

2018-UNAT-844, Loeber

UNAT Held or UNDT Pronouncements

With respect to the Appellant's first claim, UNAT agreed with UNDT's decision and noted that it is well-settled jurisprudence that an international Organisation necessarily has the power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff. To that end, UNAT will not interfere with a genuine Organisational restructuring even though it may have resulted in the loss of employment of staff. UNAT agreed with UNDT in that the decision to abolish Appellant's post was not receivable *ratione materiae*. UNAT also noted that for an administrative decision to be subject to judicial review, the decision must have had a direct impact on the terms of appointment or contract of employment of the individual staff member. UNAT held that there was no direct impact on the Appellant's terms of appointment or contract of employment. UNAT further held that the Appellant's claims that UNDT erred by not finding that procedural irregularities rendered the ensuing restructuring exercise unlawful and the resulting decision to abolish his post invalid were barred by *res judicata*. With respect to the Appellant's second claim, UNAT also agreed with UNDT's decision. UNAT found no error with UNDT's finding that the offer of appointment, received and signed by the Appellant prior to receiving the letter of recruitment, specifically referred to the nature of the appointment, which included its two-year duration. UNAT dismissed the appeal and affirmed UNDT's judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to abolish his post as part of the PMCS restructuring, which coincided with the expiration of his FTA, and the decision to separate him from service. The Applicant contested these decisions in two separate applications. UNDT concluded that the first application was not receivable *ratione materiae* because it was directed against an administrative decision not subject to judicial review. UNDT rejected the second application in its entirety after finding that the non-renewal decision had lawfully been taken. UNDT further rejected the Applicant's assertions that he had a legitimate expectation of renewal of his FTA, and that his separation from service was based on extraneous factors.

Legal Principle(s)

The key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms and conditions of appointment. Unless an Administration has made an express promise that gives a staff member an expectancy that his or her appointment will be extended, or unless it has abused its discretion, or was motivated by discriminatory or improper grounds in not extending the appointment, the non-renewal of a staff member's fixed-term appointment is not unlawful.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Loeber

Entity

UNHCR

Case Number(s)

2017-1127

Tribunal

UNAT
Registry
New York
Date of Judgement
29 Jun 2018
President Judge
Judge Lussick
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Jurisdiction / receivability (UNDT or first instance)
Subject matter (ratione materiae)
Non-renewal
No expectancy of renewal
Separation from service
Expiration of appointment (see also, Non-renewal)
Standard of review (judicial)
Judicial review (general)
Applicable Law
None
Related Judgments and Orders
UNDT/2017/073