

2021-UNAT-1166, Boubacar Dieng

UNAT Held or UNDT Pronouncements

UNAT first agreed with the UNDT that the abolition of post was not a reviewable administrative decision. Second, UNAT ruled there was no evidence of improper motives regarding the non-renewal of the staff member's appointment. The staff member's main contention on appeal was that his post should have been subject to a Comparative Review Process (CRP) instead of being identified as a "dry cut." A "dry cut" happens when a post is unique and can therefore be abolished without a comparative review. The staff member claims his post should have undergone a CRP because there were other P-5 political affairs officers in his unit. The Tribunal disagreed and explained that the post that the staff member occupied was budgeted for and located in CPU, even if he was temporarily reassigned to OJSR. Given that the staff member's post was unique in CPU, he was not entitled to a CRP. The Tribunal distinguished between post and position. UNAT explained that the staff member occupied a post in CPU. It was the CPU post that was identified for funding in the previous budget. Although he was reassigned to the position of Political Affairs Officer, he continued to encumber the same CPU post. In other words, the funding for the Political Affairs Officer position came from the budgeted Child Protection Officer post. Regarding the staff member's argument that he was loaned to OJSR and therefore his post should have been entitled to a CRP, the Tribunal dismissed the claim finding that "loans" generally refer to inter-agency transfers whereas in this case the staff member was laterally moved to a different position at the same level within the same department. Finding no error in the UNDT judgment that the staff member's post was indeed unique and therefore eligible for a "dry cut", UNAT dismissed the appeal and upheld the judgment below.

Decision Contested or Judgment/Order Appealed

After receiving complaints about a staff member's work and communication style, a supervisor decided to transfer the staff member from the Child Protection Unit (CPU) where he performed the services of a Child Protection Officer to the Office of the

Joint Special Representative (OJSR) where he was assigned to work on mediation issues as a Senior Political Affairs Officer. Both roles were at the P-5 level. The reassignment happened in April 2018, and in October 2018, the staff member was informed that his fixed term appointment would not be renewed beyond 31 December 2018 because the post he occupied at CPU would be abolished, effective 1 January 2019. He filed an application with the UNDT challenging the abolition of his post and the decision not to renew his appointment beyond 31 December 2018. UNDT held that the abolition of post was not subject to judicial review as it was made pursuant to a General Assembly resolution. Regarding the decision not to renew his appointment, the UNDT found that the administrative decision was lawful because the role of Child Protection Officer ceased to exist following a resolution of the General Assembly. Finally, the UNDT also found the decision was not tainted by improper motives.

Legal Principle(s)

The abolition of a post pursuant to a General Assembly resolution is not an administrative decision that is subject to judicial review. A “dry cut” happens when a post is unique and therefore can be abolished without a comparative review. There is a difference between a post and a position. A post usually refers to a budgeted post whereas a position generally refers to the functions of a staff member. A staff member may continue to occupy the same budgeted post, even if he is reassigned to a different position. A “loan” usually involves an inter-agency transfer and does not usually refer to lateral moves within the same department.

Outcome

Appeal dismissed on merits

Outcome Extra Text

Appeal is dismissed and UNDT Judgment is affirmed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Boubacar Dieng

Entity

UNAMID

Case Number(s)

2020-1484

Tribunal

UNAT

Registry

New York

Date of Judgement

29 Oct 2021

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Priority consideration

Administrative decision

Definition

Appointment (type)

Fixed-term appointment

Jurisdiction / receivability (UNDT or first instance)

Subject matter (*ratione materiae*)

Non-renewal

No expectancy of renewal

Reassignment or transfer

Discretion

Separation from service

Expiration of appointment (see also, Non-renewal)

Applicable Law

Staff Regulations

Staff Rules

- Rule 13.1(d)
- Rule 9.6(e)

UN Charter

- Article 101

Related Judgments and Orders

UNDT/2020/163

2021-UNAT-1118