

2023-UNAT-1389, Maryam H. Wathanafa

UNAT Held or UNDT Pronouncements

The UNAT considered an appeal by the staff member.

The UNAT found that the UNDT had not erred in fact when it had not considered separation on retirement, mentioned in the separation notice, to be the reason for the contested decision; the mention of retirement had no import on the staff member's separation. The UNAT was of the view that the letter informing her of the expiry of her fixed-term appointment was in line with the abolition of the post she encumbered.

The UNAT noted that judicial review in the context of suspension of action is different from the review conducted by the Tribunal on the merits of an application contesting the administrative decision. The UNAT found that the difference of outcome per se, between the order on suspension of action and the impugned Judgment, is neither a valid argument for illegality nor a censorable error of law. The UNAT further pointed out that as the MONUSCO budget had been subsequently approved, the original reason for the *prima facie* unlawfulness of the contested decision did not stand any longer.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2022/080.

Decision Contested or Judgment/Order Appealed

A former staff member contested the decision not to renew her fixed-term appointment and, accordingly, to separate her from service.

In Judgment No. UNDT/2022/080, the UNDT dismissed the application for lack of merit, finding the decision lawful. The UNDT pointed out that the staff member did not dispute the fact that MONUSCO had not renewed her appointment following a

lawful downsizing exercise which involved abolition, by the General Assembly, of her post effective 30 June 2021. The UNDT found that the suggestion in the separation notice that she was proceeding on retirement was made in error and she was not forced to retire.

Legal Principle(s)

To determine the lawfulness of an administrative decision, the Tribunals rely on the reasons furnished by the Administration, provided either in the contested decision itself, or afterwards. Either way, the reasons must be sufficiently clear, precise, and intelligible. They must be supported by true and relevant facts in respect of factual reasons, or by an established legal situation in respect of legal reasons.

For the UNDT to order suspension of action, three criteria must be cumulatively met: (1) a *prima facie* unlawfulness of the contested decision; (2) a particular urgency; and (3) irreparable damage to the staff member to be caused by the implementation of the contested decision.

The intensity of review of *prima facie* unlawfulness is limited: the Tribunal examines whether the contested decision appears, after a summary review, to be unlawful. It is a matter of having serious doubts as to the lawfulness of the decision rather than an exhaustively established unlawfulness. Findings made for suspension of action do not restrict the UNDT in its judicial review on the merits. Albeit being enforceable, an order for suspension of action does not have a *res judicata* effect.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Maryam H. Wathanafa

Entity

MONUSCO

Case Number(s)

2022-1749

Tribunal

UNAT

Registry

New York

Date of Judgement

27 Nov 2023

President Judge

Judge Gao

Judge Savage

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Non-renewal

Reason(s)

Procedure (first instance and UNAT)

Case management

Applicable Law

UNDT RoP

- Article 13.3

UNDT Statute

- Article 2.2

UNJSPF Regulations

- Article 28

Related Judgments and Orders

2021-UNAT-1097

2011-UNAT-115

2019-UNAT-927

UNDT/2022/080