

UNDT/2022/061, Nastase

UNAT Held or UNDT Pronouncements

The Tribunal finds that the Respondent's explanation as to why the Applicant's post was the one chosen for abolition is well substantiated. There was a genuine large scale restructuring due to severe budget cuts, which resulted in other staff members being separated from service, including the Applicant, and there was a legitimate explanation for the recruitments and vacancies that were not cancelled. The presumption of regularity was satisfied. Since the Applicant cannot convincingly show why his post should not have been abolished even though the posts of dozens of other staff members similarly situated were, the allegations of illegality do not stand. With the burden of proof shifting to the Applicant, the Tribunal analyzed whether the Applicant showed through clear and convincing evidence that the contested decision was improperly motivated. However, his assertions were found speculative at best. The Applicant did not present any clear and convincing evidence that indicates the performance-related decisions made by his supervisors were biased and improperly motivated. The disagreement over "underperformance" pertains to the framework of performance management and development, whilst the decisions not to renew his contract and to abolish his post were well within the discretionary authority of the Applicant's supervisors. Thus, considering that a performance shortcoming was identified by the Applicant's supervisors, explained to the Applicant in person, and later formalized via emails, that a time bound performance improvement plan was prepared to be in place for four months, and that the plan's details were sent to the Applicant via email, there is no evidence on record that the Applicant's rights were violated in relation to his removal from the CDT and the institution of a PIP. As such, in the absence of any evidence of bias or improper motives, the decision to abolish the Applicant's post and not to renew his contract was lawful.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of the United Nations Office for Project Services (“UNOPS”), filed an application contesting the decision not to renew his contract beyond 30 November 2020.

Legal Principle(s)

Abolition of a post resulting from a reorganization constitutes a valid reason for not renewing a staff member’s appointment. Moreover, a proposal to restructure resulting in loss of employment for staff members falls within the Secretary-General’s discretionary authority. Nonetheless, non-renewals can be challenged on the grounds that the staff member had a legitimate expectation of renewal, procedural irregularity, or the decision was arbitrary or motivated by bias, prejudice or improper motive. In this regard, the Dispute Tribunal’s review is limited to whether the restructuring was conducted in accordance with relevant procedures, due process was afforded, and it was not improperly motivated. The Applicant bears the burden of proving that the discretion not to renew his appointment was not validly exercised. The starting point when reviewing administrative decisions is the presumption that official functions have been regularly performed, which is satisfied where management minimally shows that the staff member was given fair and adequate consideration. Once this initial requirement is satisfied, the burden of proof shifts to the Applicant to show through clear and convincing evidence that in dealing with him, management did not give his case fair and adequate consideration.

Outcome

Dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Nastase

Entity

UNOPS

Case Number(s)

UNDT/GVA/2021/20

Tribunal

UNDT

Registry

Geneva

Date of Judgement

21 Jun 2022

Duty Judge

Judge Hunter Jr.

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Termination

Arbitrary or improper motive

Burden of proof

No expectancy of renewal
Performance evaluation
Non-disciplinary
Abolition of post
Non-renewal
Performance management
Standard of proof

Applicable Law

Administrative Instructions

- ST/AI/2010/5

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 4.13(c)

Related Judgments and Orders

2015-UNAT-592
2014-UNAT-481
2017-UNAT-768
2011-UNAT-115
2012-UNAT-236
UNDT/2012/008
UNDT/2011/045
2012-UNAT-201
2011-UNAT-153
2011-UNAT-132
2010-UNAT-084
2015-UNAT-503
2018-UNAT-849
2016-UNAT-624
2020-UNAT-1021

2011-UNAT-122

UNDT/2020/163

UNDT/2020/168