

2022-UNAT-1303, Dourrho Pierre

UNAT Held or UNDT Pronouncements

Mr. Pierre filed an appeal. UNAT found no error in the Dispute Tribunal's conclusion that the application was not receivable. The contested decision did not have legal consequences adversely affecting the terms and conditions of Mr. Pierre's appointment and therefore, there was no appealable administrative decision. UNAT was satisfied that the UNDT correctly held that since Mr. Pierre had no expectancy of renewal of his fixed-term appointment, the short-term renewals were considered *prima facie* in his favour. UNAT also found that Mr. Pierre had not provided sufficient evidence that the contested decision produced adverse consequences or "material harm" as part of a series of renewals for short periods; and that thus, the Dispute Tribunal correctly concluded that the contested decision to extend Mr. Pierre's appointment for six months did not have adverse consequences to his employment contract or terms of appointment and as such did not amount to an appealable administrative decision. UNAT further found no error in the UNDT's conclusion that in addition, the matter had become moot since subsequently the controversy was resolved in Mr. Pierre's favor during its pendency, with the Administration renewing Mr. Pierre's appointment through to June 2022, a term of one year. UNAT also found that the UNDT made no error in finding it could consider harassment allegations if they were relevant background information in determining whether an impugned administrative decision was motivated by ill-will; however, in the absence of an administrative decision in this case, the UNDT has no jurisdiction to examine the prior complaints of harassment. UNAT concluded that in any event, Mr. Pierre had failed to provide sufficient evidence that improper purpose or motive motivated the contested decision since he failed to make a formal complaint of harassment as required by ST/SGB/2019/8. Finally, UNAT dismissed Mr. Pierre's request for an investigation against a supervisor, finding that the tribunals have no jurisdiction to compel the Secretary-General to commence an investigation into the misconduct of an individual as requested by Mr. Pierre.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Mr. Pierre, a P-3 Engineer with MINUSMA, contested the decision to renew his fixed-term appointment for only six months until 31 December 2021. He challenged that it was a repeat of prior short-term extensions of his appointment, forming a pattern of harassment and abuse of authority and sought a twelve-month extension. The UNDT dismissed the application as not receivable *ratione materiae*. The UNDT found that the matter complained of was not an administrative decision because the extension of his fixed-term appointment did not have an adverse impact on Mr. Pierre or his rights. In addition, the Dispute Tribunal found that Mr. Pierre failed to submit evidence to support his contention that the Secretary-General's decision to extend his appointment for six months rather than a year was motivated by ill-will, and that in any event, he had not made a formal complaint of harassment in relation to the six-month extension decision which was a necessary prerequisite to him advancing the claim of harassment. Finally, the Dispute Tribunal found that the question of whether the Secretary-General had acted unlawfully by extending Mr. Pierre's appointment for six months, was moot given that it was resolved by the renewal of his appointment through to 30 June 2022.

Legal Principle(s)

Article 2(1) of the UNAT Statute requires that an appellant identify a ground of appeal to the Appeals Tribunal of a Dispute Tribunal judgment, either that the Dispute Tribunal a) exceeded its jurisdiction or competence; b) failed to exercise jurisdiction vested in it; c) erred on a question of law; d) committed an error in procedure, such as to affect the decision of the case; or e) erred on question of fact, resulting in a manifestly unreasonable decision. An appellant has the burden of satisfying the Appeals Tribunal that the Dispute Tribunal's judgment is defective based on one or more of these grounds. For purposes of Staff Rule 11.2(a), a staff member wishing to

formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules, shall, as a first step, submit a written request for management evaluation of the administrative decision. An “administrative decision” is a “unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order”. A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service (Staff Rule 4.13(c)); therefore, decisions that extend a contract, even on a short-term basis, are prima facie considered in the staff member’s favour and do not adversely affect their rights. A judicial decision will be moot if any remedy issued would have no concrete effect because it would be purely academic or subsequent events have deprived the proposed resolution of the dispute of practical significance; thus placing the matter beyond the law, there no longer being an actual controversy between the parties or the possibility of any ruling having an actual, real effect. Just as a person may not bring a case about an already resolved controversy (res judicata) so too he should not be able to continue a case when the controversy is resolved during its pendency. The Dispute Tribunal can examine harassment allegations if they are relevant background information in determining whether an impugned administrative decision was motivated by ill-will. The tribunals have no jurisdiction to compel the Secretary-General to commence an investigation into the misconduct of an individual.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Dourrho Pierre

Entity

MINUSMA

Case Number(s)

2021-1623

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Dec 2022

President Judge

Judge Sandhu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Definition

Subject matter (ratione materiae)

No expectancy of renewal

Discrimination and other improper motives

Administrative decision

Jurisdiction / receivability (UNDT or first instance)

Non-renewal

Applicable Law

Secretary-General's bulletins

- ST/SGB/2019/8

Staff Rules

- Rule 11.2(a)
- Rule 4.13(c)

UNAT Statute

- Article 2.1

Related Judgments and Orders

2011-UNAT-123

2010-UNAT-051

2017-UNAT-711

2013-UNAT-341

UNDT/2013/045

2017-UNAT-742