

2023-UNAT-1377, Mohammad Almasri

UNAT Held or UNDT Pronouncements

The UNAT held that the UNDT was correct to find that there was clearly sufficient evidence to support the Administration's conclusion that the staff member's performance only partially met expectations, and that this concern was communicated to him. Although the Rebuttal Board's confirmation of the rating, and the preparation of a second short-term performance appraisal occurred after the non-renewal was taken, the UNAT concluded that these reviews nonetheless confirmed that management's prior informal evaluation of the staff member's performance was not arbitrary but was instead well-based. Accordingly, the UNAT held that there was an objective and reasonable justification for the non-renewal of the staff member's fixed-term appointment.

However, the UNAT also concluded that there was a significant procedural irregularity with respect to the fact that the non-renewal of the staff member's contract occurred when he had timely rebutted his short-term performance appraisal. The UNAT observed that the staff member's contract should have been renewed on a monthly basis while the rebuttal process was underway. The disputed issue was for how long it should have been renewed. The UNAT held that the three months' net-base salary offered by UNHCR was insufficient. The UNAT held that six months' net base salary was appropriate in the circumstances of this case, and that the staff member was also entitled to a sum that was equivalent to what the Organization would have contributed to UNJSPF on the staff member's behalf for six months.

Decision Contested or Judgment/Order Appealed

In Judgment No. UNDT/2022/072, the Dispute Tribunal dismissed Mr. Almasri's application in which he contested the decision of UNHCR not to renew his fixed-term appointment on the basis of unsatisfactory performance. The UNDT also confirmed

that the Administration's payment of three months' net-base salary for procedural irregularities in his case was sufficient.

Mr. Almasri appealed.

Legal Principle(s)

Although a staff member holding a fixed-term appointment does not have a right to the extension of his or her FTA, the decision not to extend his or her appointment is nonetheless a discretionary decision which, like any other exercise of discretion by the Secretary-General, must be reached fairly and not in an arbitrary manner.

The ultimate question of procedural fairness in performance matters is whether the staff member was aware of the required standard and was given a fair opportunity to meet it.

Absent a proper formal performance appraisal, an informal performance evaluation can only be upheld if it was not arbitrary and if the Administration proves that it is nonetheless objective, fair and well-based.

United Nations procedures exist to facilitate fair and transparent substantive decisions, and the failure to abide by required procedures is no mere technicality but instead undermines substantive fairness.

Outcome

Appeal granted in part

Outcome Extra Text

Mr. Almasri's appeal was granted with respect to a modified remedy; in all other respects, the UNDT judgment, including confirmation of the non-renewal of his appointment, was upheld.

Full judgment

[Full judgment](#)

Applicants/Appellants

Mohammad Almasri

Entity

UNHCR

Case Number(s)

2022-1748

Tribunal

UNAT

Registry

New York

Date of Judgement

2 Nov 2023

President Judge

Judge Colgan

Judge Ziadé

Judge Forbang

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

No expectancy of renewal
Performance management
Rebuttal
Reason(s)

Applicable Law

Other UN issuances (guidelines, policies etc.)
UNHCR Staff Rules

Related Judgments and Orders

2016-UNAT-642
2017-UNAT-721
2017-UNAT-757