

# 2021-UNAT-1115, Fidele Mampeta

## UNAT Held or UNDT Pronouncements

UNAT affirmed the UNDT Judgment, finding that the staff member's FTA was not terminated but rather, it expired in its own course. The Tribunal highlighted that a termination is initiated by the Secretary-General, under Staff Rule 9.6(a), and in the instant case, the staff member was not at all terminated on 30 May 2019. Instead, his FTA continued until its expiry on 30 June 2019, and until then, he retained his full position, rights and entitlements as a staff member of the Organization. The fact that the site was closed down, and the staff member was sent home with no work to do, is not sufficient to find that he was separated from service, when he clearly continued to receive his salary and other entitlements. Regarding the request for termination indemnities, UNAT held that a staff member cannot request a termination indemnity while he continues to receive the advantages of a staff member, such as pay, benefits and health insurance.

## Decision Contested or Judgment/Order Appealed

A staff member was notified that his FTA would not be renewed when it comes to expire on 30 June 2019 as the site he was stationed at would be closed, following a budget reduction proposed by the Secretary-General. On 30 May 2019 (a month before the FTA expired), the site closed down and all staff members were sent home. The staff member filed an application challenging: 1. The decision to place him on Special Leave With Full Pay (SLWFP); 2. The de facto termination of his contract on 30 May 2019 when he was sent home (he had one month left on his FTA); and 3. The decision to deny him termination indemnities. First, the UNDT found the application receivable despite the Secretary-General's argument that it was time-barred because the staff member had known for a time that his post would be abolished. The tribunal reasoned the staff member did not challenge the abolition of his post, but rather the administrative act that caused him to be sent home on 30 May 2019, which he called a de facto termination. On the merits, however, UNDT found although the arrangement was odd, given the staff member was sent home with no work to do for the remainder of his contract (one month) and yet he kept his pay and benefits, there was still nothing perverse or tainted in the decision that caused it to be unlawful.

## Legal Principle(s)

A FTA that expires in its own course is not said to be terminated. Termination is initiated by the Secretary-General, not by the staff member. A staff member cannot be said to be de facto terminated when he continues to be on the payroll and continues to receive all his entitlements and benefits as a staff member. Closing a work site and sending a staff member home with no work to do is not a sufficient reason to find that he was separated from the Organization - if he continues to receive his salary and benefits for the remaining one month on his contract. A staff member is not eligible to receive a termination indemnity when he continues to be a staff member with full benefits and entitlements.

## Outcome

Appeal dismissed on merits

Outcome Extra Text

The appeal is dismissed, and the UNDT Judgment is affirmed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Fidele Mampeta

Entity

MONUSCO

Case Number(s)

2020-1440

Tribunal

UNAT

Registry

New York

Date of Judgement

25 Jun 2021

President Judge

Judge Knierim

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Appointment (type)

Fixed-term appointment

Non-renewal

No expectancy of renewal

Separation from service

Expiration of appointment (see also, Non-renewal)

Termination (of appointment)

Applicable Law

Staff Regulations

- Regulation 9.3

Staff Rules

- Rule 9.6(a)
- Rule 9.7
- Rule 9.8

Related Judgments and Orders

UNDT/2020/100

2021-UNAT-1098