

UNDT/2023/094, Delgado

UNAT Held or UNDT Pronouncements

Whether the Applicant was promised a renewal

The general verbal statement made by the CITO/ASG in March 2022 could not have constituted an express promise to renew the Applicant's fixed-term appointment. It lacked the essential elements of a proper and concrete offer of renewal, such as the duration of the extension and the name of the appointee. The jurisprudence further requires a promise to renew a fixed-term appointment to be in writing (see Kellie, para. 44). Contrary to the Applicant's suggestion, the verbal statement was not sufficient to support a firm commitment or an entitlement to the renewal of her fixed-term appointment.

There is no evidence of a firm commitment to renew the Applicant's fixed-term appointment. While the Applicant sought to rely on the CITO/ASG's verbal statements in March 2022, she ignored subsequent circumstances and statements made by the CITO/ASG in June 2022 about the financial crisis experienced by OICT. In fact, there is no evidence that the Applicant even discussed the issue with her supervisor.

Whether the reason provided for the non-renewal decision was lawful and supported by the facts

The abolition of the Applicant's post in the present case was part of a genuine organizational restructuring as demonstrated by the evidence on record. The jurisprudence supports lack of funding as a valid reason for abolishing a post and not renewing an appointment (see, e.g., Collins 2020-UNAT-1021, para. 30; Houenou 2021-UNAT-1091, para. 32).

Whether the alleged procedural irregularities rendered the non-renewal decision unlawful

The doctrine of estoppel does not apply to this case. The Applicant failed to invoke or produce evidence that she acted upon the CITO/ASG's representation in March 2022 to her detriment. Equally, the Applicant did not provide any direct evidence to support her assertion of negligence or corruption. The Applicant's employment with another private entity after her separation from service has no bearing on UNOPS's legal obligations and is not a "conversion" of her UN employment contract into a private one.

Whether the non-renewal decision was tainted by discrimination

The Applicant did not present any evidence showing that the non-renewal decision resulted from discrimination against the Applicant. Which post to abolish falls within the discretion of the Organization. (see Collins, para. 28). The abolition of the Applicant's post and the consequent non-renewal decision were therefore a proper exercise of discretion in light of the Organization's budgetary situation.

Decision Contested or Judgment/Order Appealed

The Applicant contests the decision not to renew her fixed-term appointment due to the abolition of her post.

Legal Principle(s)

Scope of judicial review

A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal under staff regulation 4.5(c) and staff rule 4.13(c) and expires automatically, without prior notice, on the expiration date specified in the letter of appointment pursuant to staff rule 9.4. There is thus no legitimate expectation of renewal unless the Administration has made an express promise in writing that gives the staff member an expectancy that the appointment will be extended (see, e.g., He 2018-UNAT-825, para. 41; Igbinedion 2014-UNAT-411, para. 26).

The Administration is required to state the reasons for a non-renewal to ensure that the Tribunals can judicially review the validity of the decision, and this reason must be lawful and supported by the facts (see, e.g., Nouinou 2019-UNAT-902, para. 50;

Obdeijn 2012 UNAT 201, paras. 33-39; Islam 2011-UNAT-115, paras. 29-32).

A non-renewal decision can be challenged on the grounds that the Administration has not acted fairly, justly, or transparently with the staff member or was motivated by bias, prejudice or improper motive. It is incumbent on the staff member to prove that such factors played a role in the non-renewal decision (see, e.g., Porras 2020-UNAT-1068, para. 24; Nouinou, para. 47; Said 2015-UNAT-500, para. 34).

On renewal promises

The renewal of the appointment of a staff member on successive contracts does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended" (see Kellie 2018-UNAT-875, para. 41).

For a staff member's claim of legitimate expectation of a renewal of appointment to be sustained, it must not be based on a mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case" (see, e.g., Munir 2015-UNAT-522, para. 24; Kellie, para. 41). Moreover, a promise to renew a fixed-term appointment must at least "be in writing" and contain "the essential elements of a proper and concrete offer of renewal, such as the duration of the extension" (see Kellie, paras. 44 and 45; Kalil 2015-UNAT-580, para. 67).

On reasons for the non-renewal

The Organisation enjoys a broad discretion to reorganize its operations and departments to meet changing economic conditions, including by abolishing posts (see, e.g., Russo-Got 2021-UNAT-1090, para. 32; Timothy 2018-UNAT-847, para. 25; Smith 2017-UNAT-768, para. 26). Moreover, the abolition of a post as a result of a genuine organizational restructuring is a legitimate and valid reason for not extending a fixed-term appointment (see, e.g., Russo-Got, para. 32; Islam, para. 30).

On alleged procedural irregularities

It is incumbent on the staff member to prove that procedural irregularities played a role in the non-renewal decision (see, e.g., Porras, para. 24; Nouinou, para. 47; Said, para. 34). Moreover, procedural irregularities in the decision-making process do not necessarily result in a subsequent finding of unlawfulness of the contested decision and the determination of whether a staff member was denied due process or

procedural fairness must rest upon the nature of any procedural irregularity and its impact (see Sarwar 2017- UNAT-757, para. 87).

It is well-settled jurisprudence that a proper claim of estoppel requires that there was a representation made by one party, which the other party reasonably relied upon to his or her detriment (see, e.g., Newland 2018-UNAT-820, para. 35; Kortes 2019-UNAT-925).

On discrimination tainting the non-renewal decision

It is for a party who alleges that ulterior motives tainted a decision to substantiate this claim by way of evidence (see, e.g., Ross 2019-UNAT-944, para. 25; Morsy 2013-UNAT-298, para. 23). When doing so, “[t]he mental state of the decision-maker usually will be placed in issue and will have to be proved on the basis of circumstantial evidence and inference drawn from that evidence” (see He 2016-UNAT-686, para. 39).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Delgado

Entity

UNOPS

Case Number(s)

UNDT/GVA/2023/004

Tribunal

UNDT

Registry

Geneva

Date of Judgement

8 Sep 2023

Duty Judge

Judge Sun

Language of Judgment

English

Appeal Number

2018-UNAT-825

2014-UNAT-411

2019-UNAT-902

2012-UNAT-201

2011-UNAT-115

2020-UNAT-1068

2015-UNAT-500

2018-UNAT-875

2015-UNAT-522

2015-UNAT-580

2021-UNAT-1090

2018-UNAT-847

2017-UNAT-768

2020-UNAT-1021

2021-UNAT-1091

2017-UNAT-757

2018-UNAT-820

2019-UNAT-925

2019-UNAT-944

2013-UNAT-298

2016-UNAT-686

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Reason(s)

Non-renewal

Applicable Law

Staff Regulations

- Regulation 4.5(c)
- Regulation 9.3

Staff Rules

- Rule 4.13(c)
- Rule 9.4