

2023-UNAT-1359, Mohammad Tofazzel Hossain

UNAT Held or UNDT Pronouncements

The Secretary-General appealed.

The UNAT found that the UNDT erred in law and fact and reached a manifestly unreasonable decision by concluding that Mr. Hossain had proved on a balance of probabilities that the administrative decision not to renew his fixed-term appointment had been motivated by improper motives and he had been discriminated against. The reasons proffered by the Administration for not renewing Mr. Hossain's fixed-term appointment, namely the abolition of his post in the context of a reorganization exercise, were valid reasons.

The UNAT further held that contrary to what Mr. Hossain suggests, the Administration does not have an obligation to consult affected staff members, where restructuring is likely to negatively affect staff members. Moreover, the evidence did not support the UNDT's finding that the decision to abolish Mr. Hossain's position in the context of restructuring the PMU was premeditated and biased. Finally, the UNAT did not find any illegality in the impugned administrative decision not to renew Mr. Hossain's fixed-term appointment because of the sole fact that it was his post which was abolished out of the three international staff members' posts. The UNAT found that this alone was not sufficient to support a finding, on a balance of probabilities, that the Administration made the contested decision based on discrimination, improper motives or unfairness, or that Mr. Hossain received less favourable treatment, as the UNDT improperly found.

The UNAT thus granted the appeal and reversed the UNDT Judgment.

Decision Contested or Judgment/Order Appealed

Before the UNDT, Mr. Hossain, a former staff member with the Programme Management Unit (PMU) of the Zimbabwe Resilience Building Fund (ZRBF), a program supported by the UNDP Country Office in Zimbabwe, contested the decision not to renew his fixed-term appointment due to abolition of his post.

The UNDT held that the preparation of a long-term vision Human Resources (HR) Strategy for the ZRBF PMU (HR Strategy document), without consulting Mr. Hossain, constituted an abuse of authority, that the contested decision was tainted by bias, and that the fact that out of the three international posts at the ZRBF, his post had been chosen to be reclassified, without any justification, was proof, by a preponderance of the evidence, of discrimination. The UNDT further held that the fact that Mr. Hossain's supervisor did not get along with him meant that she was biased against him and as a result the contested decision was tainted by bias and, therefore, unlawful. Finally, the UNDT concluded that the process was arbitrary and capricious. The UNDT rescinded the decision not to renew Mr. Hossain's fixed-term appointment and ordered his reinstatement. Alternatively, the UNDT ordered in-lieu compensation in the amount of 30 months' net base pay. Additionally, the UNDT ordered retroactive payment of contributions to the United Nations Joint Staff Pension Fund for the reinstated period.

Legal Principle(s)

It is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted by the moving party, whatever name the party attaches to the document, as the judgment must necessarily refer to the scope of the parties' contentions. Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review.

An international organization necessarily has the power to restructure some or all of 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.

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. The jurisprudence requires not only a firm commitment to renewal by the circumstances, but also that 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 administrative decision.

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, as in the case of a non-renewal decision, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.

As part of its judicial review, it is necessary to determine whether the decision was vitiated by bias or bad faith, that is, if it was taken for an improper purpose. A decision taken for an improper purpose is an abuse of authority. It follows that when a complainant challenges a discretionary decision, he or she by necessary implication also challenges the validity of the reasons underpinning that decision.

An administrative decision not to renew a fixed-term appointment must not be deemed unlawful on the sole ground that the decision itself does not articulate any reason for the non-renewal. But that does not mean that the Administration is not required to disclose the reasons not to renew the appointment. Rather, the Administration has an obligation to state the reasons for an administrative decision not to renew an appointment to assure the Tribunals' ability to judicially review the validity of the Administration's decision.

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 wrong-doing in need of repair.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Mohammad Tofazzel Hossain

Entity

UNDP

Case Number(s)

2022-1730

Tribunal

UNAT

Registry

New York

Date of Judgement

19 Jul 2023

President Judge

Judge Raikos

Judge Murphy

Judge Halfeld

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Arbitrary or improper motive

Reason(s)

Subject matter (ratione materiae)

Non-renewal

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 4.13(c)

Related Judgments and Orders

2017-UNAT-765

2019-UNAT-902

2018-UNAT-825

2016-UNAT-660

2012-UNAT-201

2015-UNAT-503

2016-UNAT-626

2017-UNAT-780