

2015-UNAT-534, Assale

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that UNDT made an error of law when it applied UNICEF Administrative Instruction CF/AI/2011-001 retroactively to review the non-renewal decision. UNAT held that UNDT erred in law in concluding that it was the duty of the Administration to take measures to remedy failings in performance. UNAT held that UNDT's conclusion that the non-renewal decision was vitiated by UNICEF's failure to take remedial measures to improve Mr Assale's performance was without legal basis. UNAT held that UNDT erroneously concluded that both the Chad Country Deputy Representative and the Representative had tainted or bad motives in deciding not to review Mr. Assale's appointment. UNAT held that UNICEF's failure to complete Mr. Assale's performance appraisal before the end of January 2011 did not invalidate the non-renewal decision, as UNDT erroneously determined. UNAT held that UNDT made an error of law when it concluded that UNICEF was required to extend Mr Assale's fixed-term appointment until the Office of Internal Audit issued its Investigation Report addressing his harassment complaint and accordingly, that such a conclusion could not support UNDT's ultimate determination that the non-renewal decision was unlawful. UNAT held that UNDT erred in law and exceeded its competence when it considered de novo whether harassment occurred and found that the Chad Country Representative had created a hostile work environment for Mr Assale and consequently, that finding could not support the UNDT's ultimate determination that the non-renewal was unlawful. UNAT held that the UNDT award of compensation was without basis and should be vacated. UNAT granted the Secretary-General's appeal and vacated the UNDT judgment.

Accountability Referral: UNAT held that there were no grounds for UNDT to refer both of the managers for accountability and that UNDT exceeded its competence when it improperly requested to be informed of the outcomes of both referrals. UNAT vacated the UNDT referral for possible action to enforce accountability.

Decision Contested or Judgment/Order Appealed

Mr Assale contested the decision not to renew his appointment on the grounds that UNICEF failed to comply with its own regulations and rules. UNDT found for Mr Assale, awarded compensation and referred the Chad Country Deputy Representative and the Representative to the Executive Director of UNICEF for accountability.

Legal Principle(s)

An administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Organisation has not acted fairly, justly or transparently or was motivated by bias, prejudice or improper motive against the staff member; the staff member has the burden of proving such factors played a role in the administrative decision.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Assale

Entity

UNICEF

Case Number(s)

2014-610

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Jul 2015

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

No expectancy of renewal

Reason(s)

Performance management

Performance evaluation

Referral for accountability

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNICEF Human Resources Manual

UNDT Statute

UNRWA DT Statute

- Article 10.8

UNICEF Administrative Instructions

- [CF/AI/2009-005](#)

Related Judgments and Orders

[UNDT/2014/034](#)

[2011-UNAT-123](#)

[2014-UNAT-483](#)

[2013-UNAT-298](#)

[2010-UNAT-061](#)

[2011-UNAT-153](#)

[2012-UNAT-279](#)

[2015-UNAT-500](#)

[2014-UNAT-400](#)