

2023-UNAT-1367, Mihai Nastase

UNAT Held or UNDT Pronouncements

The UNAT considered an appeal by the staff member.

The UNAT found that the staff member had merely made unsubstantiated general claims about having the requisite skills and experience for his post to be retained.

The UNAT was of the view that, as the UNDT had correctly held, the staff member had failed to discharge the evidentiary burden to rebut the presumption of regularity that arose from the minimal showing of a rational basis for the decision.

The UNAT found that the record confirmed that there was a genuine restructuring that led to the retrenchment of 29 staff members.

The record also showed that the abolition of particular posts depended on the requirements of the clients of UNOPS. Lastly, the fact that he had been placed on performance improvement plan was not per se an indication of bias, or clear and convincing evidence that the rationale to abolish his post was unreasonable.

The UNAT noted that it was immaterial whether the rationale for the contested decision had been formulated in writing after taking that decision; it provided no compelling indication of any impropriety.

The UNAT dismissed the appeal and affirmed Judgment No. UNDT/2022/061.

Decision Contested or Judgment/Order Appealed

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

In Judgment No. UNDT/2022/061, the UNDT dismissed his application. The UNDT accepted that the decision to abolish the P-3 post, encumbered by the staff member, instead of a P-2 post, had been rational and that the Administration had properly

exercised its discretion. The UNDT found that the staff member had been given fair and adequate consideration and that he had failed to adduce clear and convincing evidence of improper motive or bias sufficient to rebut the presumption of regularity.

Legal Principle(s)

Restructuring may justify the termination of employment on grounds of operational requirements. The abolition of a post resulting from a reorganization or effectuated on the grounds of operational requirements therefore usually constitutes a valid substantive reason for non-renewal of an appointment or not extending a fixed-term appointment.

A non-renewal of a fixed-term appointment can be challenged on the grounds of procedural irregularity or that the staff member had a legitimate expectation of renewal or that the decision was arbitrary or motivated by bias, prejudice or improper motive.

The UNDT should not interfere with an organizational restructuring exercise unless there is evidence that the discretion was exercised unreasonably, unlawfully or without due process. If the Administration is able to minimally show that the staff member was given full and fair consideration, then the evidentiary burden shifts to the staff member to show that he or she was subject to an act of unreasonableness or unfairness.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Mihai Nastase

Entity

UNOPS

Case Number(s)

2022-1722

Tribunal

UNAT

Registry

New York

Date of Judgement

31 Jul 2023

President Judge

Judge Murphy

Language of Judgment

Inglés

Issuance Type

Judgment

Categories/Subcategories

Termination

Reasons

Bias/favouritism

Discretionary authority

Non-renewal

Abolition of post

Administrative decision

Discrimination and other improper motives

Applicable Law

Staff Rules

- Rule 4.13(c)

Staff Regulations

- Regulation 4.5(c)

Related Judgments and Orders

UNDT/2022/061

2017-UNAT-768

2011-UNAT-122