

2021-UNAT-1098, Mwetaminwa

UNAT Held or UNDT Pronouncements

UNAT agreed with UNDT and found that the administrative decision could not be regarded as a “disguised termination”. UNAT held that the staff member was not separated from service on 29 May 2019, and he in fact continued to retain his full position, rights, and entitlements of a staff member until the expiry of his FTA on 30 June 2019.

Decision Contested or Judgment/Order Appealed

A staff member was sent home on 29 May 2019, as a result of the impending closure of his work site and the abolition of his post, as proposed by a Budget reduction. The staff member’s fixed-term appointment was set to expire a month later, on 30 June 2019. The staff member argued by virtue of being sent home a month before his contract expired, the Administration placed him on Special Leave with Full Pay (SLWFP). As such, he argued he was de facto terminated prior to the expiration of his FTA. UNDT found that the staff member’s FTA expired in its natural course, and because the staff member continued to receive his salary and entitlements until the expiration of his appointment as per its original terms, and given that he did not have a workstation only for a short period of time, his case could not be considered a “disguised termination.”

Legal Principle(s)

In the context of the downsizing of a Mission, if a staff member is sent home as a result of his work site being prepared for closure, and there is only a short time remaining on his fixed-term appointment (FTA), such measure cannot be considered as a separation, a de facto termination or being placed on Special Leave with Full Pay, because the staff member is still retaining his full position, rights and entitlements until the expiry of his FTA.

Outcome

Appeal dismissed on merits

Outcome Extra Text

UNAT dismissed the appeal and affirmed the UNDT Judgment.

Full judgment

[Full judgment](#)

Applicants/Appellants

Mwetaminwa

Entity

MONUSCO

Case Number(s)

2020-1403

Tribunal

UNAT

Registry

New York

Date of Judgement

19 Mar 2021

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Termination

Appointment (type)

Fixed-term appointment

Benefits and entitlements

Non-renewal

No expectancy of renewal

Applicable Law

Staff Regulations

- Regulation 4.5
- Regulation 9.3

Staff Rules

- Rule 4.13
- Rule 9.4
- Rule 9.6
- Rule 9.7
- Rule 9.8

UNAT Statute

- Article 2.1

Related Judgments and Orders

2016-UNAT-669

2018-UNAT-849
UNDT/2020/056