

UNDT/2022/095, Qassem

UNAT Held or UNDT Pronouncements

The management evaluation response was sent to the Applicant on Friday, 7 May 2020, at 10:51 a.m., New York time (EDT), which was 5:51 p.m. in East Jerusalem and Ramallah. UNDP sent the RME Response after working hours in the duty station, at the start of the Applicant's weekend (which was Saturday and Sunday), and during the traditional weekend in the oPt which is Friday and Saturday. The UNDT therefore determined that the first full day of the delivery of the email was 8 May 2020, which means that the 90-day count under art. 8.1(d)(i)(a) of the UNDT Statute started from 9 May 2020. The UNDT found that the Applicant had not adduced sufficient evidence to connect his illness to the non-renewal decision. The Applicant had not appealed the disability finding and termination on those grounds and subjected it to review by management evaluation. The Administration admitted they made errors in the process; these errors were followed by his illness and termination on the ground of disability. The fact that the Applicant's final termination was based on disability due to illness was not something that exonerated the Administration from responsibility in the circumstances. It was doubtful whether due regard was given to regulation 4.4 of article IV of the Staff Regulations which requires that in filling vacancies, regard should be had to the requisite qualifications and experience of persons already in the service of the United Nations. In this case the Administration went outside the available staff pool to increase the capacity of the Jerusalem dispatch office by employing a private contractor.

Accountability referral: Given the peculiar circumstances of this case, the Tribunal found it appropriate to refer the matter to the Secretary-General pursuant to article 10(8) of the Tribunal's Statute for special consideration of accountability since the overall impact of the decisions taken seem to run contrary to the Charter of the United Nations in respect of its aim of finding dedicated staff and enhancing their ability to serve the organisation diligently.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the Respondent's decision to not renew his appointment beyond 31 March 2020.

Legal Principle(s)

On receivability: art. 34 of UNDT Rules of Procedure provides that time limits "shall not include the day of the event from which the period runs."

Outcome

Appeal dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Qassem

Entity

UNDP

Case Number(s)

UNDT/NBI/2020/61

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

29 Sep 2022

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Fixed-term appointment

Temporal (ratione temporis)

Arbitrary or improper motive

Abolition of position

Appointment (type)

Jurisdiction / receivability (UNDT or first instance)

Non-renewal

Termination (of appointment)

Referral for accountability

Applicable Law

Staff Regulations

- Regulation 4.4
- Regulation IV

UN Charter

- Article 101

UNDT Statute

- Article 8.1(d)(i)(a)

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

2020-UNAT-1043