

2022-UNAT-1289, Lolo Mkhabela

UNAT Held or UNDT Pronouncements

Ms. Mkhabela appealed.

As regards receivability *ratione temporis*, the UNAT held that the RC could not be seen as having lawfully extended the time limits to file a management evaluation request. Apart from the fact that there is no evidence of such a promise, the truth is that the RC did not have such authority, which is only bestowed upon the Secretary-General, as prescribed by Staff Rule 11.2(c). Likewise, Ms. Mkhabela's claim that she was not apprised of the reasons or decision to deviate from the Transition Plan is without merit, as she is not entitled to be made aware of reasons behind managerial actions not directly impacting on the terms or conditions of her appointment.

Ms. Mkhabela's references to any discretionary power of the tribunals to waive or extend time limits are misplaced, in light of the authority given by the respective statutes. The decision of the UNDT was correct when it held that it was not competent to extend or waive deadlines pertinent to the administrative stage of the proceedings, as set out by the Dispute Tribunal Statute and the Appeals Tribunal's jurisprudence. In light of these facts, the UNDT correctly declined to exercise its jurisdiction.

The UNAT found, in addition, that the UNDT had made no error in finding that the application was not receivable *ratione materiae*, since the contested decision was not an administrative decision warranting judicial review. Being a managerial decision about a change in the Transition Plan of the RCO Eswatini, it had no direct impact on Ms. Mkhabela's terms of appointment or contract of employment. It merely constituted an act leading up to the final decision not to renew her fixed-term appointment, which was not the subject of her application.

The UNAT dismissed Ms. Mkhabela's appeal and affirmed Judgment No. UNDT/2021/103.

Decision Contested or Judgment/Order Appealed

Ms. Mkhabela contested the decision by the Resident Coordinator (RC) to deviate from the agreed Transition Plan for restructuring the United Nations Resident Coordinator Office (RCO), United Nations Development Programme (UNDP), Mbabane, Eswatini.

By Judgment No. UNDT/2021/103, issued on 2 September 2021, the Dispute Tribunal dismissed the application as not receivable both *ratione materiae* and *ratione temporis*.

Legal Principle(s)

Time limits in the context of the administration of justice in the United Nations' internal justice system must be observed and strictly enforced.

It is incumbent on the UNDT to individualize and define the administrative decision challenged by a party and to identify the subject of judicial review.

It is not enough for an appellant to disagree with the findings of fact or the conclusions of law made by the trial court. Rather, for an appeal to succeed, an appellant must persuade the UNAT that the contested decision fulfils the objective criteria of its competence, as prescribed by Article 2(1) of the UNAT Statute.

The Organization has the power to restructure some or all its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff. The Appeals 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 key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms and conditions of appointment. The administrative decision must hence, in order for it to be reviewable, have a direct adverse impact on the terms of

appointment or contract of employment of the individual staff member.

Fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment.

Even the renewal of the appointment of a staff member on successive contracts does not, in and of itself, give grounds for an expectation of renewal, unless the Administration has made an express promise that gives the staff member an expectation that his or her appointment will be extended.

Separation as a result of the expiration of a fixed-term appointment takes place automatically, without prior notice, on the expiry date specified in the letter of appointment.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Lolo Mkhabela

Entity

UNDP

Case Number(s)

2021-1625

Tribunal

UNAT

Registry

New York

Date of Judgement

15 Dec 2022

President Judge

Judge Raikos

Judge Murphy

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Notification

Subject matter (ratione materiae)

Temporal (ratione temporis)

Extension of time

No expectancy of renewal

Expiration of appointment (see also, Non-renewal)

Restructuring

Discretionary authority

Administrative decision

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Non-renewal

Separation from service

Reassignment or transfer

Applicable Law

Staff Rules

- Rule 11.2

UNAT Statute

- Article 8.3

Related Judgments and Orders

2015-UNAT-495

2014-UNAT-470

2012-UNAT-218

2011-UNAT-118

2017-UNAT-765

2021-UNAT-1132

2012-UNAT-273

2018-UNAT-844

2016-UNAT-705

2015-UNAT-592

2014-UNAT-481

2010-UNAT-058

2017-UNAT-780

2017-UNAT-721

2013-UNAT-311

2012-UNAT-261

2011-UNAT-119