

2013-UNAT-311, Pirnea

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that the reasons proffered by the Administration for not renewing Mr Pirnea's appointment were valid, namely that he could no longer perform his functions in Somalia since his life was at risk there. UNAT held that the UNDT's conclusion that the Administration had hidden reasons for not renewing Mr Pirnea's appointment was based solely on speculation and that UNDT erred on a question of law and fact resulting in a manifestly unreasonable decision when it concluded that there was no valid reason for the non-renewal. UNAT noted that, under Article 11(1) of the UNDT Statute, UNDT was required to explain the reasons, facts, and law on which its award of compensation was based, which it did not do. UNAT held that there was no basis for an award of compensation on the grounds of an unlawful non-renewal. UNAT held that there was no legal basis for UNDT to address the propriety of any actions by the CSA since Mr Pirnea never sought management evaluation of such actions and they were not relevant to the issues before UNDT. UNAT held that the DSA claim was not receivable because it had not been referred to management evaluation. UNAT held that, in concluding that Mr Pirnea sought management evaluation of his DSA claim, UNDT erred in law and fact resulting in a manifestly unreasonable decision. UNAT held that UNDT exceeded its jurisdiction or competence in receiving the DSA claim and reaching its merits. UNAT affirmed the appeal and vacated the UNDT judgment.

Accountability Referral: UNAT held that UNDT erred in law and fact when it referred the conduct of the CSA to the Secretary-General for possible action to enforce accountability, as the issue of Mr Pirnea's reassignment was never appealed and was not before UNDT, and there was no evidence showing the CSA had any role in the failure of the Office of Audit and Investigations to give timely written notice to Mr Pirnea of the closure of its investigation.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to renew his contract. UNDT found for the Applicant, awarded him compensation and Daily Subsistence Allowance (DSA) entitlements, and referred the conduct of the Chief Security Advisor (CSA) to the Secretary-General.

Legal Principle(s)

An administrative decision not to renew a fixed-term appointment must not be deemed unlawful on the sole ground that the decision itself does not articulate the reason for the non-renewal; however, this does not mean that the Administration is not required to disclose the reasons not to renew the appointment. The Administration has an obligation to state the reasons for an administrative decision not to renew an appointment to assure the Tribunal's ability to judicially review the validity of the decision. UNDT is required to explain the reasons, facts, and law on which its award of compensation was based. A staff member wishing to formally contest an administrative decision must first submit a request for management evaluation.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Pirnea

Entity

DSS

Case Number(s)

2012-347

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Mar 2013

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Reasons

Compensation

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Subject matter (ratione materiae)

Referral for accountability

Applicable Law

Staff Rules

- Rule 11.2(a)

UNDT Statute

- Article 11.1
- Article 8.1(c)

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

UNDT/2012/068

2010-UNAT-100

2012-UNAT-201

2010-UNAT-021

2010-UNAT-061

2011-UNAT-153

2012-UNAT-261