

2017-UNAT-780, Muwambi

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that the UNDT's finding that there was no legal basis for the Administration to assert that Mr Muwambi was subject to the requirement of clearance by a central review body, constituted an error of law since such clearance was a requirement clearly established by the legal framework of the Organisation. UNAT held that, given the discontinuation since 30 June 2015 of the practice of temporarily reassigning staff affected by downsizing in a peacekeeping mission to allow them to apply for vacant positions, practice on which Mr Muwambi's provisional reassignment was based, t's fixed-term appointment could not be extended. UNAT held that UNDT erred in relying exclusively on the content of Mr Muwambi's relevant letters of appointment to determine that he was not on provisional reassignment status and that his appointment was not conditional upon his participation in a competitive selection process or endorsement by a review board. UNAT held that as the decision not to renew Mr Muwambi's appointment was based on the existing Staff Regulations and Rules and the new staff selection system, which formed part of his contract(s) of appointment, it constituted a lawful basis for the Administration to assert that was subject to the requirement of clearance by a central review body. UNAT held that the Acting Director, Field Personnel Division, Department of Field Support, had the authority to issue the policy of discontinuance of provisional reassignments and that issuance was a proper exercise of his authority. UNAT held that UNDT made errors of law and fact resulting in a manifestly unreasonable decision when it concluded that there was no valid reason for the non-renewal of Mr Muwambi's appointment. UNAT granted the Secretary-General's appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision not to renew his fixed-term appointment on the grounds that the applicant was only provisionally reassigned from MINURCAT to MINUSTAH and had not been cleared by a central review body as provided in the

Applicant's initial offer of appointment, even if the subsequent letters of appointment did not include such conditions. UNDT considered that if a certain material provision was not incorporated into the letter of appointment, it did not form part of the contract of employment and that there was no legal basis to assert that the Applicant remained subject to the conditions of the initial offer of appointment. UNDT concluded that the non-renewal of the appointment was unlawful. UNDT awarded compensation of one year's net base salary.

Legal Principle(s)

The letter of appointment governs the conditions of the employment relationship along with the Rules and Regulations of the Organisation which are incorporated into the contract. Fixed-term appointments and appointments of limited duration carry no expectation of renewal or conversion to another type of appointment. An administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive. As of 30 June 2015, the practice of extending the appointments of staff who had not been vetted by a central review body following a regular selection process was abolished, in alignment with the staff selection contractual reforms set forth in ST/AI/2010/3 requiring that any staff appointments of one year or longer be reviewed by a central review body.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Muwambi

Entity

MINURCAT

Case Number(s)

2017-1061

Tribunal

UNAT

Registry

New York

Date of Judgement

14 Jul 2017

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

No expectancy of renewal

Reassignment or transfer

Discretion

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 4.13(c)

Related Judgments and Orders

UNDT/2016/216