

2020-UNAT-978, Thombiano

UNAT Held or UNDT Pronouncements

UNAT rejected the Appellant's unsubstantiated allegations of bias and conflict of interest against the judge who signed the impugned judgment. UNAT considered that: (1) the Appellant did not provide any evidence of his suitability for conversion to a continuing appointment; (2) his appeal was based solely on the impossibility of the retroactive extension of his fixed-term appointments; and (3) he had been made aware that his fixed-term appointment would be extended pending the appropriate assessment of his performance under the rebuttal process. Accordingly, UNAT held that the UNDT was correct in its finding that there was no basis for the conversion of his fixed-term appointment into a continuing appointment. UNAT held that the procedural irregularities, particularly the retroactive extension of the Appellant's fixed-term appointment, were immaterial and inconsequential to his appointment. UNAT found no merit in the Appellant's claim that UNDT did not grant him an opportunity to provide evidence of moral damages. UNAT held that the UNDT's delay in issuing its judgment did not entitle the Appellant to moral damages and that this was beyond the scope of his initial application, noting that the delay did not stem from any act of the Secretary-General or of the Appellant's superiors. UNAT held that the Appellant's other claims and issues raised as possible grounds for moral compensation were not within the scope of his application. UNAT held that rescission of a decision by the Administration was not a proper basis for moral damage because it was favourable to the Appellant's immediate interests. UNAT found that to award compensation for moral damage based on rescission could be perceived as a possible deterrent to future rescissions by the Administration and possibly a threat to the regular functioning of the informal dispute resolution system. UNAT held that the circumstances of the case did not qualify UNDT to invoke its statutory jurisdiction to award compensation for moral injury. UNAT dismissed the appeal and upheld the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision to extend his fixed-term appointment in increments pending the rebuttal process of his performance appraisal and requested UNDT to confirm the conversion of his appointment to a continuing appointment. UNDT dismissed the application regarding extensions as not receivable as the Applicant had failed to make a timely request for management evaluation. UNDT dismissed the claim for a continuing appointment as the Appellant had no basis to presume that his appointment would be so converted.

Legal Principle(s)

Only substantial procedural irregularities can render an administrative decision unlawful.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Thombiano

Entity

UNFPA

Case Number(s)

2019-1276

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Mar 2020

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Appointment (type)

Continuing appointment

Compensation

Non-pecuniary (moral) damages

Applicable Law

Secretary-General's bulletins

- ST/SGB/2011/9

Staff Regulations

- Regulation 1.2(m)
- Regulation 4.5

Staff Rules

- Rule 4.12
- Rule 4.13
- Rule 4.13(c)
- Rule 4.14(b)

UNDT RoP

- Article 27

Related Judgments and Orders

UNDT/2019/079

2017-UNAT-782

2010-UNAT-044

2010-UNAT-035