

2017-UNAT-721, Ncube

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that UNDT erred in finding that the Administration had failed to provide a performance-related justification for its decision not to renew Mr Ncube's fixed-term appointment. UNAT held that the decision not to renew Mr Ncube's appointment had to be upheld despite the fact that his e-PAS suffered from procedural irregularities as it did not consider that the flaws rendered the appraisal unlawful or unreasonable. UNAT considered that the decision not to renew the appointment was justified because the Secretary-General proved that the overall evaluation of Mr Ncube of "does not meet expectations" was not arbitrary but, rather, objective, fair and well-grounded, and his due process rights were fully respected within the evaluation process. UNAT held that the witnesses who testified that Mr Ncube was underperforming were credible and that the testimonies of Mr Ncube and another witness who was a colleague and friend did not cast doubt on the 2012 appraisal. In addition, UNAT held that Mr Ncube was informed of his performance shortcomings, was given ample opportunity to improve and his due process rights were respected. UNAT held that there was a performance-related justification for not renewing Mr Ncube's appointment, the impugned decision was lawful and UNDT made an error of law in concluding otherwise and rescinding the non-renewal decision. UNAT held that there could be no order of in-lieu compensation and there was no basis to award compensation for moral injury. UNAT upheld the appeal and reversed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to separate him from service on grounds of unsatisfactory performance. UNDT found that the non-renewal decision was unlawful and awarded compensation.

Legal Principle(s)

A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service. To justify a decision based on poor performance, it is not sufficient to give informal feedback to the staff member.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Ncube

Entity

OCHA

Case Number(s)

2016-958

Tribunal

UNAT

Registry

New York

Date of Judgement

31 Mar 2017

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Performance management

Performance evaluation

Separation from service

Applicable Law

Administrative Instructions

- ST/AI/2010/5

Staff Regulations

- Regulation 1.3(a)
- Regulation 4.5(c)

Staff Rules

- Rule 1.3(a)
- Rule 4.13(c)
- Rule 9.6(b)

UNDT Statute

- Article 10.5

Related Judgments and Orders

UNDT/2016/069