

2020-UNAT-1043, Loose

UNAT Held or UNDT Pronouncements

The Secretary-General appealed the UNDT judgment as it related to the non-renewal decision only. UNAT held that a shifting onus of proof was appropriate where the non-renewal decision was based on a lack of funds. UNAT found nothing objectionable with the UNDT's reference to the burden or onus of proof resting with the Secretary-General in the circumstances of the case. UNAT held that UNDT did not err in concluding that the Secretary-General failed to establish by evidence that the financial situation of the UN body which had engaged Ms Loose at the time of the separation was still sufficiently grave to justify the non-renewal. UNAT held that UNDT did not err in its decision that the Appellant had a reasonable and legitimate expectation that her appointment would be extended or renewed. UNAT dismissed the appeal and upheld the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested three decisions: the decision not to renew her fixed-term appointment; her non-selection for another position; and the decision not to grant her special leave without pay. UNDT found that the Secretary-General failed to justify in law the non-renewal and that the Applicant's separation was therefore unlawful. UNDT ordered rescission of the decision or payment in lieu.

Legal Principle(s)

A fixed-term appointment carries no expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service. The onus or burden of proof in establishing error lies initially with the staff member to establish a sufficient or apparent case of the adequacy of resources to support renewal or extension or other relevant grounds for not discontinuing employment; however, when the initial onus to establish the grounds for not discontinuing employment has been discharged by

the staff member, the onus of justifying in law the decision not to renew, where that is justiciable, moves to the Administration.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Loose

Entity

UNODA

Case Number(s)

2020-1392

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Oct 2020

President Judge

Judge Colgan

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Burden of proof

Reason(s)

Applicable Law

Staff Regulations

- Regulation 4.13
- Regulation 4.5

Related Judgments and Orders

UNDT/2020/038

2019-UNAT-902

2012-UNAT-234

2011-UNAT-153

2012-UNAT-206