

2024-UNAT-1486, Abbas Abbas Koura

UNAT Held or UNDT Pronouncements

The UNAT noted that the staff member had been among the staff whose fixed-term appointments were not renewed due to the closure of the UNAMID mission.

With regard to his colleague who was laterally reassigned to the Headquarters and consequently remained in service, the UNAT found that the reassignment had been directly related to the undisputed fact that the colleague could not have been repatriated to Afghanistan for safety and security reasons. The UNAT was of the view that without the lawfulness of the reassignment decision having been placed before it for determination, it was unable to find that such reassignment had been irregular or unlawful.

The UNAT held that the staff member had no right to appointment or reassignment following the expiry of his fixed-term appointment. The UNAT found that his personal circumstances had been materially different from those of his colleague. The UNAT held that the staff member had failed to rebut the presumption of regularity. The UNAT noted that no nexus had been shown to exist between the non-renewal of his appointment and the reassignment of his colleague. The UNAT considered that a neutral, reasonable and informed bystander having regard to the facts, would not have held a reasonable apprehension that the Secretary-General had been biased.

The UNAT concluded that the contested decision had not been unlawful, unfair, unjust or motivated by bias, prejudice or improper motive and the UNDT had erred in finding differently.

The UNAT dismissed the staff member's appeal, granted the Secretary-General's appeal and reversed the UNDT Judgment.

Decision Contested or Judgment/Order Appealed

A former staff member contested a decision not to renew his fixed-term appointment.

In Judgment No. UNDT/2023/136, the UNDT rescinded the contested decision, awarded compensation in lieu of rescission in the amount of four months' net base salary and dismissed all other claims.

The Secretary-General and the staff member both appealed.

Legal Principle(s)

The Administration has broad discretion to reorganize its operations and departments to adapt to its economic vagaries and challenges.

In taking a decision, the Administration is under a duty to act fairly, justly and transparently, and is not to be motivated by bias, prejudice or improper motive.

There exists a presumption of regularity in respect of administrative acts, with it falling to the employee to rebut that presumption.

In deciding whether a staff member has suffered discrimination or been treated in a discriminatory manner, it falls to the UNDT to consider whether, considered objectively, that person has been treated differently to another in a way that is unfair and unwarranted, has the potential to impair their dignity as a person or affect them adversely in a comparably serious manner.

For conduct to have been prejudicial to a staff member it must be shown to have been harmful to them in circumstances in which this was unfair and unwarranted.

Outcome

Appeal dismissed on merits, Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Abbas Abbas Koura

Entity

UNAMID

Case Number(s)

2024-1895

2024-1897

Tribunal

UNAT

Registry

New York

Date of Judgement

20 Nov 2024

President Judge

Judge Savage

Judge Forbang

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discretionary authority

Bias/favouritism

Arbitrary or improper motive

Burden of proof
Oral hearings
Restructuring
Discrimination and other improper motives
Non-renewal
Procedure (first instance and UNAT)
Reassignment or transfer

Applicable Law

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 12.3(b)
- Rule 4.13(c)
- Rule 9.4

Related Judgments and Orders

UNDT/2023/136

2024-UNAT-1437

2019-UNAT-903

2011-UNAT-122

2021-UNAT-1090