

2020-UNAT-1000, Ross

UNAT Held or UNDT Pronouncements

UNAT considered: 1) three motions filed by Mr Ross, for temporary suspension of proceedings and “Comments on the Respondent’s comments”, for additional pleadings, and for submission of applicable legal norms; 2) an application to file a Friend-of-the-Court Brief by the UNHCR Staff Council; 3) an appeal by Mr Ross; and 4) an appeal by the Secretary-General. Regarding the motion for temporary suspension of proceedings and “Comments on the Respondent’s comments”, UNAT held that there was no merit in it since the factual circumstances of the instant case were different from those he seemed to have alleged in case No.

UNDT/NY/2019/061, still pending before UNDT. UNAT dismissed the motion for suspension. Regarding the application to file a Friend-of-the-Court Brief, UNAT held that the case did not necessitate an assessment of policy in this area. In addition, UNAT held that the individual aspects of the case which were raised in the friend-of-court brief had to be disregarded as they would override the inherent purpose of the friend-of-court procedure, which was to establish general and collective guidelines for the future rather than those for an individual. Regarding the motion for additional pleadings, UNAT held that there were no exceptional circumstances to justify receiving the additional evidence submitted by Mr Ross with the motion, which for the most part was known to either party and should have been presented at the level of UNDT. UNAT rejected the motion to file additional pleadings. Regarding the motion of submission of applicable legal norms, UNAT agreed with the Secretary-General that UNHCR’s Policy on Discrimination, Harassment, Sexual Harassment, and Abuse of Authority of 2014 was not relevant to the case. UNAT rejected the motion, noting that there were no exceptional circumstances to justify the filing of such an additional legal document, the facts, and arguments of the present case did not relate to any allegation of discrimination, harassment, or retaliation. Regarding the request for oral hearings, UNAT rejected the request, finding that the factual and legal issues arising from Mr. Ross’ appeal had already been clearly defined by the parties and there was no need for further clarification. Regarding the non-renewal of Mr. Ross’ contract, UNAT agreed with UNDT that, having refused to accept an

extension of his temporary assignment and an offer to be recommended for another regular position, Mr. Ross knowingly assumed the risk of not being able to secure another assignment or position before his FTA expired. Noting that an FTA carries no expectation of renewal unless there is evidence of a firm commitment otherwise, UNAT held that Mr. Ross' appeal contesting the non-extension of his FTA failed. Regarding Mr. Ross' non-selection for a second post, UNAT held that there was no error in UNDT's finding that the application was receivable *ratione personae*. On whether UNDT was correct in its finding that the filing of the management evaluation request was timely, UNAT held that the request for management evaluation was late and therefore the Mr Ross application regarding the non-selection not receivable *ratione materiae*. UNAT, therefore, vacated the UNDT judgment on the rescission of the non-selection decision and the compensation in-lieu of rescission. Regarding Mr Ross' requests for compensation for his separation of service, UNAT held that there were no grounds for compensation as there was no illegality in the Appellant's separation from service. UNAT further held that there were no grounds for an award of compensation in lieu, nor for an award of compensation for moral damage or for missed career opportunities. Regarding Mr Ross' request for referral for accountability and award of costs against the Secretary-General for abuse of process, UNAT held that no manifest abuse of process was established which could justify an award of costs against the Secretary-General and that no referral for accountability would be warranted. UNAT granted the Secretary-General's appeal and vacated the UNDT judgment in part, regarding the rescission of the non-selection decision and the amount awarded for compensation in lieu. UNAT dismissed Mr Ross' appeal.

Decision Contested or Judgment/Order Appealed

Mr Ross contested the decisions: 1) not to select him for a position; 2) separate him from service; and 3) to place a note in his personnel file. UNDT dismissed his claims pertaining to separation, found that his non-selection was unlawful due to procedural irregularity, and ordered the removal of the note from his personnel file.

Legal Principle(s)

A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, unless there is evidence

of a firm commitment otherwise. UNAT is not a forum for a party to reargue the case without identifying the defects and demonstrating on which grounds an impugned UNDT judgment is erroneous. In the absence of a compelling argument that UNDT erred on a question of law, or on a question of fact, resulting in a manifestly unreasonable decision, UNAT will not interfere with the findings of UNDT.

Outcome

Appeal dismissed on merits; Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Ross

Entity

UNHCR

Case Number(s)

2019-1313

2019-1314

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Mar 2020

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Fixed-term appointment

Compensation

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Non-renewal

Referral for accountability

Termination (of appointment)

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNAT Practice Direction No.1/Section II.A.3
- UNHCR Revised Policy and Procedures on Assignments

Laws of other entities (rules, regulations etc.)

- UNHCR/HCP/2014/4

UNAT RoP

- Article 17.1
- Article 31.1
- Article 8.1

UNAT Statute

- Article 2.5
- Article 8.3

UNDT Statute

- Article 2.1

UNHCR Staff Rules

- Rule 4.13(c)

Related Judgments and Orders

UNDT/2019/126

2018-UNAT-810

2013-UNAT-346

2010-UNAT-035

2015-UNAT-540

2016-UNAT-610

2017-UNAT-711

2014-UNAT-411

2011-UNAT-153

2017-UNAT-739

2018-UNAT-863

2014-UNAT-445