

UNDT/2021/156, Adelegan

UNAT Held or UNDT Pronouncements

Whether the Applicant was promised a renewal The Applicant appears to argue that the Administration created an expectancy of renewal of his contract by referring to statements, allegedly made by various individuals of the Organization. The individuals concerned dispute the facts as presented by the Applicant and he has not adduced any written evidence regarding a firm commitment to renewal. In this respect, the Tribunal recalls that “[i]n order for a staff member’s claim of legitimate expectation of a renewal of appointment to be sustained, it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case”. A promise to renew a fixed-term appointment must therefore at least “be in writing” and contain “the essential elements of a proper and concrete offer of renewal, such as the duration of the extension”. Therefore, the Applicant has not established by evidence that a firm commitment to renew his contract was made by the Organization. Whether the reason provided for the non-renewal decision was lawful and supported by the facts In the present case, the reason provided for the Applicant’s non-renewal is the abolition of the post he encumbered due to limited resources, and new priorities related to COVID-19 response and recovery goals. The abolition of a post as a result of a genuine organizational restructuring is a legitimate and valid reason for not extending a fixed-term appointment. The abolition of the Applicant’s post in the present case was part of a genuine organizational restructuring. Therefore, the reason provided for the non-renewal decision was legitimate and supported by the facts. Whether the non-renewal decision was flawed by procedural irregularities First, moving the Applicant to UN Global Pulse was a natural consequence of the genuine organizational restructuring, i.e., the UNTIL’s operational and management responsibilities being moved to UN Global Pulse on 1 July 2020. Indeed, the evidence on record shows that UNTSS is broader and includes OICT, which formerly included UNTIL, as well as UN Global Pulse. Moreover, even if it was technically not correct not to issue a new letter of appointment to the Applicant for the period of 1 July 2020 to 31 October 2020, this would have been an immaterial irregularity that would

not have disrupted the lawfulness of the non-renewal decision. Second, the Applicant's argument that the decision not to renew his contract was wholly and effectively made at the meeting of 8 September 2020, which has been demonstrated to have serious irregularities in terms of its convening, constitution, and procedural conduct was not supported by evidence. Indeed, the record shows that the decision not to continue with the circular economy and, accordingly, not to renew his contract was made by the EOSG following a portfolio review with UN Global Pulse on 17 August 2020. Therefore, the claimed irregularities in the meeting of 8 September 2020 would not have any impact on the non-renewal decision. Moreover, the Tribunal finds that there is no evidence to prove that the non-renewal decision was not fair or was not transparent. Accordingly, the Applicant failed to establish that the non-renewal decision was flawed by procedural irregularities. Whether the non-renewal decision was tainted by ulterior motives To support his claim, the Applicant submitted evidence showing that on 18 June 2020 he filed a complaint of harassment and abuse of authority against his former Supervisor, namely, the then UNTIL Finland Lab Manager. However, he did not present any evidence showing that the non-renewal decision was a result of his complaint of harassment and abuse of authority against his former Supervisor. Further, his former Supervisor was not the decision-maker of the contested decision. The Applicant does not claim that the decision-maker of the contested decision was racially or discriminatorily motivated either. Therefore, the Applicant failed to establish that the decision not to renew his fixed-term appointment was tainted by improper motives, resulting from his complaint against his former Supervisor.

Decision Contested or Judgment/Order Appealed

The Applicant contests the non-renewal of his fixed-term contract, which expired on 31 October 2020.

Legal Principle(s)

A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal under staff regulation 4.5(c) and staff rule 4.13(c) and expires automatically, without prior notice, on the expiration date specified in the letter of appointment pursuant to staff rule 9.4. There is thus no legitimate expectation of renewal unless the Administration has made an express promise in writing that gives

the staff member an expectancy that the appointment will be extended. Nevertheless, the Administration is required to state the reasons for a non renewal to ensure that the Tribunals can judicially review the validity of the decision, and this reason must be lawful and supported by the facts. Moreover, a non-renewal decision can be challenged on the grounds that the Administration has not acted fairly, justly, or transparently with the staff member or was motivated by bias, prejudice or improper motive. It is incumbent on the staff member to prove that such factors played a role in the non-renewal decision. The Tribunal does not have jurisdiction to consider appeals against the Administration's responses to the Applicant's request for management evaluation. Procedural irregularities in the decision-making process do not necessarily result in a subsequent finding of unlawfulness of the contested decision and the determination of whether a staff member was denied due process or procedural fairness must rest upon the nature of any procedural irregularity and its impact. It is for a party who alleges that ulterior motives tainted a decision to substantiate this claim by way of evidence. When doing so, "[t]he mental state of the decision-maker usually will be placed in issue and will have to be proved on the basis of circumstantial evidence and inference drawn from that evidence".

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Adelegan

Entity

UNOPS

Case Number(s)

UNDT/GVA/2020/54

Tribunal

UNDT

Registry

Geneva

Date of Judgement

21 Dec 2021

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Reason(s)

Abolition of post

Applicable Law

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 4.13(c)
- Rule 9.4

Related Judgments and Orders

2018-UNAT-825
2014-UNAT-411
2019-UNAT-902
2012-UNAT-201
2011-UNAT-115
2020-UNAT-1068
2015-UNAT-500
2016-UNAT-697
2018-UNAT-875
2015-UNAT-580
2018-UNAT-844
2017-UNAT-768
2012-UNAT-236
2021-UNAT-1090
2014-UNAT-481
2017-UNAT-757
2019-UNAT-944
2013-UNAT-298
2016-UNAT-686