

2017-UNAT-788, Soliman

UNAT Held or UNDT Pronouncements

UNAT held that UNRWA DT did not err in law and/or fact resulting in a manifestly unreasonable decision when it found that UNRWA's decision not to renew the Appellant's fixed-term appointment at the end of the probationary period was a lawful exercise of its discretion. UNAT held that UNRWA DT correctly found that a performance-related justification for the non-renewal was properly given in the form of his electronic Performance Evaluation Report. UNAT held that the irregularities in the assessment of the Appellant's performance were not sufficiently substantial or consequential so as to rebut the presumption that the non-renewal decision was lawful and to shift the burden of proof to the Administration. UNAT held that the non-renewal decision was taken without bias and that the Appellant had knowledge of his shortcomings and ample opportunity to comment and to improve his performance. UNAT held that the Appellant's submission that the assessment of his performance was unfair as he had not yet been deployed to the field and thus was deprived of the opportunity to carry out his duties was without merit, noting that UNRWA has a broad discretionary power regarding deployment of staff members in the field. UNAT held that UNRWA DT did not err in law and/or fact resulting in a manifestly unreasonable decision when it found that UNRWA appropriately decided to close the investigation into the Appellant's complaint of harassment and abuse of power. UNAT held that UNRWA DT did not err by finding that the repeated suggestions to the Appellant to resign in lieu of termination did not amount to harassment or abuse of power in the circumstances because the advantages and disadvantages of resignation versus termination were openly negotiated and discussed. UNAT held that UNRWA DT correctly stated that all other alleged acts of misconduct did not constitute harassment or abuse of power or were not raised in the complaint. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decisions not to extend his appointment and to close the investigation following his complaint of prohibited conduct. UNRWA DT dismissed both applications in their entirety.

Legal Principle(s)

The presumption of regularity is the presumption that official acts have been regularly performed. The presumption of regularity is rebuttable.

Outcome

Appeal dismissed on merits

Outcome Extra Text

No relief ordered; No relief ordered.

Full judgment

[Full judgment](#)

Applicants/Appellants

Soliman

Entity

UNRWA

Case Number(s)

2017-1072

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Oct 2017

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Investigation

Non-renewal

Performance management

Performance evaluation

Applicable Law

UNRWA Personnel Directives

- IPD/I/104.4
- IPD/I/112.6/Rev.1