

UNDT/2022/069, Hossain

UNAT Held or UNDT Pronouncements

The Tribunal held that the Applicant had proven that the process of restructuring of the Programme Management Unit leading to the abolition of his post and hence the non-renewal of his contract was arbitrary, capricious, motivated by prejudice, procedurally irregular and an error in law. By its failure to follow the Regulations and Rules for the restructuring and abolition of the Finance Specialist position, the Tribunal agreed with the Applicant that he was singled out among the three international staff members, to pave way for national staff without a legitimate objective criterion, and in violation of the clear organogram agreed to and in force at the material time.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision not to renew his fixed-term appointment (“FTA”) due to abolition of his post for reasons of nationalization.

Legal Principle(s)

The role of the Dispute Tribunal in exercising judicial review is to determine if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate. As a result of judicial review, the Tribunal may find the impugned administrative decision to be unreasonable, unfair, illegal, irrational, procedurally incorrect, or disproportionate. During this process the Dispute Tribunal is not conducting a merit-based review, but a judicial review. Judicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decisionmaker’s decision. This process may give an impression to a lay person that the Tribunal has acted as an appellate authority over the decision-maker’s administrative decision. This is a misunderstanding of the delicate task of conducting a judicial review because due

deference is always shown to the decision-maker, who in this case is the Secretary-General. When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and 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. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General. The Organization is accorded a broad discretion to re-organise its operations to meet changing economic conditions and operational needs, including by abolishing posts. The Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, even in a restructuring exercise, like any other administrative decision, the Administration has the duty to act fairly, justly, and transparently in dealing with staff members. The Administration is obliged to act without bias, prejudice, or improper motive in carrying out the restructuring exercise. If alleged, the staff member has an initial burden of establishing such factors played a role in the administrative decision. The Dispute Tribunal can then consider whether relevant matters have been ignored and irrelevant matters considered and whether the decision is absurd or perverse. Consequently, the Tribunal may interfere with an administrative decision, not to renew an FTA due to restructuring, if it is proved, that, it was done arbitrarily or capriciously, was motivated by prejudice or other extraneous factors or was flawed by procedural irregularity or an error of law. The staff member has the burden of proving that the aforementioned factors played a role in the administrative decision. If the reason not to renew an appointment is related to abolition of post, the Administration must show that the abolition of the post followed a legitimate restructuring exercise. Where restructuring is likely to negatively affect staff members, the Administration has an obligation to consult the affected staff members and give them an opportunity to comment or give feedback on the proposed structure before implementation. Under art. 17(6) of the Dispute Tribunal's Rules of Procedure, the Judge has the discretion to decide whether the presence of a witness is required. The primary consideration is whether such a witness' testimony will be relevant to the issue to be decided and aid the Tribunal in arriving at a fair decision. Further, under article 18(5) of the Rules of Procedure, the Tribunal may limit oral evidence as it deems fit.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The decision to not to renew the Applicant's contract was rescinded. As the Applicant had not sufficiently proved that he suffered moral damages as required by the Tribunals' jurisprudence, this head of relief failed. The Tribunal ordered the Applicant's reinstatement from 30 June 2019 to 31 December 2021. In lieu of reinstatement, the Applicant is to be paid compensation equivalent to 30 months' net base pay.

Full judgment

[Full judgment](#)

Applicants/Appellants

Hossain

Entity

UNDP

Case Number(s)

UNDT/NBI/2019/148

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

25 Jul 2022

Duty Judge

Judge Sikwese

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Termination

Classification (post)

Burden of proof

Reason(s)

Abolition of post

Non-renewal

Applicable Law

Laws of other entities (rules, regulations etc.)

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 4.13(c)
- Rule 9.4
- Rule 9.6

UNDT RoP

- Article 17
- Article 18.5

Related Judgments and Orders

2013-UNAT-349
2021-UNAT-1090
2021-UNAT-1163
2018-UNAT-847
2019-UNAT-902
2018-UNAT-844
2020-UNAT-1068
2022-UNAT-1204
2019-UNAT-971
2017-UNAT-721
2019-UNAT-960
2015-UNAT-592
UNDT/2015/123
2018-UNAT-872
2017-UNAT-742