

UNDT/2025/003, Ben Madi

UNAT Held or UNDT Pronouncements

When closely perusing the application, it clearly followed from the facts set out by the Applicant that the only administrative decision under appeal pursuant to art. 2.1(a) of the Statute of the Dispute Tribunal is the “non-renewal of [his] contract beyond 31 December 2023 due to lack of funds”. Accordingly, the issue under review in the present case can therefore be defined as the legality of this decision.

It explicitly followed from the contested decision that the non-renewal of the Applicant’s fixed-term appointment was “due to lack of funds”. The Appeals Tribunal has in various cases held that the lack of funding is a valid reason for not renewing a fixed-term appointment (see, for instance, *Nouinou* 2019-UNAT-902, para. 56, and *Abdeljalil* 2019-UNAT-960, para. 31). Regarded solely as a matter of law, the reason provided in the present case was therefore proper.

Considering the broad discretion enjoyed by the Administration in restructuring exercises (see *Koduro*, para. 26), UNFPA Libya, in principle, acted lawfully in deciding to maintain some but not all staff members whose posts were funded through fund code JPD56 by seeking funding elsewhere.

Accordingly, the Tribunal concluded that the contested decision was lawful as (a) lack of funding is a lawful reason for not renewing a fixed-term appointment, (b) the facts underpinning the contested decision have been established, and (c) the Applicant has failed to demonstrate that the contested decision was influenced by ill motivation.

The Ethics Office report constitutes nothing but hearsay evidence in the present case—as such, it only represents the Ethics Office’s legal and factual findings based on its own investigations and assessments and provides no direct evidence of the circumstances surrounding the contested decision (see, similarly, the Appeals Tribunal in *AAO* 2023-UNAT-1361, para. 59, regarding an investigation report authored by the Office of Internal Oversight Services). The Ethics Office report, if

anything, actually affirms that lack of funding was, as a matter of fact, the reason for not renewing the Applicant's fixed-term appointment.

The HR Director was correct when indicating in the 4 December 2023 letter that the Applicant's fixed-term appointment was not to be renewed due to lack of funds.

Decision Contested or Judgment/Order Appealed

The decision not to renew the Applicant's fixed-term appointment.

Legal Principle(s)

The Appeals Tribunal has held that: "It is well settled jurisprudence that an international organization necessarily has the power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts, and the redeployment of staff. The Appeals Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, even in a restructuring exercise, like any other administrative decision, the Administration has the duty to act fairly, justly, and transparently in dealing with staff members" (see, *Koduro*, para. 26, references to footnotes omitted).

Concerning the evidentiary burden in non-renewal cases, the Appeals Tribunal has determined that such cases are determined in accordance with the notion of presumption of regularity. This means that the Respondent first needs to establish with a minimal showing that the non-renewal decision was lawful, and if the Respondent succeeds, the Applicant must then rebut this minimal showing with clear and convincing evidence for the application to prevail (see, for instance, *Soliman* 2017-UNAT-788 and *Rolland* 2011-UNAT-122). "The standard of clear and convincing evidence is a finding of higher probability. There must be very solid support for the finding; significantly more evidence supports the finding and there is limited information suggesting the contrary" (see *Applicant* 2022-UNAT-1187, para. 64).

Whereas hearsay evidence is, in principle, admissible before the Dispute Tribunal, its evidentiary weight depends on the specific circumstances of the case. In this regard,

the Appeals Tribunal has held that “hearsay evidence is intrinsically unreliable and of little weight, unless substantially corroborated, because its probative value depends largely on the credibility of a person ... other than the person giving such evidence”. (See *Applicant* 2022-UNAT-1187, para. 73.)

According to the Appeals Tribunal, “[u]nder the well-established jurisprudence, the burden of proving any allegations of ill-motivation rests with the applicant” (see *Kisia* 2020-UNAT-1049, para. 38). The evidentiary burden is the preponderance of evidence, which is also known as the balance of probabilities (see *Chawla* 2024-UNAT-1423, para. 64, and *Applicant*, para. 63)

Outcome

Dismissed on merits

Outcome Extra Text

Whereas it is trite law that the Applicant must identify the contested administrative decision under review (see, for instance, *Planas* 2010-UNAT-049), the Appeals Tribunal has also held that self-represented applicants, such as the Applicant in the present case , are to be granted “some latitude ... in the interest of justice” if the grounds of appeal have not been identified (see, *Murad* 2020-UNAT-1025, para. 27).

The Appeals Tribunal has consistently held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”. To do so, “the Dispute Tribunal may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed”. See *Fasanella* 2017-UNAT-765, para. 20, which has been affirmed in many subsequent judgments, including *Dia* 2024-UNAT-1452, para. 40.

Even if a fixed-term appointment expires automatically and carries no expectancy of renewal, “an administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive” (see *Koduro* 2022-UNAT-1230, para. 30).

When deciding not to renew a fixed-term appointment, the decision maker must provide the affected staff member with a lawful reason that is supported by correct factual findings (see, for instance, *Ozturk* 2024-UNAT-1451/Corr.1, paras. 27-32, *Wathanafa* 2023-UNAT-1389, para. 40, *Obdeijn* 2012-UNAT-201, paras. 33-39, and *Islam* 2011-UNAT-115, paras 29-32).

Full judgment

[Full judgment](#)

Applicants/Appellants

Ben Madi

Entity

UNFPA

Case Number(s)

UNDT/NY/2024/011

Tribunal

UNDT

Registry

New York

Date of Judgement

20 Jan 2025

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Definition

Burden of proof

Arbitrary or improper motive

No expectancy of renewal

Reason(s)

Administrative decision

Non-renewal

Applicable Law

Staff Regulations

- Regulation 4.5(c)
- Regulation 4.13(c)

Staff Rules

- Rule 9.4

Related Judgments and Orders

2010-UNAT-049

2020-UNAT-1025

2017-UNAT-765

2024-UNAT-1452

2022-UNAT-1230

2024-UNAT-1451-Corr.1

2023-UNAT-1389

2012-UNAT-201

2011-UNAT-115

2017-UNAT-788

2011-UNAT-122

2019-UNAT-902

2019-UNAT-960
2023-UNAT-1361
2020-UNAT-1049
2024-UNAT-1423