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Case No.: UNDT/GVA/2012/069

Judgment No.: UNDT/2013/019





establishes the Administration's bad faith. Such a practice leads to results which are quite unfair.

11. The Respondent's contentions are:

a. The Applicant's appointment was not terminated; it ran its full term and expired. Termination is the premature ending of an appointment prior to the expiration of its fixed term. It is distinguished from an expiration of appointment and this is reflected in the terms of appointment of the Applicant's fixed-term contract and in the Staff Rules; rules 9.4 and 9.6 clearly distinguish between the two situations. Rule 9.6 (b) states that separation as a result of expiration of appointment shall not be regarded as a termination. Rule 9.4 provides that a fixed-term appointment shall expire automatically. It follows that separation from service by reason of

e. Thus, the principle of the equality of staff members was not violated since their situations were different.

#### Consideration

12. Rule 9.6 (b) of the Staff Rules provides that:

(b) Separation as a result of resignation, abandonment of post, expiration of appointment, retirement, or death shall not be regarded as a termination within the meaning of the Staff Rules.

13. Annex III to the Staff Rules ("Termination indemnity") states:

(d) No indemnity payments shall be made to:

...

18. The Tribunal must recall this jurisprudence. Where the conditions for the granting of an indemnity are established in a rule, the Secretary-General is required to apply the rule in force. The Administration has no discretionary power to grant or deny such an indemnity. The fact that it may, in some cases, have applied the current rules incorrectly in no way entitles other staff members to the same treatment. Only where the Secretary-General has discretionary power does the rule that staff members in the same situation must be treated equally apply. In this case, he had no such power and the Applicant cannot invoke the principle of equal treatment. Therefore, her request that the Tribunal order the Respondent to produce the documents concerning the appointment of other UNMIK staff members must be rejected since the production of these documents could in no way affect the outcome of the dispute.

19. The Applicant also maintains that the Administration had led her to hope that she would receive the disputed termination indemnity. But no document in which the Administration undertook to grant such an indemnity, or even gave her reason to hope to receive it, has been placed in the case file.

20. Therefore, the application must be rejected.

#### Conclusion

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

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 14<sup>th</sup> day of February 2013

Entered in the register on this 14<sup>th</sup> day of February 2013

(Signed)

René M. Vargas M., Registrar, Geneva