




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-210



**Liverakos
(Appellant)**
v.
**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Jean Courtial, Presiding Judge Sophia Adinyira Judge Kamal Singh Garewal
Judgment No.:	2012-UNAT-206
Date:	16 March 2012
Registrar:	Weicheng Lin

Counsel for Appellant: George G. Irving

Counsel for Respondent: Stéphanie Cartier

JUDGE JEAN COURTIAL, Presiding.

Synopsis

1. Mr. Panayiotis (Panos) Liverakos, who had been recruited under a fixed-term contract governed by the 200 series of the Staff Rules to a post in the United Nations Thessaloniki Centre for Public Service Professionalism (UNTC), contested the administrative decision not to renew his appointment, which had expired. The Appeals Tribunal considers that the United Nations Dispute Tribunal did not make any errors of fact resulting in a manifestly unreasonable judgment in finding that the reason given by the Administration for the decision not to renew the appointment, namely the strong likelihood that the Centre would close the following year owing to a lack of funding, was borne out by the record. The Appellant failed to submit sufficiently clear and convincing evidence that the desire to retaliate against him was a key factor in the decision not to renew his appointment. The Appeals Tribunal further considers that the Dispute Tribunal did not fail to exercise its jurisdiction by not considering whether the closure of the Centre was the result of serious mismanagement and irregularities. The appeal is dismissed.

Facts and Procedure

2. Mr. Liverakos was recruited to the post of Chief Technical Adviser at the United Nations Thessaloniki Centre for Public Service Professionalism (hereinafter "the Centre"), part of the Division for Public Administration and Development Management (DPADM), Department of Economic and Social Affairs, with effect from 11 October 2004. His contract, governed by the 200 series of the Staff Rules, was subsequently extended to 31 December 2005.

3. By letter dated 5 December 2005, the Director of DPADM informed the Minister of the Interior of Greece that, given the uncertainty about the financing of the Centre and the strong likelihood that its activities would cease at the end of 2005, Mr. Liverakos' contract, which was also due to expire at the end of 2005, would not be renewed. A copy of that letter was sent to the Appellant, whose employment did in fact come to an end on 31 December 2005. The Centre was closed on 31 October 2006.

4. Following several exchanges of correspondence between Mr. Liverakos and various departments within the United Nations concerning the management of the Centre; the Appellant's performance evaluation, which was carried out without his knowledge; and the manner in which his employment was terminated, Mr. Liverakos filed an appeal with the

Joint Appeals Board (JAB) on 21 August 2006. On 5 December 2007, The JAB adopted a report recommending that the appeal should be rejected and on 29 February 2008, the Deputy Secretary-General notified Mr. Liverakos of her decision to follow the Board's recommendation.

5. Mr. Liverakos submitted his application to the former United Nations Administrative Tribunal on 1 July 2008. Following the abolition of that court, the case was transferred to the Dispute Tribunal.

6. The Dispute Tribunal issued Judgment UNDT/2011/039 on 25 February 2011. It found that the reason given by the Administration for the non-renewal of Mr. Liverakos' appointment, namely the prospect of the Centre's imminent closure, was borne out by the documents on record, which did not show that the decision not to renew his contract had been taken in retaliation against Mr. Liverakos' criticism of the manner in which the Department of Economic and Social Affairs had managed the Centre. The Dispute Tribunal - which, moreover, found that the fact that the Centre had been closed as a result of mismanagement by the Department of Economic and Social Affairs had no bearing on the non-renewal of Mr. Liverakos' appointment - dismissed his application.

Submissions

The Appellant

7. Mr. Liverakos contends that the Dispute Tribunal failed to exercise the jurisdiction vested in it by failing to determine whether the United Nations and senior staff members from the Department of Economic and Social Affairs were liable for the mismanagement of the Centre, which led to the non-renewal of his contract.

8. Mr. Liverakos also argues that the Dispute Tribunal erred on questions of fact by failing to give sufficient consideration to the evidence that he submitted, which showed that the decision not to renew his contract was retaliatory. He maintains that senior staff members from the Department of Economic and Social Affairs thereby sought to get rid of a staff member whom they perceived as unwilling to dissuade the Greek Government from pursuing accountability for the mismanagement of the Centre, as demonstrated by the fact that an extremely negative evaluation of his performance was carried out without his knowledge and after his contract had expired.

The Respondent

9. The Secretary-General notes that a fixed-term appointment expires automatically and without notice and carries no expectancy of renewal. Mr. Liverakos had received no assurances of a possible renewal of his appointment.

10. The Secretary-General maintains that, as the Dispute Tribunal decided, the reason given by the Administration for not renewing the Appellant's appointment was substantiated. He adds that the Dispute Tribunal correctly declined to examine Mr. Liverakos' allegations concerning the mismanagement of the Centre and that it correctly concluded that the decision not to renew the contract was not motivated by retaliation.

11. Lastly, the Secretary-General maintains that the Dispute Tribunal correctly concluded that Mr. Liverakos' performance evaluation was immaterial to the non-renewal of his contract.

Considerations

12. The Appellant was recruited under a fixed-term contract governed by the 200 series of the Staff Rules. Staff rule 204.3 provided that this kind of temporary appointment did not carry with it any expectancy of renewal. However, it is clear from the established jurisprudence of the former United Nations Administrative Tribunal and of the Appeals Tribunal that while the Secretary-General has the discretionary power not to renew an appointment, he cannot misuse this power. There must be legal grounds for his decision.

13. After noting that in a letter dated 5 December 2005 and sent to the Appellant, the Director of DPADM had given as the reason for the decision not to renew his appointment the strong likelihood that the Centre would not be funded for 2006 and would have to cease its activities owing to a lack of agreement between the Department of Economic and Social Affairs and the Greek Government, the Dispute Tribunal considered that the genuineness of this reason was borne out by the record.

14. Contrary to the Appellant's contention, the Dispute Tribunal was in no way required to ascertain whether the closure of the Centre was a consequence of mismanagement or of any other factor since the primary purpose was not to get rid of the staff member. It follows that the Dispute Tribunal did not fail to exercise its jurisdiction by not ascertaining whether the closure of the Centre was the result of serious mismanagement and irregularities.

15. The Tribunal recognizes that the Appellant makes several troubling allegations. It is clear from the documents on file that he cooperated in the Office of Internal Oversight Services investigation into the mismanagement of the Centre and the offences that may have been committed by senior staff of the Department of Economic and Social Affairs; that an unusually severe evaluation of his performance was signed on 16 January 2006 without his knowledge; and that a vacancy announcement for his post of Chief Technical Advisor at the Centre was published after the termination of his employment. However, as the Dispute Tribunal noted, the post was not filled and the Centre was indeed closed in 2006. The Appellant failed to submit sufficiently clear and convincing evidence that the desire to retaliate against him was a key factor in the decision not to renew his appointment.

16. Thus, it does not appear that the Dispute Tribunal, which did not err on questions of law, made errors of fact resulting in a manifestly unreasonable judgment.

17. It follows from the foregoing that the appeal is unsubstantiated. It must be dismissed.

Judgment

18. Mr. Liverakos' appeal is dismissed.

Original and Authoritative Version: French

Dated this 16th day of March 2012 in New York, United States.

(Signed)

Judge Courtial, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Garewal

Entered in the Register on this 7th day of May 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar