

UNDT/2023/136, Koura

UNAT Held or UNDT Pronouncements

The Applicant failed to convince the Tribunal that the Administration raised in him a legitimate expectation of renewal of his FTA. An erroneously raised personnel action without a written contract does not constitute a ground for legitimate expectation of renewal.

The Tribunal agreed with the Applicant that the Staff Regulations and Rules must be applied uniformly and consistently to staff members. 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.

Any exception to laid down procedures under the Staff Regulations and Rules must be taken fairly, justly and transparently to avoid the perception of abuse of the system and claims of bias and discrimination.

The Respondent decided to exceptionally use a “Delegated Instrument” to reassign a staff member similarly placed to the Applicant. In so doing, the Respondent, did not follow the laid down procedures for staff selection. The process was carried out without transparency. Its result was a decision, which was perceived prejudicial to the Applicant. The reason given to treat the Applicant with inequality was improper as it was not justifiable by the Staff Regulations and Rules and the procedure was not transparent.

The Tribunal found that the Applicant had successfully rebutted the presumption of regularity and proved by clear and convincing evidence that the non-renewal of his fixed-term appointment was unlawful because the rules were applied in a discriminatory manner.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to terminate his fixed-term appointment ("FTA") on 30 November 2021 and his non-selection for three Job Openings.

Legal Principle(s)

When reviewing administrative decisions of the Secretary-General, there is a presumption that the official functions have been regularly performed.

The Respondent has a minimal burden of proof to justify his actions in administrative matters. Once discharged, the burden shifts to the staff member who must show the contrary through clear and convincing evidence.

In reviewing administrative decisions regarding appointments and promotions, the factors to be considered are: (1) whether the procedure as laid down in the Staff Regulations and Rules was followed; (2) whether the staff member was given fair and adequate consideration, and (3) whether the applicable Regulations and Rules were applied in a fair, transparent and non-discriminatory manner.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Koura

Entity

UNAMID

Case Number(s)

UNDT/NBI/2022/048

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

14 Dec 2023

Duty Judge

Judge Sikwese

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Burden of proof

Full and fair consideration

Staff selection (non-selection/non-promotion)

Applicable Law

Staff Regulations

- Regulation 4.5(c)

Provisional Staff Regulations and Rules

- Rule 4.13(c)

TANU Statut du Tribunal

- Article 10.5(a)

UNDT Statute

Related Judgments and Orders

2011-UNAT-122

2021-UNAT-1090

2018-UNAT-847

2016-UNAT-642

2021-UNAT-1077

2021-UNAT-1135

2019-UNAT-902

2018-UNAT-868

2010-UNAT-084

2017-UNAT-742