

UNDT/2023/117, Isufi

UNAT Held or UNDT Pronouncements

The Applicant lost a significant portion of his annual leave balance because the Administration used that leave to address the period of unlawful separation. This ongoing injury is of sufficient collateral consequence to preclude mootness despite the partial reversal of the direct effects of the contested decision. Thus, even if the Applicant was reinstated, there remained a live controversy between the parties and as such, the application is not moot.

The contested decision in the case at hand is the non-renewal decision. There is no separate litigation of the decision to charge absence to annual leave required for the Applicant to be made whole. Therefore, the Respondent's challenge to the receivability in this respect fails.

The evidence on record shows that in response to the Applicant's request for management evaluation, the Administration rescinded the decision in question on 2 March 2023 and reinstated the Applicant as of 3 April 2023. This shows that the Administration admitted that the non-renewal decision was irregular.

A proper remedy in the case at hand further requires the Administration to place the Applicant in the position he would have been if he had never been separated. Therefore, there is no basis for the Administration to charge the totality of the period between the Applicant's separation to the Applicant's reinstatement as annual leave. In this connection, the Administration shall credit back to the Applicant 23 days of annual leave.

Decision Contested or Judgment/Order Appealed

The Applicant, a staff member of the United Nations Development Coordination Office ("UNDCO"), contests the decision not to renew his fixed-term appointment beyond 31 December 2022 due to unsatisfactory performance.

Legal Principle(s)

Since a finding of mootness results in the drastic action of dismissal of the case, the Appeals Tribunal requires that the mootness doctrine be applied with caution (see Kallon 2017-UNAT-742, para. 45). The Appeals Tribunal has, thus, consistently emphasised the non-absolute nature of mootness where an applicant still sustains an injury for which the Tribunal can award relief (see, e.g., Azar 2021-UNAT-1104, para. 30; Kallon, para. 46).

The 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", and "may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed" (see, e.g., Fasanella 2017-UNAT-765, para. 20; Cardwell 2018-UNAT-876, para. 23).

The purpose of staff rule 4.17 is to "confer continuity of employment on former staff members with fixed-term or continuing appointments who have been re-employed, and who may then be reinstated ... on the same type of contract within 12 months of their separation" (see Eggesfield UNDT/2012/208, para. 18). This ultimately ensures that "an employee is not disentitled of benefits that normally accrue through continuous service" (see Eggesfield, para. 18).

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Isufi

Entity

UNDCO

Case Number(s)

UNDT/GVA/2023/031

Tribunal

UNDT

Registry

Geneva

Date of Judgement

2 Nov 2023

Duty Judge

Judge Sun

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Expiration of appointment (see also, Non-renewal)

Separation from service

Applicable Law

UNDT Statute

- Article 10.5(a)
- Article 10.5(b)

Staff Rules

- Article 4.17(b)

Related Judgments and Orders

2017-UNAT-742

2021-UNAT-1104

2017-UNAT-765

2018-UNAT-876

UNDT/2014/046

2015-UNAT-590

2010-UNAT-059

2015-UNAT-587

2015-UNAT-528

2010-UNAT-095

2010-UNAT-044

UNDT/2012/208

2022-UNAT-1228

2019-UNAT-899

2018-UNAT-874