

UNDT/2025/017, Kamel NK

UNAT Held or UNDT Pronouncements

The Respondent argued that the discontinuation of the Applicant's position was distinct from the non-renewal of his position. The Tribunal rejected this argument. The Tribunal found that the decision-maker linked the discontinuation of the Applicant's post with the non-renewal. The Tribunal held that the discontinuation and non-renewal were inextricably interrelated and therefore the application was receivable. The Respondent's argument that the claim was not receivable *ratione temporis* was rejected.

The Respondent's distinction, while perhaps academically correct, would make receivability no more than a word game in which choosing amongst various words in an administrative decision determined whether a staff member can seek judicial review of that decision. Given that the General Assembly has stressed the "importance of ensuring access for all staff members to the system of administration of justice" (see, e.g., A/RES/79/254), the Tribunal declined to play that game.

The Applicant presented no evidence to support his allegation that the contested decision(s) were not about budgetary constraints. Given the evidence in the record to the contrary, it was plainly obvious that the discontinuation decision was based on budgetary constraints.

The Applicant failed to present any evidence to substantiate his allegation that the contested decisions were part of a targeted effort to portray him as a burden to the unit.

The Applicant did not show that the contested decisions were either discriminatory or retaliatory. On the contrary, the record showed that the Administration went out of its way to assist the Applicant in addressing his shortcomings in numerous ways.

The Respondent complied with his duty to act fairly, justly, and transparently in the discontinuance and non-renewal decisions.

The Applicant alleged unjustified delays in processing his medical accommodation request. However, the record indicated that the request was handled relatively promptly by the Administration. In fact, any delays were frequently caused by the Applicant, including his delay in pursuing an evaluation to confirm his suspected medical condition, and later providing additional records.

The Applicant complained of contract renewal limitations and the deliberate alignment of this contract's expiry date with the effective date of his position discontinuation. With respect to the latter, it made eminent sense to align the discontinuation and non-renewal dates. Otherwise, a renewal would be ineffective if there were not an approved position for him to hold. Thereafter, the renewals were of a duration appropriate to their stated purpose.

Whether or not requesting a medical accommodation should be considered a protected activity is a matter of policy to be determined by the Administration.

The Tribunal found no fault with the Ethics Office decision to close the Applicant's complaint of retaliation .

Decision Contested or Judgment/Order Appealed

The Applicant contested the discontinuation of the post he encumbered and the non-renewal of his employment contract.

Legal Principle(s)

An international organisation necessarily has power to restructure some or all of its departments or units, including the abolition of posts.

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.

The law is clear that there is no expectation of renewal of fixed-term appointments. A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion.

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. This means that an applicant must show, by clear and convincing evidence, that the non-renewal decision was motivated by bias, prejudice or improper motive.

A non-renewal decision may be unlawful if the Administration abused its discretion or made an express promise creating an expectation of renewal.

The discontinuance decision and the concomitant non-renewal decision both required the Administration to act fairly, justly and transparently, and not from bias, prejudice, or improper motive.

The Appeals Tribunal's jurisprudence is consistent on allowing some latitude if an appellant is not legally represented.

Outcome

Dismissed on merits

Outcome Extra Text

Having found that the challenged decisions were proper, the Tribunal held that there was no basis on which to grant the Applicant any of the relief he sought and dismissed the application in its entirety.

Full judgment

[Full judgment](#)

Applicants/Appellants

Kamel NK

Entity

UNHCR

Case Number(s)

UNDT/NBI/2024/018

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

16 Apr 2025

Duty Judge

Wallace

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Ethics office

Jurisdiction / receivability (UNDT or first instance)

Non-renewal
Performance management
Definition
Retaliation
Subject matter (ratione materiae)
Temporal (ratione temporis)
Arbitrary or improper motive
Burden of proof
No expectancy of renewal
Reason(s)

Applicable Law

GA Resolutions
Laws of other entities (rules, regulations etc.)
Staff Rules

- Rule 4.13(c)

Related Judgments and Orders

2024-UNAT-1467
2014-UNAT-481
2024-UNAT-1499
2024-UNAT-1435
2021-UNAT-1084
2016-UNAT-660
2018-UNAT-844
2010-UNAT-061
2024-UNAT-1486
2017-UNAT-780
2013-UNAT-341
2011-UNAT-138
2011-UNAT-153
2011-UNAT-115
UNDT/2010/091
2022-UNAT-1300
2012-UNAT-236

2013-UNAT-281

2016-UNAT-705

2015-UNAT-592

2012-UNAT-261

2015-UNAT-503

2015-UNAT-522

2020-UNAT-981

2019-UNAT-903

2011-UNAT-122

2013-UNAT-341

2010-UNAT-091