



**Before:** Judge Francis Belle

**Registry:** Geneva

**Registrar:** René M. Vargas M.

FERNANDEZ CARRILLO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Elizabeth Gall, UNDP

## **Introduction**

1. On 4 January 2019, the Applicant, a former staff member of the United Nations Development Programme (“UNDP”), based in Nepal, filed an application to contest the decision not to renew her fixed-term appointment beyond the date of its expiration.
2. The Respondent replied that the application was without merit.
3. Having reviewed the evidence in this case along with the parties’ submissions, the Tribunal finds that the contested administrative decision was lawful and dismisses the application for the reasons stated below.

## **Relevant facts**

4. On 12 December 2017, the Applicant was informed that the Rule of Law project would be replaced by a new phase of the Rule of Law program with more limited resources. The Applicant’s post was to be extended for an additional six months to facilitate the transition to the new phase of the project.
5. The Applicant’s fixed-term appointment was extended by six months, from 1 January to 30 June 2018.
6. The Applicant was on certified sick leave for several periods of time from 21 December 2017 to 10 April 2018 and went on maternity leave from 11 April 2018 to 31 July 2018.
7. To allow the Applicant to complete her maternity leave, the Applicant’s fixed-term appointment was extended beyond its expiration date of 30 June 2018 until 12 August 2018, and the Applicant separated from the Organization on that date.

## **Consideration**

### *Applicable law*

8. Staff regulation 4.5(c) and staff rule 4.13(c) both provide that a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal.

9. In *Agha* 2019-UNAT-916, at paras. 16-17, the Appeals Tribunal recapitulated its long-standing case law concerning challenges of decisions not to renew fixed-term appointments stating that it is a well-established principle that fixed-term appointments do not carry an expectation of renewal. It stated that separation as a result of expiration of a fixed-term appointment takes place automatically, without prior notice, on the expiration date specified in the letter of appointment.

10. It recalled, however, that a 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. The Appeals Tribunal finally recalled that it is an applicant's burden to prove such factors played a role in the contested administrative decision.

### *Discussion*

11. By memorandum dated 8 August 2018, the UNDP Resident Representative in Nepal notified the Applicant that the project Rule of Law, for which the Applicant was the Chief Technical Advisor, was closed and, therefore, her post was abolished as of June 2018. The memorandum further explains that the project was initially scheduled to close in December 2017 but was extended until June 2018 with reduced personnel and limited activities given the available financial resources. Accordingly, the Applicant was informed that her fixed-term appointment was not renewed beyond the completion of her maternity leave on 12 August 2018.

12. In the application, the Applicant raises several grounds to contest the decision not to renew her fixed-term appointment, which concern both the abolishment of her post and her right to be appointed to a post within the Organization at the completion of her maternity leave. The Tribunal will review these grounds in turn.

*Was the decision to abolish the Applicant's post lawful?*

13. The Applicant first disputes the reasons provided by the Administration for the abolishment of her post as Chief Technical Adviser of the Rule of Law project at the UNDP office in Nepal. She states that even though the 8 August 2018 memorandum states that the reason for the non-renewal of the fixed-term appointment is the closure of the Rule of Law project and subsequent abolishment of her post in June 2018, previous discussions within UNDP management had indicated that her functions would still be needed beyond that date. The Applicant claims that her appointment was extended for six months in December 2017 while most of the operations had already been completed and the level of work during that time was low. In the Applicant's view, this fact indicates that her post was selected for downsizing not because her functions were no longer needed but because she was absent from the office on medical and maternity leave. The Applicant finds it "illogical" that the new project on Access to Justice, that was to replace the Rule of Law project, which still targets women and other vulnerable population, excludes her from its structure even though she is the only woman with managerial responsibilities.

14. The Applicant further argues that she was not consulted on the restructuring of the Rule of Law project because she was on sick and maternity leave.

15. The Respondent replies that the Rule of Law project ended on 31 December 2017 as scheduled. The end of the project was followed by a limited extension pending the creation and implementation of the new Access to Justice project. The Applicant's post was funded from a separate fund for that intervening period.

16. The Respondent further explains that in June 2018, the new project on Access to Justice was endorsed by UNDP and its partners. The new project had a significantly lower budget than the Rule of Law project and was composed of 11 positions, compared to 26 in the preceding project.

17. The Respondent further states that the Access to Justice project focused on enhancing access to justice for the vulnerable social categories and its needs would be better met with a position specifically focused on this subject matter. Moreover, considering that all the established outputs of the project incorporated a gender component, the project was to be supported by a gender dedicated position, that of the Gender Equality and Social Inclusion Officer rather than the Applicant's Chief Technical Advisor post.

18. The Respondent argues that given that the Rule of Law project was not restructured but ended as scheduled, the Applicant had no right to be consulted on the abolition of the post she encumbered, and the development of a new project does not give rise to any rights for the Applicant.

19. The Applicant responds that her position was also conceived to provide support in various areas of access to justice and, therefore, given that she has more professional experience than the Access to Justice Specialist (P-4 level) and her managerial experience, it would have been more reasonable to retain her position for the newly created project.

20. She goes on to state that the structure of the new project was inconsistent, in her view, with the work plan approved shortly after her appointment was renewed for the last time. The Applicant contends that the reason for this departure was that she was on leave at the time.

21. In *Loeber* 2018-UNAT-844, at para. 18, the Appeals Tribunal recalled its well settled jurisprudence that the Administration has 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. It is not the role of the Tribunal to interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, the Appeals Tribunal also recalled that 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.

22. Furthermore, it is the long-standing jurisprudence of the Appeals Tribunal that the role of the Dispute Tribunal is to determine if an administrative decision is legal, rational, procedurally correct, and proportionate. But it is not its role to consider the correctness of the Administration's choice amongst the various courses of action available. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General (*Sanwidi* 2010-UNAT-084, para. 40).

23. The Tribunal notes that the Applicant has different views on how the new project of Access to Justice should have been structured in accordance with its stated goals. She therefore has different views with respect with the role that she could have played in it. However, she fails to provide evidence of ulterior motive or bias on the side of the Administration.

24. The evidence rather shows that the Applicant's post was abolished when the project to which it was attached ended in December 2017, and that her contract was extended for an additional period of six months to cover the limited extension of the project pending the creation and implementation of a new project.

25. Given that the role of the Tribunal is not to decide whether the Administration chose the best course of action among those available to it and in the absence of evidence of illicit motive, the Tribunal finds that the decision to abolish the Applicant's post was lawful.

26. The Tribunal further recalls that in *Obdeijin* UNAT stated the relevant principle applied in non-renewal cases to be:

“As a general principle, a staff member bears the burden of proof of showing that a decision was arbitrary or tainted by improper motives. However, the Administration’s refusal to disclose the reasons for the contested decision shifts the burden of proof so that it is for the Administration to establish that its decision was neither arbitrary nor tainted by improper motives.”

27. The Tribunal finds that the administration has given reasons for the non-renewal of the Applicant’s contract and has shown that the decision was neither arbitrary nor improper.

*Did the Applicant have a right to “return to work” at the completion of her maternity leave?*

28. In sum, the Applicant submits that under the Organization’s policies and international human rights and labour standards, at the completion of her maternity leave she had a right to a guaranteed return to work to the same position or an equivalent one. She refers to Convention No. 156 of the International Labour Organization (“ILO”) protecting workers with family responsibilities.

29. The Applicant further asserts that under Convention No. 183 of the ILO, the burden of proving that the reasons for her dismissal are unrelated to pregnancy lies with the employer. She states further that had the Administration decided to open a selection process with revised terms of reference, she could have had the opportunity to apply and preserve her career with the Organization.

30. The Tribunal notes that the Conventions referred to by the Applicant are not applicable to the United Nations. Moreover, contrary to the Applicant’s assertions, her contract was not terminated but expired. Therefore, under staff regulation 4.5(c) and staff rule 4.13(c), she had no expectation of renewal. The Tribunal further notes that

the Administration did not have any obligation to take steps to retain the Applicant at the end of her maternity leave. Under staff rule 9.6(e), the Administration is only duty bound to make efforts to retain staff members whose appointments have been terminated and under a determined order of preference where fixed-term appointments rank third. As the Applicant's fixed-term appointment was not terminated but expired, there was no obligation on the Administration to seek to retain her.

31. The Tribunal is therefore not satisfied that the Applicant showed that the non-renewal of her fixed-term appointment beyond its expiration date was unlawful.

**Conclusion**

32. In view of the foregoing, the Tribunal DECIDES:

The application is dismissed.

*(Signed)*

Judge Francis Belle

Dated this 3<sup>rd</sup> day of November 2020

Entered in the Register on this 3<sup>rd</sup> day of November 2020

*(Signed)*

René M. Vargas M., Registrar, Geneva