

2019-UNAT-916, Agha

UNAT Held or UNDT Pronouncements

UNAT held that the UNDT finding that the non-renewal decision constituted a separation decision for abandonment of post was not supported by the evidence and was, therefore, an error in fact and in law. UNAT held that the evidence clearly established that the non-renewal decision was solely based on the Appellant's unauthorised absence from duty. UNAT held that UNDT erred in law in distinguishing Abdallah (judgment No. 2010-UNAT-091) from the present case. UNAT held that there was overwhelming evidence that the Applicant did not meet his burden of proving that the Administration did not act fairly, justly, or transparently. UNAT held that the Administration acted fairly and transparently towards the Applicant. UNAT held that the contested decision was a reasonable exercise of the Administration's discretion. UNAT held that UNDT erred in fact and in law, resulting in a manifestly unreasonable decision. 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 due to his unauthorised absence from work. UNDT concluded that the non-renewal decision constituted a separation decision for abandonment of post, which was issued unlawfully, without following mandatory procedures. UNDT found that the Administration failed to act fairly, justly, and transparently in leading the Applicant to believe that it was still considering granting him Special Leave Without Pay while at the same time recommending the non-renewal of his fixed-term appointment due to his unauthorised absence. UNDT ordered the decision to be rescinded, the Applicant to be retroactively reinstated (with an alternative in-lieu compensation), and for the Applicant to be paid compensation for loss of earnings.

Legal Principle(s)

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, and the staff member has the burden of proving such factors played a role in the administrative decision. Chronic absenteeism may be a lawful basis for a decision not to renew a fixed-term contract.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Agha

Entity

DSS

Case Number(s)

2018-1211

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Mar 2019

President Judge

Judge Lussick

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Arbitrary or improper motive

Reason(s)

Separation from service

Abandonment of post

Applicable Law

Administrative Instructions

- ST/AI/400

Related Judgments and Orders

UNDT/2018/092