

2022-UNAT-1213, Sandra Hilaire-Madsen

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General against Judgment No. UNDT/2021/032. It also considered a cross-appeal by Ms. Hilaire-Madsen claiming that the UNDT should have rescinded the Administration's non-renewal decision and awarded her alternative compensation as well as compensation for moral damages.

As regards the lawfulness of the non-renewal decision, UNAT held that under the specific circumstances, at the material time of the contested non-renewal decision at the end of December 2018, from the point of view of a fair-minded objective observer, with the information available at the time of making the decision and given Ms. Hilaire-Madsen's poor performance for the years 2014-2017, the decision of the Administration not to renew her FTA, based on the available recent Performance Appraisal and Development (PAD) reports (2016-2017), especially that of 2017, in which Ms. Hilaire-Madsen's performance was further downgraded, was reasonable. The Administration was not under an obligation to take into consideration in the balancing exercise of its discretionary authority Ms. Hilaire-Madsen's performance from September to December 2018, by waiting for the 2018 PAD.

As regards the issue of remedies, UNAT held that UNDT fell into error, both factually and legally, when it disregarded Ms. Hilaire-Madsen's specific claims to rescission of the non-renewal decision and proceeded with awarding compensation for harm to her. However, the UNAT finding that the contested non-renewal decision was lawful renders unnecessary the examination of whether rescission or compensation in lieu should have been an effective remedy.

Decision Contested or Judgment/Order Appealed

UNDT Judgment: Ms. Hilaire-Madsen contested the administrative decision, dated 31 January 2019, not to renew her fixed-term appointment (FTA) at the G-5 level with the United Nations Population Fund (UNFPA). The UNDT, by Judgment No. UNDT/2021/032, partially granted Ms. Hilaire-Madsen's application and awarded her compensation for material damages in the amount of three month's net base salary.

Legal Principle(s)

It is a well-established principle that 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 appointments 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, or there is a firm commitment to renewal revealed by the circumstances of the case. The jurisprudence requires this promise at least be in writing.

An administrative decision not to renew a fixed-term appointment 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. The staff member has the burden of proving such factors played a role in the decision. Poor or unsatisfactory performance may properly be the basis for the non-renewal of a fixed-term appointment.

The Administration is not required to complete the last performance evaluation prior to reaching a non-renewal decision, because this would amount to requiring an everlasting cycle of performance evaluations, whereby it could never be in a position to terminate an appointment of a staff member.

Legal certainty requires administrative issuances to be applied in a predictable manner and once the procedure foreseen in the UNFPA Separation from Service Policy is initiated, it should be followed through.

The decision on remedy is quintessentially a matter for the first instance Tribunal, having regard to the circumstances of each particular case and the constraints imposed by its governing Statute. The UNDT's discretion under Article 10(5)(a) is

constrained by the mandatory requirement to set an amount of compensation (no greater than that provided for in Article 10(5)(b)) as an alternative to an order rescinding a decision on appointment, promotion or termination.

Compensation cannot be awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair.

Outcome

Appeal dismissed on the merits; Cross-appeal dismissed on the merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Sandra Hilaire-Madsen

Entity

UNFPA

Case Number(s)

2021-1561

Tribunal

UNAT

Registry

New York

Date of Judgement

18 Mar 2022

President Judge

Judge Knierim

Judge Raikos

Judge Murphy

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Reason(s)

Performance management

No expectancy of renewal

Discretionary authority

Non-renewal

Applicable Law

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 4.13(c)

UNDT Statute

- Article 10.5

UNFPA Staff Rules

Related Judgments and Orders

2019-UNAT-902

2018-UNAT-849

2018-UNAT-825

2017-UNAT-780

2015-UNAT-500

2015-UNAT-571

2018-UNAT-829