

2024-UNAT-1505, Sara Delgado Castillo & Eva Fernandez

UNAT Held or UNDT Pronouncements

As a preliminary matter, the Appeals Tribunal dismissed the Appellants' requests for an oral hearing on grounds that an oral hearing would not be expeditious and that in light of comprehensive written submissions nothing would be gained from hearing the Appellants' counsel in person.

The Appeals Tribunal found that in the absence of an express promise of renewal of the Appellants' fixed-term appointments, the Appellants did not have a legitimate expectation of renewal of their fixed-term contracts. The statements giving assurances to UNOPS staff members were not made by a UNOPS official with the authority to renew the Appellants' fixed-term appointments, but by an official within OICT. As such, the assurances were incapable of creating legal obligations or of giving rise to a legitimate expectation by the Appellants of their renewal.

The Appeals Tribunal further held that the UNDT did not err in considering that UNOPS provided valid reasons for the abolition of the Appellants' posts. UNOPS was to lose its contracted work for OICT as a result of which UNOPS decided to abolish the posts that had been established to provide particular IT services to OICT. The fact that after their separation from UNOPS the Appellants were immediately hired by a private company to provide the same services to OICT was not, as alleged by them, a "legal fraud" committed by UNOPS. The Appeals Tribunal found that the Appellants' posts were not "converted" as opposed to having been abolished. The Appellants were no longer UNOPS staff members but contractors working for OICT. While OICT had an ongoing need for the services that the Appellants had performed, it could not sustain the cost of doing so through the agency of UNOPS by which the Appellants had been employed.

The Appeals Tribunal dismissed the appeals and affirmed the UNDT judgments.

Decision Contested or Judgment/Order Appealed

Ms. Fernandez and Ms. Delgado Castillo contested before the UNDT, by way of two separate applications, the decisions not to renew their respective fixed-term appointments beyond 31 August 2022 due to the abolition of their posts.

At the time of their separation from service, Ms. Fernandez and Ms. Delgado Castillo were part of a group of UNOPS staff members providing IT services to the Office of Information Technology Services (OICT) by means of Financial Agreements between UNOPS and OICT. Following their separation, Ms. Delgado Castillo and Ms. Fernandez immediately joined a private company, providing the same services to OICT.

By Judgment No. UNDT/2023/094 and Judgment No. UNDT/2023/1062, the UNDT dismissed the applications.

The UNDT found that the decisions not to renew the appointments were lawful. In particular, the UNDT found that Ms. Fernandez and Ms. Delgado Castillo failed to demonstrate that they had been promised a renewal of their fixed-term appointments; and that the reason provided by UNOPS for the non-renewal decisions was unlawful and unsupported by the facts. The UNDT also held that Ms. Fernandez and Ms. Delgado Castillo failed to demonstrate that any alleged procedural irregularities had rendered unlawful the abolition of their posts and, consequently, also the non-renewal decisions. Finally, the UNDT noted that Ms. Fernandez and Ms. Delgado Castillo did not present any evidence showing that the non-renewal decisions resulted from discrimination against them.

Ms. Fernandez and Ms. Delgado Castillo both filed separate appeals against the respective UNDT Judgments.

Legal Principle(s)

The statutory test for whether to depart from the default position of appeals being dealt with on the papers is set out in Article 18(1) of the UNAT's Rules of Procedure. The test is whether holding an oral hearing of the appeal will be both expeditious and fair in all the circumstances.

In order to create a legitimate expectation of a renewal of a contract after its expiration, assurances must have been given in writing to the affected staff and quite specific as to the duration of the promised renewal, and such assurances should be from someone having the authority to give them.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Sara Delgado Castillo & Eva Fernandez

Entity

UNOPS

Case Number(s)

2023-1868; 2023-1869

Tribunal

UNAT

Registry

New York

Date of Judgement

20 Dec 2024

President Judge

Judge Colgan

Judge Ziadé

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

No expectancy of renewal

Reason(s)

Oral hearings

Non-renewal

Procedure (first instance and UNAT)

Applicable Law

UNAT RoP

- Article 18.1

Related Judgments and Orders

UNDT/2023/094

UNDT/2023/106