

UNDT/2022/089, Lanla Kamara-Joyner

UNAT Held or UNDT Pronouncements

The written reprimand

Factual basis for the imposition of the measure

UNPAD, as an ad hoc special interest group, advocates for issues relating to conditions of work pertaining to staff members of African descent in the United Nations.

UNOMS is established “to make available confidential services of impartial and independent persons to address work-related issues of staff members” (see ST/SGB/2016/7 para 1.1). UNOMS is guided in its work by four core principles, namely independence, confidentiality, neutrality, and informality.

It appeared from the information on record that the Applicant’s role as President of UNPAD was on a voluntary basis whereas her official function remained that of a Conflict Resolution Officer with UNOMS. The evidence showed that, indeed, the Applicant’s role at UNPAD undermined the neutrality and independence of UNOMS. The Applicant was repeatedly informed of such conflict of interest by her Supervisor but failed to take corrective action.

The Tribunal found that the facts on which the administrative measure was based were properly established as per the applicable standard of proof, namely preponderance of evidence.

Nature of the measure applied and its proportionality

The Tribunal noted that prior to the issuance of the letter of reprimand, the Applicant was informed of the conflict of interest and given multiple opportunities to cure it and to avoid administrative action. The Applicant did not take any corrective action, and under those circumstances, the Tribunal found that the Ombudsman’s decision to issue her a written reprimand was lawful.

The Tribunal noted that in deciding the administrative measure to be imposed, the Ombudsman took into account the multiple exchanges on the matter, the Applicant's continued engagement with UNPAD as President, and the fact that she could not provide the Applicant with any assignment as a Conflict Resolution Officer until the conflict of interest no longer existed. Under such circumstances, the Tribunal found that the issuance of a written reprimand was a reasonable course of action.

The Applicant's due process rights

The Tribunal considered that the Applicant's claim in this respect failed.

The denial of work

Given that the Applicant was informed about the conflict of interest and granted the opportunity to correct such situation, the Tribunal found that the Ombudsman's decision not to provide her with any assignment as a Conflict Resolution Officer for as long as the situation of conflict of interest remained was lawful.

The non-renewal decision

The Applicant was informed of the decision not to renew her appointment on 16 June 2021. She submitted her request for management evaluation on Monday, 16 August 2021. The MEU rejected her request on the ground that it had been submitted outside the prescribed 60 calendar days under staff rule 11.2(c). The mandatory period ended, according to MEU, on Sunday, 15 August 2021.

The Tribunal noted that staff rule 11.2(c) on the filing of a management evaluation request refers to calendar days for the calculation of time limits. The term calendar days is not defined or qualified in the Staff Rules. Therefore, in the absence of a specific and explicit provision indicating otherwise, staff rule 11.2 should be applicable upon its plain reading.

The Tribunal, therefore, held that the application was not receivable in respect of the non-renewal decision.

Decision Contested or Judgment/Order Appealed

The Applicant contests two decisions 1) to deny her the opportunity to perform assigned work and to issue her a written reprimand, and 2) not to renew her fixed-term appointment beyond its expiration on 31 August 2021.

Legal Principle(s)

The Administration has the duty to act fairly, justly, and transparently in dealing with staff members (Matadi et al. 2015-UNAT-592, para. 17), and the validity of the exercise of discretionary authority is judged under the legal principles as set forth in Sanwidi 2010 UNAT 084, at para. 40.

Judicial review is focused on how the decision-maker reached the impugned decision, and not on the merits of the decision-maker's decision (Sanwidi 2010-UNAT-084, para. 42 and Santos 2014-UNAT-415, para 30).

Although the reprimand is not a disciplinary measure but an administrative one, because of its adverse impact on the concerned staff member's career, it must be warranted on the basis of reliable facts, established to the requisite standard of proof, namely that of "preponderance of evidence", and be reasoned in order for the Tribunals to have the ability to perform their judicial duty to review administrative decisions and to ensure the protection of individuals, which otherwise would be compromised (Yasin 2019-UNAT-915, para. 47).

In the context of administrative law, the principle of proportionality means that an administrative action should not be more excessive than is necessary for obtaining the desired result. The requirement of proportionality is satisfied if a course of action is reasonable, but not if the course of action is excessive (Sanwidi 2010-UNAT-084, para. 39).

The Dispute Tribunal has no jurisdiction to waive deadlines for management evaluation or administrative review (Muratore 2012-UNAT-191, para. 38; Christensen 2013-UNAT-335, para. 19; Pavicic 2016 UNAT-619, para. 21).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Lanla Kamara-Joyner

Entity

UNS

Case Number(s)

UNDT/NY/2021/059

Tribunal

UNDT

Registry

New York

Date of Judgement

27 Sep 2022

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Conduct

Discretionary authority

Jurisdiction / receivability (UNDT or first instance)

Non-renewal

Applicable Law

Secretary-General's Bulletins

Staff Regulations

- Regulation 1.2(m)

Staff Rules

- Rule 1.2(q)
- Rule 10.2(c)
- Rule 11.2(c)

UNDT RoP

- Article 34

UNDT Statute

- Article 8.3

Related Judgments and Orders

2015-UNAT-592

2014-UNAT-415

2019-UNAT-915

UNDT/2017/054

UNDT/2021/076

2012-UNAT-209

UNDT/2019/110

2010-UNAT-084

2012-UNAT-191

2013-UNAT-335

2016-UNAT-619

2012-UNAT-225