

Case No. UNDT/NY/2019/010

Order No. 35 (NY/2019)

Case No. UNDT/NY/2019/010

Order No. 35 (NY/2019)

decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

6. For the Tribunal to grant an application of suspension of action during management evaluation, all three cumulative substantive criteria *prima facie* unlawfulness, particular urgency, and irreparable damage must therefore be fulfilled.

Scope of the case and receivability

7. From the outset, the Tribunal notes that, in his present application, the Applicant only appeals (a) the decision not to renew his contract beyond 6 March 2019 and (b) the correlated decision not to grant him a termination indemnity. The Applicant does not challenge the underlying decision of abolition of post, including the rationale and reason(s) provided therefor.

8. In this regard, in support of his application for suspension of action pending management evaluation, the Applicant submits that the contested administrative decisions are unlawful because a disguised abolition of the post depriving [the Applicant of his] rights under [s]taff [r]ule 9.6(e) (that is right to be

assignment with the country office in Venezuela will end. Please note that this extension has been granted specifically to allow for a proper professional and personal transition.

As you are aware, in accordance with the Staff Regulations and Rules, a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service.

Although your contract expires automatically and without prior notice on the expiration date specified in your letter of appointment, our usual practice is to notify staff members of the non-renewal of their contracts at least one month before the expiration date. I trust that this notice will allow you to plan accordingly for a proper transition.

14. In a communication dated 19 December 2019 from the Applicant to the acting UNDP Resident Representative in Venezuela, the Applicant, *inter alia*, requests that (a) the decision not to renew her fixed-term appointment be reconsidered and that her contract be extended to at least 31 June 2019 and (b) that UNDP would consider her

15. In a communication dated 16 January 2019, the acting UNDP Resident Representative in Venezuela responded to the Applicant as follows:

I write to you in reference to your letter of 18 December 2018, in which you request a reconsideration of the decision you received on the non-renewal of your contract.

In this regard, we take note of the arguments you raised. However, I wish to inform you that the decisions are based on the rules in effect at the time they are taken and that they apply to all staff, regardless of the specific circumstances of the countries in which they are to be implemented.

As you were informed, despite the fact that your contract expired on 31 December 2018, it has been extended until 6 March 2019 to give you more time to make a personal and professional transition. We do, nevertheless, understand the difficult situation you are experiencing.

16. The Tribunal observes that for fixed-term appointments, staff rule 4.13(a), in general, provides that A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service,

and art. 13.1 of its Rules of Procedure, the application for suspension of action cannot be granted.

26. In light of the above, the Tribunal rejects the application for suspension of action.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 14th day of February 2019