

2014-UNAT-426, Kacan

UNAT Held or UNDT Pronouncements

UNAT held that the Appellant had failed to show that UNDT exceeded its discretion in matters of case management. UNAT noted that it was indisputable that the Appellant had made a request to UNDT for his witness to be called. UNAT found that there was no mention of any witness in the UNDT judgment and that it was not clear that UNDT had considered that evidence. UNAT held that the Appellant should have been given the opportunity to call his witness or given an explanation by UNDT for not calling the witness. UNAT held that UNDT had committed an error of procedure, such as to affect the decision of the case under Article 2. 1(d) of the UNAT Statute, by not allowing the Appellant to call a witness. UNAT remanded the case to UNDT, to hear the evidence of the Appellant's witness. UNAT upheld the appeal and remanded the case to UNDT to be considered by a different judge.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the decision not to renew his fixed-term appointment. UNDT issued judgment No. UNDT/2013/025, dismissing the application. UNDT found that the Applicant had failed to satisfy the burden of proof required to demonstrate that the decision not to renew his fixed-term appointment was tainted by improper considerations or was otherwise unlawful. UNDT found that the recommendations of the Final Report were rendered irrelevant as they were never implemented because the Van Field Office was closed due to damage caused by the earthquake. UNDT found that the non-renewal decision was thus solely an Organisational measure that UNHCR was forced to take following the earthquake. UNDT rejected the Applicant's argument that he was not treated in the same manner as the other staff members, finding that his situation was different from that of the staff members who continued to serve their posts.

Legal Principle(s)

The burden of proving that the grounds for non-renewal were unlawful lies with the staff member contesting the decision not to renew his or her contract.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Kacan

Entity

UNHCR

Case Number(s)

2013-480

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Apr 2014

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Evidence

Production of evidence

Procedure (first instance and UNAT)

Case management

Applicable Law

UNAT Statute

- Article 2.1(d)

Related Judgments and Orders

UNDT/2013/025

2011-UNAT-178