UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2011-226

Schook

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Mary Faherty, Presiding Judge Sophia Adinyira Judge Luis María Simón
Judgment No.:	2012-UNAT-216
Date:	16 March 2012
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Phyllis Hwang

JUDGE MARY FAHERTY, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Steven Paul Schook on 24 June 2011 against Judgment No. UNDT/2011/083 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on 11 May 2011. The Secretary-General filed his answer on 4 August 2011.

2. It is not in dispute that Mr. Schook's appointment in April 2006 was a contract of limited duration which was extended twice before it expired on 31 December 2007. However, he seeks to challenge the ruling of the UNDT which upheld the decision of the Secretary-General not to renew his contract of limited duration and which held that the non-renewal constituted a proper exercise of the Secretary-General's discretion.

3. Quite properly, the starting point for the UNDT Judge was the well-established principle that contracts of limited duration carry no expectation of renewal. Indeed, as observed by the Dispute Tribunal, the Appellant did not contend that he was promised such renewal or that such was implicit in his course of dealing with the Administration.

4. The approach of the Dispute Tribunal Judge was to consider whether the reason given for the non-renewal constituted a proper exercise of the Secretary-General's discretion, given the known circumstances.

5. Having regard to the factual matrix which surrounded the decision reviewed by the Dispute Tribunal Judge, this Tribunal finds no error in the approach adopted.

6. In all the circumstances, we do not find that Mr. Schook has established grounds warranting the reversal of the Dispute Tribunal Judgment and the appeal is thus dismissed.

Facts and Procedure

7. Mr. Schook was appointed Principal Deputy to the Special Representative of the Secretary-General (PDSRSG) of the United Nations Interim Administration Mission in Kosovo (UNMIK), in April 2006. He held an appointment of limited duration under the 300 series of the former Staff Rules. It was extended twice and expired on 31 December 2007.

8. In 2007, the Office of Internal Oversight Services (OIOS) investigated allegations that Mr. Schook had engaged in misconduct and retaliation. Mr. Schook was interviewed in relation to these allegations in December 2007 and January 2008.

9. In August 2007, the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) investigated allegations that Mr. Schook engaged in contempt of court. On 26 September 2007, Mr. Schook held a press conference to affirm his innocence in light of the allegations against him. In October 2007, the Secretary-General approved a limited waiver of Mr. Schook's immunity in relation to the ICTY investigation.

10. On 15 December 2007, Mr. Schook was informed by the Under-Secretary-General for Peacekeeping Operations that his contract would not be renewed beyond 31 December 2007 and that he should return to New York immediately. He left Kosovo on 17 December 2007 and, on 31 December 2007, he separated from the Organization.

11. In a memorandum dated 24 April 2008 from the Director of the Ethics Office, Mr. Schook was informed that OIOS had found that he had not engaged in retaliation. In a letter from the Acting Director of the Investigations Division of OIOS, Mr. Schook was informed that OIOS had concluded its investigation and found that "there was an insufficient basis to conclude misconduct. However, [the Investigations Division of OIOS] noted that some evidence of certain aspects of [Mr. Schook's] behaviour, at the very least, created a perception of inappropriate conduct."

12. On 30 December 2008, the Secretary-General rejected Mr. Schook's request for administrative review of the decision not to renew his appointment and the manner in which the investigations were conducted by OIOS. On 5 February 2009, Mr. Schook challenged the non-renewal decision before the Joint Appeals Board (JAB). Mr. Schook's appeal was not considered by the JAB before its abolition on 30 June 2009, and his case was subsequently transferred to the UNDT. The UNDT originally rejected Mr. Schook's application as not receivable, but this decision was overturned by the Appeals Tribunal, which remanded the case to the UNDT for a consideration on the merits.

13. On 11 May 2011, the UNDT issued Judgment No. UNDT/2011/083. It concluded that the non-renewal decision constituted a proper exercise of the Secretary-General's discretion, as it was within "the Secretary-General's discretion to take action to address the negative

impact of allegations which could jeopardize the reputation and proper functioning of the Organization where those allegations concern the most senior officials of a United Nations body, like UNMIK".

Submissions

Mr. Schook's Appeal

14. Mr. Schook submits that, contrary to what the UNDT implied in the contested Judgment, he did not contest the decision not to renew his appointment, but rather the manner in which the separation was done. Mr. Schook submits that the non-extension of his appointment was an implicit confirmation of his guilt, which caused him irreparable personal and professional damage. The Secretary-General failed to act in a "timely and respectful fashion" and failed to choose any of the options available to him, which would have had the same impact on the mission while respecting his due process rights. He thereby abused his authority.

15. Mr. Schook also submits that while the UNDT noted that the two investigations by OIOS were carried out into allegations of misconduct and retaliation against him, these allegations were made against the UNMIK leadership, which also included the SRSG and the Legal Advisor. The UNDT further failed to mention that the press conference was discussed with, and approved by, the leadership of the Mission and DPKO headquarters in New York. This omission, he submits, gave the erroneous perception that he had held the press conference without approval.

16. Mr. Schook challenges the UNDT's finding that the negative consequences of the press conference were the reason for the Secretary-General's decision not to renew his appointment. Had the negative impact on the mission indeed been the primary concern, the Administration could have terminated his appointment much earlier, but another three months went by until his appointment expired.

17. Mr. Schook requests that his principal contentions be reconsidered as well as the compensation claims for the loss of income from 31 December 2007 until January 2009, during which time he had been unable to find employment.

Secretary-General's Answer

18. The Secretary-General submits that the UNDT correctly concluded that the non-renewal of Mr. Schook's appointment constituted a proper exercise of the Secretary-General's discretionary authority. An appointment of limited duration carries no expectancy of renewal.

19. The Secretary-General does not concur with the UNDT's finding that the reason for the non-renewal of Mr. Schook's appointment was the negative impact that allegations then made against Mr. Schook could have on the Organization, but he does not find it necessary to appeal the Judgment on this ground. He submits that the UNDT correctly concluded that there was ample evidence (newspaper articles) that the allegations against the Appellant resulted in negative publicity that undermined the effectiveness of Mr. Schook and UNMIK. The UNDT correctly concluded that the Organization took that factor into account.

20. The Secretary-General further submits that Mr. Schook's contention that the UNDT failed to consider the merits of his claim is contradicted by the discussion of these issues in the UNDT Judgment. Further, Mr. Schook's arguments regarding the UNDT's discussion of the negative consequences of the 26 September 2007 press conference do not establish any errors warranting a reversal of the Judgment. Contrary to Mr. Schook's contention, the UNDT did not only rely on the press conference, but it referred more generally to the allegations against Mr. Schook. In response to Mr. Schook's argument that the Secretary-General should have taken alternative action rather than not renewing his appointment, the Secretary-General submits that the UNDT properly declined to substitute its own judgment for that of the Secretary-General. Finally, the Secretary-General submits that Mr. Schook's allegation that the UNDT omitted certain facts were either not substantiated or did not constitute errors of fact resulting in a manifestly unreasonable decision.

21. The Secretary-General requests that the Appeals Tribunal affirm the contested UNDT Judgment and dismiss the appeal in its entirety.

22. The Secretary-General requests that the Appeals Tribunal order that the confidentiality of annex 3 to the Respondent's answer be maintained.

Considerations

23. It is not in dispute that Mr. Schook's appointment in April 2006 was a contract of limited duration which was extended twice before it expired on 31 December 2007. However, he seeks to challenge the ruling of the UNDT which upheld the decision of the Secretary-General not to renew his contract of limited duration and which held that the non-renewal constituted a proper exercise of the Secretary General's discretion.

24. Mr. Schook challenges the UNDT Judgment on a number of grounds, namely

-- that the UNDT limited its deliberations to the non-extension of his appointment, in isolation of the facts surrounding that decision;

-- that the UNDT, while acknowledging that the reason for the non-renewal was the negative impact on the Organization of media reporting of allegations made against Mr. Schook, failed to take into account that the manner of his non-renewal constituted an implicit confirmation of his guilt, thus causing damage to his personal and professional reputation, and in circumstances where ultimately no misconduct on his part was found;

-- that the UNDT failed to find that the Secretary-General could have addressed the non-renewal of his contract in a manner which would have alleviated or limited the damage to his personal and professional reputation;

-- the over-reliance placed by the UNDT on the press conference of 26 September 2007;

-- that the UNDT erred in finding that no abuse of authority on the part of the Secretary-General took place, in circumstances where Mr. Schook contends that the UNDT failed to take account of the fact that the Secretary-General could have achieved his objective otherwise than in the manner in which he did; and

-- that the UNDT made errors of fact sufficient to warrant a reversal of its Judgment.

25. Did the Dispute Tribunal limit its deliberations to the non-extension of Mr. Schook's contract in isolation of all other issues?

26. Quite properly, the starting point for the UNDT Judge was the well-established principle that contracts of limited duration carry no expectation of renewal. Indeed, as observed by the Dispute Tribunal, the Appellant did not contend that he was promised such renewal or that such was implicit in his course of dealing with the Administration.

27. In accordance with established case law principles, the Dispute Tribunal Judge observed that the administrative decision of the Secretary-General not to renew a contract of limited duration is subject to judicial review. Non-renewal has always been and must remain a distinct and challengeable administrative decision.

28. The UNDT found as a matter of fact that Mr. Schook had been given a reason for the non-renewal, namely "the negative impact that allegations then made against the Applicant could have on the Organization".[1]

29. From its consideration of the relevant documentation in the case, this Tribunal is satisfied that the Dispute Tribunal Judge correctly determined that a factual situation existed, namely the adverse publicity surrounding Mr. Schook's role as Principal Deputy to UNMIK, which informed the decision of the Secretary-General not to renew the contract.

30. The Dispute Tribunal's review of this factual situation by necessity involved a consideration of issues beyond the mere fact of the non-renewal of Mr. Schook's contract and thus this Tribunal finds no merit in the submission that the UNDT's deliberations on the issue of non-renewal took place in isolation of the facts surrounding the decision.

31. Did the UNDT fail to take account of the negative impact of the non-renewal on Mr. Schook's personal and professional life?

32. This Tribunal notes that the Dispute Tribunal considered Mr. Schook's argument that the allegations made against him were subsequently found not to be substantiated. The Dispute Tribunal found however that the decision not to renew the contract was concerned not with whether the allegations were true, but rather with the fact that such allegations were "being publically echoed".[2] Moreover, it found, in effect, that the issue could not be divorced

[1] *Schook v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/083, para. 30.
[2] *Schook v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/083, para. 34.

from the impact which, as contended by the Secretary-General, the allegations, irrespective of their accuracy, had on the future of "an extremely complex and politically sensitive mission",[3] given Mr. Schook's particular responsibilities as the second highest official in UNMIK.

33. The approach of the Dispute Tribunal Judge was to consider whether the reason given for the non-renewal constituted a proper exercise of the Secretary-General's discretion, given the known circumstances.

34. In *Sanwidi*, this Tribunal has stated:

> When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.[4]

35. As also enunciated in *Sanwidi*, what the Dispute Tribunal is conducting is a "judicial review" and not a "merit-based review".[5]

36. Recognizing that the Secretary-General's discretion is not unfettered and at the same time acknowledging the widespread media reporting of allegations against Mr. Schook in the period leading up to the expiry of his contract, the Dispute Tribunal, in assessing the Secretary-General's actions, applied the principle, inter alia, set out in *Bertucci*[6] that the Secretary-General in the exercise of his discretion could, in certain instances, take account of the effect of press articles and in the instant case the Dispute Tribunal Judge was of the view that it was "within the Secretary-General's discretion to take action to address the negative impact of allegations which could jeopardize the reputation and proper functioning of the Organization where those allegations concern the most senior officials of a United Nations

[3] *Schook v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/083, para. 34.
[4] *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.
[5] *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 42.
[6] *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-121.

body, like UNMIK, which is so exposed not only to local public opinion but also to international attention".[7]

37. Having regard to the factual matrix which surrounded the decision reviewed by the Dispute Tribunal Judge, this Tribunal finds no error in the approach adopted.

38. With regard to Mr. Schook's argument that the UNDT placed over-reliance on the press conference of 26 September 2007, this Tribunal finds no merit in this contention, being satisfied that it was but one element of the series of media interventions considered by the Dispute Tribunal Judge.

39. Mr. Schook contends that the UNDT erroneously implied that the non-renewal of the contract was being challenged whereas Mr. Schook maintains that what he challenged was the "manner" of his non-renewal.

40. With regard to the latter point, this Tribunal accepts the Respondent's submission that the Dispute Tribunal Judge considered both the reasons for the non-renewal of the contract, and the circumstances surrounding the making of the decision. Consequently Mr. Schook's contention is rejected.

41. Mr. Schook also contends that the UNDT Judgment should be set aside for the provision of "misleading, incomplete or inaccurate information". In this regard, Mr. Schook takes issue with the UNDT's failure, in its recitation of facts, to note that allegations had been made against others and not just against him. Moreover, he contends that the Judge failed to mention that the 26 September press conference had been "approved by both the leadership of the Mission and DPKO headquarters in New York".

42. On the issue of the failure, as contended by Mr. Schook, of the Dispute Tribunal Judge to make reference to the fact that the press conference had official sanction, this Tribunal notes the conflict between him and the Respondent as to the extent to which it was in fact sanctioned. However, we perceive no necessity to resolve this conflict since we are of the view that neither the failure of the UNDT to address the extent to which the press conference had been sanctioned nor the failure to record in its Judgment that allegations had

[7] *Schook v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/083, para. 32.

been made against others (who like Mr. Schook were subsequently cleared of wrongdoing) were omissions which constituted, on the part of the Dispute Tribunal, manifestly unreasonable decisions such as to impugn its Judgment.

43. In all the circumstances, we do not find that Mr. Schook has established grounds warranting the reversal of the Dispute Tribunal Judgment.

Judgment

44. The appeal is dismissed.

Original and Authoritative Version: English

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

(*Signed*)	(*Signed*)	(*Signed*)
Judge Faherty, Presiding	Judge Simón	Judge Adinyira

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

(*Signed*)

Weicheng Lin, Registrar