

UNDT/2024/067, Schifferling

UNAT Held or UNDT Pronouncements

The Respondent discharged the evidentiary burden of minimal showing that the decisions regarding abolition of the Applicant's post leading to non-renewal of his fixed-term appointment and separation were lawful. The witnesses were credible, their evidence was cogent, reliable, consistent and corroborative. It was not contradicted in any meaningful manner. After examining the Applicant's and his witnesses' testimonies, the Tribunal was not convinced that the Applicant has made a clear and convincing case to rebut the presumption that the abolition of his post leading to the non-renewal of his fixed-term appointment and eventual separation was lawful.

It is clear that since the ASG/OICT did not have the delegated authority to speak on the renewal of the Applicant's fixed-term appointment, his statements, however construed by the Applicant, were ultra vires, made in error and did not bind UNOPS. The Applicant has not adduced any written material in which an express promise to renew his contract was made in order to substantiate his allegation that he had a legitimate expectation of renewal. He did not contradict the ASG/OICT that he was not a relevant decision-maker in UNOPS. Even in the absence of a written promise, the Applicant was not able to show that the circumstances under which the alleged express promise was made support a finding of legitimate expectation. He did not dispute the fact that the ASG/OICT's statements were unwarranted and of no legal effect considering that he had no authority to speak for UNOPS. Further, the circumstances under which the statements were made, that is, made verbally and generally at a town hall meeting targeting not any individual staff member, howsoever construed, do not constitute a firm commitment of contract renewal. Finally, the Applicant is precluded from drawing any conclusion of legitimate expectation from utterances made by an OICT staff member when it is his case that his employer was UNOPS.

The evidence did not disclose any discrimination and/or ulterior motive.

Decision Contested or Judgment/Order Appealed

The abolishment the Applicant's post, his separation from service, and the non-renewal of his appointment.

An organization has the power to restructure its departments or units to meet its operational requirements. In doing so, it has an obligation to act within the law. A staff member may therefore challenge the decision arising from a restructuring if it can be shown that it was unlawful. There are several grounds for challenging a decision resulting from a restructuring process.

Based on the circumstances of a case, an express promise of contract renewal made to a staff member is not an absolute necessity for a legitimate expectation to be created (see, *Loose* 2020-UNAT-1043).

The Appeals Tribunal found in *Nastase* that lack of funding would be an operational requirement necessitating an organizational restructuring (similarly, see, the Appeals Tribunal in *Nouinou, Abdeljalil* 2019-UNAT-960, *Abu Ouda* et al. 2020-UNAT-1018, and *Bantan Nugroho* 2020-UNAT-1042).

A staff member may plead the doctrine of estoppel where the Administration is alleged to have made a representation which a staff member reasonably relied upon to his/her detriment. Since this is an equitable remedy, a party relying on it must come to the Tribunal with clean hands (see, *Kortes* 2019-UNAT-925, para. 38).

Where discrimination is alleged, the onus is on the staff member to substantiate the allegation with evidence. Mere speculation is not enough (see, *Kisia* 2020-UNAT-1049, para. 38, *Najjar* 2021-UNAT-1084, para. 34, and *Azzouni* 2010-UNAT-081, para. 35).

The letter of appointment sets forth the “terms and conditions of the employment contract” (see, *Slade* 2014-UNAT-463, para. 26). This includes the salaries and compensation of the staff member. The organization, which offers a staff member a letter of appointment, is therefore also responsible for payment of the salaries and compensation.

There is always a presumption that official acts have been regularly performed. If the Administration is able to minimally show that the staff member was given full

and fair consideration, the burden shifts to the staff member to show that he or she was subject to an act of unlawfulness, unreasonableness or unfairness. The staff member must rebut the presumption of regularity through clear and convincing evidence. (See, for instance, the Appeals Tribunal in *Nastase*, para. 25, *Rolland* 2011-UNAT-122, para. 26, and *Lemonnier* 2017-UNAT-762, para. 32).

Regarding a review of a case concerning non-renewal of a fixed-term appointment, the law is clear under staff regulation 4.5(c) and staff rule 4.13(c), providing that a fixed-term appointment does not carry any expectancy of renewal.

In order to be binding the express promise or circumstances leading to a legitimate expectation should originate from an authorized official (see, for instance, *Houenou*, para. 26 and *Kazazi* 2015-UNAT-557, para. 35).

The Tribunal does not operate on an opinion because an opinion is subjective. The Tribunal is guided by only relevant facts and not opinions.

Legal Principle(s)

In *Nastase* 2023-UNAT-1367, the Appeals Tribunal underscored the law and the scope of judicial review in cases, like the present one, regarding abolition of post and non-renewal of a fixed-term appointment, which are two related but separate administrative decisions. The decision of separation from service is, on the other hand, solely a consequence of the appointment not being renewed and therefore not an independently reviewable decision. Therefore, the contested decisions for review in this application are the decision to abolish the Applicant's post leading to the second decision not to renew his fixed term appointment (hereinafter referred to as the contested decisions).

The law is settled that the Administration has broad discretion to reorganize its operations and departments to meet changing needs and economic realities (see, *Timothy* 2018-UNAT-847, para. 25 and *Russo-Got* 2021-UNAT-1090, para. 29).

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Schifferling

Entity

UNOPS

Case Number(s)

UNDT/NY/2022/057

Tribunal

UNDT

Registry

New York

Date of Judgement

30 Sep 2024

Duty Judge

Judge Sikwese

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Arbitrary or improper motive

Non-renewal

Applicable Law

Staff Regulations

- Regulation 4.5(c)
- Regulation 9.3

Staff Rules

- Rule 4.13(c)
- Rule 9.6(e)

Related Judgments and Orders

2023-UNAT-1367

2018-UNAT-847

2021-UNAT-1090

2023-UNAT-1359

2016-UNAT-660

2018-UNAT-825

2017-UNAT-780

2017-UNAT-721

2014-UNAT-411

2011-UNAT-153

2020-UNAT-1043

2019-UNAT-960

2020-UNAT-1018

2020-UNAT-1042

2019-UNAT-925

2020-UNAT-1049

2021-UNAT-1084

2010-UNAT-081

2014-UNAT-463

2010-UNAT-084

2011-UNAT-122

2017-UNAT-762

2015-UNAT-557

2024-UNAT-1433

2023-UNAT-1347