

UNDT/2022/134, Rixen

UNAT Held or UNDT Pronouncements

The contested decision impacted the Applicant's terms of appointment or contract of employment. It had a negative impact on the Applicant's legal situation vis-à-vis his employer and on his ability to properly plan his professional life. It also altered the reason for the Applicant's separation from service from termination of contract due to abolishment of post to non-renewal. Consequently, the application is receivable *ratione materiae*.

There is no evidence confirming the alleged operational needs justifying the contested decision to keep the Applicant beyond 31 May 2021. There is enough evidence on record that, all combined, there was an express promise of termination of appointment made to the Applicant. This created a legitimate expectation on him that his appointment would be terminated, and he would be separated on 31 May 2021, receiving, as a result, the corresponding termination indemnity and separation entitlements.

The contested decision is unlawful and rescinded. Said rescission implies re-establishing the abolition of the Applicant's post and his separation date following termination of appointment to 31 May 2021. As a result, the Applicant is entitled to all the corresponding termination indemnities and separation entitlements, including accrued annual leave. The Respondent may elect to pay compensation in lieu of rescinding the contested decision, as per art. 10.5(a), in the amount of ten months' net salary.

There is valid and sufficient evidence of the work-related suffering and anxiety caused by the contested decision. It is adequate and proportionate to grant the Applicant compensation for moral damages in the amount of USD5000.

The Tribunal cannot grant the payment of legal fees as it is not allowed under its legal framework. Likewise, the request for compensation for professional harm cannot be granted for lack of evidence of said harm.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to rescind the termination of his appointment due to abolition of post and to separate him from service for non-renewal of his fixed-term appointment.

Legal Principle(s)

The burden of proof is on the person contesting a decision. In this case, the Applicant needs to demonstrate that the contested decision was either abusive, arbitrary, discriminatory or irregular.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Rixen

Entity

WMO

Case Number(s)

UNDT/GVA/2021/45

Tribunal

UNDT

Registry

Geneva

Date of Judgement

23 Dec 2022

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Termination

In-lieu compensation

Non-pecuniary (moral) damages

Pecuniary (material) damages

Non-renewal

Abolition of post

Compensation

Applicable Law

UNDT Statute

- Article 10.5(a)
- Article 10.5(b)
- Article 2.1