



Federation of International  
Civil Servants' Associations

**Benjamin D. Katzenberg, Esq.**  
**Attorney, member of the New York State Bar**  
**Member of the Roster of FICSA Legal Advisers**

---

## **Downsizing in International Organizations :**

### **Rights and Protections Under ILOAT Case Law**

#### **Introduction**

Due to system-wide downsizing measures, international civil servants are facing an unprecedented crisis of unemployment.<sup>1</sup> The term “reform” is the current euphemism of choice applied to the mass lay-offs and involuntary relocation orders disseminating throughout the international civil service. In many cases, the lay-offs resulting from these “reforms” are a catastrophe of epic proportions for the staff members and their families.

This tip of the month will inform international civil servants under the jurisdiction of the Administrative Tribunal of the International Labour Organization (ILOAT) of their rights, the law, and the tools that they can use to protect themselves.

#### **Part I: Terminations resulting from restructuring**

An institution may reorganize itself completely or one or some of its departments. This also covers changes in the job descriptions which result in redundancy.<sup>2</sup> When such a restructuring results in the dismissal of the individual staff member, at least three procedures must have taken place: **(1)** The Organization’s management must have decided that the restructuring was necessary, and such a decision must be cogently motivated; **(2)** The Organization must have evaluated the staff member’s post, objectively, as one of those which must be eliminated in the interests of the Organization; and **(3)** The Organization must take an individual decision to dismiss the affected staff member that respects all of their rights under their terms of employment, which, in addition to the contract and the staff regulations, encompass the jurisprudence of the ILOAT and the general principles of law applicable to the international civil service.

The rules applicable overlap a great deal with those governing the abolition or suppression of posts.<sup>3</sup>

---

<sup>1</sup> *Global Issues*, “UN 80 Restructuring: No Office or Agency will be Exempted from Staff Layoffs”, June 2025.

<sup>2</sup> Judgment 2510, Consideration 10; and Judgment 2742, Consideration 34.

<sup>3</sup> Judgment 5147, Consideration 4.

1. Under ILOAT case law, as a general rule, staff members have the right of access to all evidence upon which the competent authority bases its decision to dismiss them.<sup>4</sup> In cases of dismissal on grounds of restructuring, this means in practice that staff have a right to the evidence the organization relied on to decide a restructuring was necessary, as well as to the evidence relied on to determine that the abolition of their posts, and their dismissal, were necessary consequences thereof.
2. Any decision to abolish a post must be based on objective grounds and its purpose may never be to remove a member of staff regarded as unwanted. Disguising such purposes as a restructuring measure would constitute abuse of authority.<sup>5</sup>

International organizations generally have the legal right to restructure their operations when they believe it is necessary to improve efficiency, reduce costs, respond to budgetary pressures, or reorganize institutional priorities. This can include merging departments, redistributing functions, reducing staffing levels, or abolishing posts entirely. The leadership of an organization is given broad discretion in deciding how to manage and organize the institution, and the ILOAT will not substitute its own judgment for that of management. In other words, the Tribunal will not normally decide whether the reorganization itself was a “good idea” or a “bad idea.”

However, the organization’s discretion is not unlimited. Even during periods of downsizing or institutional reform, the organization must still comply with its legal obligations and respect the rights of staff members. The Tribunal *will* therefore examine whether the restructuring process was carried out lawfully. This includes reviewing whether: (1) The correct procedures were followed; (2) Whether the proper authority made the decision; (3) Whether the decision was based on accurate facts and sound legal reasoning; and (4) Whether the organization acted honestly and in good faith rather than for an improper purpose.

One of the most important principles established in the case law is that an organization cannot falsely use a “restructuring” as a pretext to remove a staff member it no longer wants for unrelated reasons.<sup>6</sup> If the dismissal allegedly due to restructuring is, in fact, being used as a hidden disciplinary measure, an act of retaliation, or a disguised attempt to target a particular employee, the Tribunal may find that the organization committed an abuse of authority. In such circumstances, the decision can be declared unlawful even if it was formally presented as part of a restructuring exercise.

Staff members also retain important procedural rights during downsizing processes. When a post is abolished, the affected employee must generally receive proper notice, a genuine explanation of why the position is being eliminated, and a meaningful opportunity to challenge the decision through the organization’s internal justice system. The Tribunal places particular importance on transparency and reasoned explanations because staff members cannot effectively defend their rights, assess whether the decision was lawful, or decide whether or not it makes sense to appeal unless they understand the real basis for the organization’s actions.

For staff members facing termination due to restructuring or downsizing, the main practical takeaway is that international organizations do have the legal authority to eliminate posts and reorganize their workforce, on large and small scales. However, they cannot do so arbitrarily,

---

<sup>4</sup> See Judgment 5156, Consideration 10; 4659, Consideration 4; 3295, Consideration 13; 3214, Consideration 24; and 2229, Consideration 3(b).

<sup>5</sup> See Judgments 4353, Consideration 6; and 3582, Consideration 6.

<sup>6</sup> *Ibid.*

secretly, discriminatorily, or abuse such processes as a cover to get rid of particular “unwanted” employees. Staff members remain entitled to fairness, transparency, due process, and good faith treatment throughout the process. Employees affected by downsizing should carefully preserve all communications and documentation relating to the restructuring, request written explanations for decisions affecting them, and pay close attention to applicable appeal deadlines. Where there are indications that a restructuring was used improperly to target a specific individual, legal advice should be sought promptly because such cases may involve abuse of authority or other violations of international administrative law.

## **Part II: Non-renewals of fixed-term contracts during downsizings**

Under the case law of the ILOAT, an important distinction exists between the termination of an ongoing appointment and the non-renewal of a fixed-term contract. This distinction, to some extent, significantly affects both the scope of the organization’s obligations and the procedural protections available to the staff member.

The Tribunal has consistently held that a staff member serving under a fixed-term contract generally does not possess a right to renewal of the contract beyond its expiry date. In principle, a fixed-term appointment ends automatically upon the expiration of its agreed term, and the organization retains broad discretion in deciding whether or not to renew it. Because of this, a non-renewal is not treated in exactly the same manner as a dismissal or termination of an appointment before its agreed expiry date. An important exception to is the doctrine of legitimate expectation, whereby a staff member on a fixed-term contract who has a valid reason to believe that their contract will be renewed *does* become entitled to the renewal, and thus will occupy a position similar in law and fact to those on a continuing or permanent appointment during a downsizing and/or in respect of an abolition of post.

With due regard to the noted exception above, staff members whose fixed-term contracts are simply allowed to expire generally lose certain protections that would ordinarily apply in cases of termination. Most importantly, they usually lose any right to continued employment beyond the contract’s expiry date. Organizations are generally not required to prove the same level of operational necessity that would be required to abolish an occupied post held under a continuing or indefinite appointment. Similarly, a staff member whose contract expires naturally will often not be entitled to the same notice periods, termination indemnities, or redeployment protections that may apply when an organization affirmatively terminates an appointment early or abolishes a post occupied by a permanent or continuing staff member.

However, the organization’s discretion regarding non-renewal is still not unlimited. Even where a staff member has no entitlement to renewal, the Tribunal has repeatedly held that the decision not to renew must still comply with the general principles of international administrative law.<sup>7</sup> In particular, the organization may not rely on improper motives, abuse of authority, discrimination, retaliation, or materially incorrect facts. A non-renewal decision cannot lawfully be used as a disguised disciplinary measure or as a hidden mechanism to remove an employee for improper reasons while avoiding the procedural protections associated with formal disciplinary or termination proceedings.

Accordingly, staff members whose contracts are not renewed still retain several important rights. They retain the right to challenge a non-renewal decision that was tainted by bad faith, procedural unfairness, retaliation, discrimination, or abuse of authority. In many circumstances, they retain rights to transparency and access to at least the essential reasons

---

<sup>7</sup> Judgment 5144, Considerations 5-6.

underlying the decision, particularly where the non-renewal is alleged to be motivated by an abolition of post due to a restructuring.

The Tribunal has also recognized that when a non-renewal is closely connected to restructuring exercises, the organization may still be required to demonstrate that the restructuring was genuine and not merely a pretext for targeting a particular individual.<sup>8</sup> Thus, even in the context of fixed-term contracts, the principles discussed in the foregoing remain highly relevant: restructuring measures must still be objectively justified, undertaken in good faith, and free from ulterior motives.

At the same time, the Tribunal generally affords organizations greater latitude in non-renewal cases than in outright dismissal cases. A staff member challenging a non-renewal therefore often faces a higher practical burden in demonstrating that the decision was unlawful. The mere fact that a restructuring occurred, or that another person later performed similar functions, might not automatically establish illegality. Instead, successful challenges typically require evidence suggesting that the stated reasons for non-renewal were false, implausible, inconsistent, retaliatory, discriminatory, procedurally improper, or otherwise constituted abuse of authority.

In practical terms, this means that staff members on fixed-term contracts retain core protections against arbitrariness, retaliation, bad faith, and disguised disciplinary action, but they often lose the stronger expectation of continued employment and many of the substantive protections associated with the premature termination of an ongoing appointment.

### **Part III: Practical Guidance for Staff Members Facing Dismissal due to Downsizing**

For staff members facing termination or non-renewal allegedly linked to downsizing, early preparation and careful documentation are often critically important. Staff members who understand their rights and preserve relevant evidence are generally in a far stronger position to protect their interests. One of the most important first steps is to contact your Staff Association or Union as early as possible. In many organizations, staff representative bodies possess institutional knowledge concerning restructuring practices, internal appeal mechanisms, prior cases, and applicable entitlements that individual staff members may not be aware of. Staff Associations are also often familiar with recurring patterns of abuse or procedural irregularities that may arise during downsizing exercises. In some organizations, they may additionally provide legal referrals, direct legal assistance, or access to external counsel experienced in international administrative law.

Staff members should also determine immediately whether they have access to financial assistance or insurance coverage for legal representation. Some organizations maintain legal assistance funds through Staff Associations, while certain professional liability insurance policies or staff welfare schemes may partially reimburse legal fees incurred in employment disputes. Because appeal deadlines before internal tribunals are often short and strictly enforced, identifying available resources early can be extremely important.

Another highly advisable measure is the maintenance of a contemporaneous daily journal. Staff members should carefully record meetings, conversations, instructions, and events connected to the restructuring process, particularly where management's conduct appears unusual, retaliatory, inconsistent, or procedurally improper. Such notes should be factual, dated, and written as soon as possible after the relevant events occur. Contemporaneous records frequently

---

<sup>8</sup> *Id.*, Consideration 6.

carry substantial evidentiary value because they help establish timelines, identify witnesses, preserve details that may later be forgotten, and demonstrate patterns of conduct over time. The latter is particularly important because staff members bear the burden of proving bad faith and isolated incidents may not be enough to discharge this burden, while documented patterns of repeated malfeasance may be.<sup>9</sup>

Staff members should also preserve copies of all relevant documents and communications. This includes not only individual communications relating directly to their own employment situation, but also broader restructuring materials such as organizational announcements, policy memoranda, restructuring plans, budget documents, revised organizational charts, vacancy notices, emails concerning the restructuring exercise, and records relating to the abolition of posts or redistribution of functions. In many cases, evidence demonstrating inconsistency between the organization's stated rationale and its actual conduct may become highly significant.

Particular attention should be paid to preserving documents relating to the decision-making process itself. For example, staff members should retain performance evaluations, correspondence with supervisors, notices of abolition of post, redeployment discussions, interview records, and any written explanations concerning why their specific position was selected for elimination. Where possible, staff members should also preserve evidence showing whether their former duties continue to exist, have been reassigned to others, or have reappeared under different titles following the restructuring.

It is equally important for staff members to remain professional and measured throughout the process. Communications should be professional and amicable. Acrimonious or spiteful behavior may later be used against the staff member or complicate legal proceedings. Even where management's conduct appears improper, maintaining professionalism strengthens the staff member's credibility, and therefore their case, before internal appeal bodies and the Tribunal.

Finally, staff members should pay extremely close attention to applicable time limits. Internal review procedures and appeals within the international civil service system are often governed by strict filing deadlines, and failure to comply with them may permanently bar otherwise meritorious claims. Staff members should therefore seek advice promptly and avoid assuming that informal discussions with management or human resources will suspend or extend procedural deadlines.

#### Disclaimer

These resources and articles are provided for the convenience of FICSA members and do not constitute legal advice, are not intended to be a substitute for legal advice, and should not be relied upon as such. You should seek legal advice or other professional advice in relation to any matters you or your organization may have. The views expressed are those of the author(s) and do not necessarily reflect those of FICSA.

---

<sup>9</sup> Judgment 4937, Consideration 12 (for a definition); Judgment 4003, Consideration 15 (for an example of what constitutes evidence of bad faith); *and* Judgment 4691, Consideration 11 (for an example of repeated conduct over time as a means of proving bad faith).

