2018-UNAT-825, He

UNAT Held or UNDT Pronouncements

UNAT rejected the motion for leave to comment on the answer to the appeal, finding that the matters that the Appellant sought to address in her comments would be essentially a repetition of, or supplementary to, her submissions. UNAT held that UNDT properly reviewed the contested decision in accordance with the applicable law and addressed the concerns identified by UNAT by establishing the critical facts as instructed. UNAT found that UNDT's conclusions were consistent with the evidence. UNAT found no error in the UNDT’s finding that the Appellant failed to establish that the decision not to renew her fixed-term appointment was tainted by improper and discriminatory motives, resulting from bias and animus, based on an ongoing conflict between her and the Chief of the CTPU. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to not renew her fixed-term appointment based on the reduction of work within the Chinese Test Processing Unit (CTPU). UNDT found that it was not unreasonable for the Administration, based on the data available at the time of the contested decision, to conclude that there would be a decrease in work in the CTPU. UNDT also found that the Applicant had failed to provide sufficient evidence to support her alleged expectancy for contract renewal. The Applicant appealed. UNAT remanded the case to UNDT for fresh consideration since UNDT had not addressed the Applicant’s allegations that the reasons that the Administration had provided for the non-renewal decision were a falsehood and a fabrication aimed at justifying retaliation against her on account of her complaints. In judgment No. UNDT/2017/071, UNDT again rejected the application, finding that the Applicant failed to meet the burden of proof that the [non-renewal] decision was based [on] ulterior motives.

Legal Principle(s)

It is a well-established principle that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment. Even the renewal of the appointment of a staff member on successive appointments does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended. The jurisprudence requires this promise at least to be in writing. 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. The staff member has the burden of proving such factors played a role in the administrative decision.

Outcome

Appeal dismissed on merits

Full judgment

Full judgment

Applicants/Appellants

He

Entity

UNOG

Case Number(s)

2017-1114

Tribunal

UNAT

Registry

New York

Date of Judgement

22 Mar 2018

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct
Abuse of authority
Sexual harassment
Non-renewal
Arbitrary or improper motive

Applicable Law

Secretary-General's bulletins

- ST/SGB/2008/5

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 4.13(c)
- Rule 4.14(b)

UNAT RoP

- Article 31.1

UNAT Statute

- Article 2.1(e)

Related Judgments and Orders

UNDT/2017/071