

2022-UNAT-1203, Torek Farhadi

UNAT Held or UNDT Pronouncements

Mr. Farhadi appealed. UNAT dismissed the appeal. UNAT dismissed Mr. Farhadi's request for compensation for the UNDT's delay in delivering its Judgment within a reasonable timeframe. UNAT noted that Article 9(1)(b) of the Appeals Tribunal Statute authorises the Appeals Tribunal only to award compensation for harm deriving from an administrative decision, not from a delay in the UNDT's proceedings. UNAT dismissed Mr. Farhadi's contention that the UNDT shifted the burden of proof. UNAT was satisfied that the UNDT had assessed all the elements of evidence in the record and correctly found that, while the Administration had satisfactorily discharged its burden given the totality of the evidence, Mr. Farhadi had not provided any counter evidence in favour of his arguments. Furthermore, although the Administration acknowledged a mistake pointed out by Mr. Farhadi in that the specific Arrangement between the Donor Country and the ITC cited by the UNDT was irrelevant for the present case since it concerned another project (IORA), it appears that a similar agreement existed concerning the Pacific Project, indicating the finite nature of the Pacific Project itself. UNAT was satisfied that the UNDT did not err in finding that the basis for the non-renewal decision, which was a lack of funding, was sufficiently supported by the established facts, and that the record did not show that the non-renewal was the result of bias or improper motive.

Decision Contested or Judgment/Order Appealed

The UNDT dismissed the application. The UNDT found that the basis for the non-renewal decision, which was a lack of funding, was sufficiently supported by the established facts, and that the record did not show that the non-renewal was the result of bias or improper motive. The UNDT also found that Mr. Farhadi had failed to substantiate his claim that the funds earmarked for the Pacific Project, which he managed, had been misappropriated. In addition, the UNDT held that the Secretary-General had not circumvented the Staff Rules on termination of fixed-term appointments, nor had the non-renewal decision been tainted by abuse of authority.

Legal Principle(s)

Fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment. Even the renewal of the appointment of a staff member on successive contracts does not in itself give grounds for any expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended. Such promise must at least be in writing. The Administration's exercise of its discretion is, however, not unfettered, and should permit judicial review. When judging the validity of the Secretary-General's exercise of discretion in administrative matters, as in the case of a non-renewal decision, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered and can also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him/her. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General. An administrative decision not to renew a fixed-term appointment 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. However, the staff member has the burden of proving that such factors played a role in the administrative decision. The duty to justify a decision is essential for both Tribunals to exercise their judicial review of administrative decisions, assessing whether they are arbitrary, capricious, or unlawful.

Outcome

Dismissed on merits
Full judgment
[Full judgment](#)
Applicants/Appellants
Torek Farhadi
Entity
UN Secretariat
Case Number(s)
2021-1523
Tribunal
UNAT
Registry
New York
Date of Judgement
18 Mar 2022
President Judge
Judge Halfeld
Language of Judgment
English
Issuance Type
Judgment
Categories/Subcategories
Arbitrary or improper motive
Burden of proof
No expectancy of renewal
Non-renewal
Applicable Law
Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 4.13(c)

UNAT Statute

- Article 9.1(b)

Related Judgments and Orders

2020-UNAT-1043
2019-UNAT-918
2019-UNAT-916
2017-UNAT-780
2017-UNAT-721
2013-UNAT-311
2012-UNAT-261
2014-UNAT-411
2018-UNAT-849
2015-UNAT-500
2010-UNAT-084

2020-UNAT-1042
2012-UNAT-201
2011-UNAT-153
2010-UNAT-021