainted performance evaluation and that UNDT, therefore, ordered the rescission of the decision. UNAT held that UNDT had correctly assessed the chances of the Appellant's contract being renewed if the irregularities had not happened and that UNDT had committed no error in finding that the probability of a different outcome to be low. UNAT held that the Appellant had failed to demonstrate that he had a legitimate expectation of renewal. UNAT held that the compensation granted by UNDT was in line with the UNAT jurisprudence. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to renew his contract and requested separately for UNDT to suspend that decision. UNDT issued judgment No. UNDT/2009/004 rejecting the request for suspension of action. In judgment No. UNDT/2011/080 UNDT addressed the merits. UNDT found that the contested decision had been taken in violation of the applicable procedure. UNDT ordered the rescission of the contested decision or, alternatively, compensation in lieu of two months' net base salary. UNDT also ordered the Organisation to pay the Applicant compensation for non-pecuniary damages in the amount of one month's net base salary. The Applicant appealed against both judgments.

Legal Principle(s)

The amount of the compensation constituting an alternative to the execution of the rescission of an administrative decision on appointment, promotion or termination must be determined by UNDT on a case-by-case basis. UNDT has a discretionary power to decide whether to refer a case to the Secretary-General or to another competent authority.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Fradin De Bellabre

Entity

MINUSTAH

Case Number(s)

2011-224

Tribunal

UNAT

Registry

New York

Date of Judgement

16 Mar 2012

President Judge

Judge Courtial

Language of Judgment

French

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNAT)

Appeal

Interlocutory appeal

Non-renewal

Standard of review (judicial)

Non-renewal

Applicable Law

Former Staff Rules

- Rule 304.4(a)

UNDT Statute

- Article 10.5

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

UNDT/2011/080

2010-UNAT-052

2010-UNAT-044