

2020-UNAT-1068, Porras

UNAT Held or UNDT Pronouncements

UNAT held that as allegations of improper motive, bias, or prejudice as reasons for the unlawfulness of the non-renewal were not raised before UNDT for its consideration, UNAT should not consider them. UNAT held that the exceptional circumstances that were required to allow additional pleadings to be considered, were not present. UNAT held that UNDT erred in finding that the Organisation properly exercised its discretion in not renewing the Appellant's fixed-term appointment. UNAT held that, in situations of a staff member being declared persona non grata by a host country, it was the duty of the Organisation to take steps to alleviate the predicament in which the staff member finds themselves following their expulsion from the host country. This obligation arises because of the unilateral and unquestionable nature of a persona non grata declaration, including that it may be made irrespective of fault or misconduct by the individual so declared and because of the inability of that individual to challenge and reverse its effect. UNAT recognized that the Organisation made various good faith efforts to help the Appellant find alternative employment and reassigned him to a position in South Sudan for two years. However, UNAT held that it was unreasonable for the Organisation not to review the status of the Note Verbale or attempt to obtain a visa for the Appellant to be redeployed to Sudan when the post was re-established there, or to explain to him why such an attempt could not be made. UNAT held that UNDT's finding that the Note Verbale was "firm" was an error of fact that resulted in a manifestly unreasonable decision. UNAT held that the impugned decision not to renew the Appellant's fixed-term appointment was unlawful. UNAT vacated the UNDT judgment, ordered rescission of the impugned decision, and in lieu of reinstatement, ordered four months' net base salary.

Decision Contested or Judgment/Order Appealed

After being declared persona non grata in a Note Verbale from the Sudanese government, the Applicant was reassigned to another position in South Sudan, which he held for two years. The Applicant then contested the subsequent decision not to renew his fixed-term appointment. UNDT held that the Organisation had fulfilled its legal obligations towards the Applicant and that the impugned decision was lawful.

Legal Principle(s)

The renewal of the appointment of a staff member on successive contracts does not, in and of itself, give grounds for an expectancy of renewal, unless the Organisation has made an express promise which gives the staff member an expectancy that his or her appointment will be extended. Separation as a result of the expiration of a fixed-term appointment takes place automatically, without prior notice, on the expiration date specified in the letter of appointment. A party should not argue a different position on appeal than in the first instance. In situations of staff members who have been declared persona non grata, it is the duty of the Organisation to take steps to alleviate the predicament in which the staff member finds themselves following their expulsion from the host country.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Porras

Entity

UNISFA

Case Number(s)

2020-1370

Tribunal

UNAT

Registry

New York

Date of Judgement

30 Oct 2020

President Judge

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Reason(s)

Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNAT Practice Directions

Staff Regulations

- Regulation 4.5(c)

UNAT RoP

- Article 31

UNAT Statute

- Article 9

Related Judgments and Orders

UNDT/2019/178

2012-UNAT-201

UNDT/2014/094

UNDT/2018/101

2019-UNAT-974

2010-UNAT-042

2019-UNAT-916

2013-UNAT-311

2011-UNAT-119

2017-UNAT-721

2017-UNAT-780