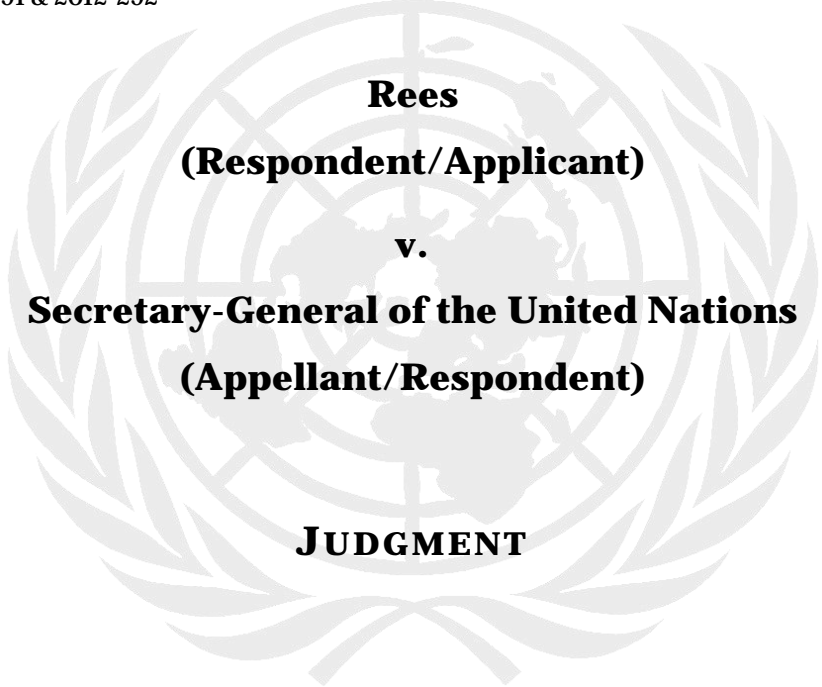




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case Nos. 2012- 291 & 2012-292



**Rees
(Respondent/Applicant)**
v.
**Secretary-General of the United Nations
(Appellant/Respondent)**
JUDGMENT

Before: Judge Sophia Adinyira, Presiding
Judge Luis María Simón
Judge Richard Lussick

Judgment No.: 2012-UNAT-266

Date: 1 November 2012

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Lyndon Barnes/Victoria Creighton

Counsel for Appellant/Respondent: Rupa Mitra/John Stompor

JUDGE SOPHIA ADINYIRA, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals filed by the Secretary-General of the United Nations against Judgment No. UNDT/2011/156 and Judgment No. UNDT/2011/201, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 6 September 2011 and 25 November 2011, respectively. The Secretary-General filed his appeals on 24 January 2012 and Ms. Madeleine Rees filed her answer on 9 March 2012.

Synopsis

Reassignment

2. The Secretary-General has broad discretion to reassign staff members. A reassignment is proper if the new post is at the staff member's grade; if the responsibilities involved correspond to his or her level; if the new functions are commensurate with the staff member's competencies and skills; and, if he or she has substantial professional experience in the field. None of these factors existed with respect to the position to which the Administration purported to reassign Ms. Rees. We therefore affirm the decision of the UNDT that the reassignment was unlawful.

Non-renewal

3. No staff member has the right to select his or her own supervisor. An organization is not compelled to retain a staff member who insists to stay on his or her post while refusing to report to a supervisor who he or she claimed had discriminated against him or her or created a hostile work environment.

4. The staff member has the right to seek redress through informal or formal complaint procedures pursuant to ST/SGB/2008/5. Ms. Rees was advised to submit a formal complaint of harassment against the Deputy High Commissioner for Human Rights (DHC) and the Director of the Research and Right to Development Branch (RRDB). Having failed to do so, her insistence on different reporting lines is without merit. She cannot insist on restructuring of the Organisation to suit her wishes.

5. In these circumstances, we hold that the High Commissioner for Human Rights (HC) properly exercised her discretionary authority not to renew Ms. Rees' fixed-term appointment. The appeal on this ground succeeds and the UNDT's order of rescission is set aside.

Compensation

6. Having held that Ms. Rees' non-renewal was lawful, we set aside the award of compensation as an alternative to rescission. Specifically, the amount of two years' net base salary plus the applicable post adjustment, entitlements and benefits, reduced by Ms. Rees' net take-home pay from 1 April 2010 to 31 March 2012, is hereby set aside.

7. Turning to the moral damages awarded by the UNDT, the UNDT took into account the period around the reassignment decision that caused most stress to Ms. Rees and awarded her four months' net base salary for moral damages. We consider the amount inadequate and enhance it to six months' net base salary.

8. The appeal succeeds in part. The Judgment of UNDT is varied.

Facts and Procedure

9. From November 1998, Ms. Rees was employed by the Office of the High Commissioner for Human Rights (OHCHR) as Chief of the office in Bosnia-Herzegovina, at the P-5 level. In 2006, she was laterally assigned by the then HC to the position of Coordinator, Women's Rights and Gender Unit (WRGU), in RRDB at OHCHR in Geneva. Her fixed-term appointment was renewed in 2008. At the time of the first contested decision, she held a fixed-term appointment which was due to expire on 31 March 2010.

10. From September 2006 to June 2009, Ms. Rees' immediate supervisor was the Chief of RRDB and, from January 2009, her second reporting officer was the Director of the Research and Right to Development Division (RRDD). From the beginning of her service, Ms. Rees had had no performance appraisals.

11. In September 2008, Ms. Navanethem Pillay was appointed as the new HC. A few days after taking office, she addressed a reception held for her by Equality Now. In her address, she stated that OHCHR had a Women's Rights and Gender Unit and that she had heard that it was not working well.

12. Ms. Rees and one of her colleagues met with the DHC a few days later and told her that their work was not being recognized at the senior management level.

13. On 6 October 2008, the HC received a full briefing from WRGU. At the meeting, the then Chief of RRDB and the DHC were also present. The DHC interrupted Ms. Rees' presentation, expressing "extreme displeasure and dissatisfaction". In November 2008, Ms. Rees met with the DHC to discuss the comments the DHC had made during the 6 October meeting. The DHC criticized Ms. Rees' work and attitude. According to Ms. Rees, the HC "expressed her confidence and approval" during a second meeting held in December 2008.

14. In January 2009, a new Director of RRDD took up her position. She was asked by the DHC to work closely with Ms. Rees to improve her performance, since her working relationship with the former Chief of RRDB had not been good.

15. In February 2009, the HC temporarily appointed the president of Equality Now as head of the New York office of OHCHR. Ms. Rees and the new head of the New York office had policy differences about a specific OHCHR project and, at the end of February 2009, Ms. Rees was told that the DHC did not want her to talk about these policy differences.

16. During a regular meeting of the executive and the senior managers, held on 10 March 2009, the DHC stated that the quality of the joint work plan prepared by WRGU for submission by OHCHR and the Division for the Advancement of Women to the Human Rights Council should be improved for the following year. This issue had not been raised with Ms. Rees before then. That same day, the Director of RRDD met with Ms. Rees to discuss matters that needed to be improved. She subsequently sent Ms. Rees a written summary of the discussion.

17. In Ms. Rees' written response, she stated that this was the first time that there had been a formal meeting to provide feedback in over two years and that she was concerned that the memo mentioned a potential non-renewal of her appointment.

18. Ms. Rees sought assistance from the OHCHR Staff Committee and saw a stress counsellor because she felt that the DHC was displaying open hostility towards her.

19. During a meeting held on 20 May 2009, the DHC expressed her discontent with respect to several aspects of Ms. Rees' work.

20. On 9 June 2009, Ms. Rees met with the Director of RRDD and two others. She had asked for assistance on how to deal with the situation with the DHC. The meeting however only covered WRGU management issues.

21. On 12 June 2009, the HC mentioned to Ms. Rees informally that it would be good for her to work full time on sexual orientation. On 15 June 2009, Ms. Rees, the Director of RRDD and a representative of the Staff Committee met to discuss the HC's decision to remove her from her position and to assign her to work on sexual orientation. Ms. Rees stated before the UNDT that she was also notified that it was unlikely that her fixed-term appointment would be renewed after its expiration on 31 March 2010 and that her planned mission to Colombia on 20 June 2009 would be cancelled.

22. On 17 June 2009, Ms. Rees was placed on sick leave. That same day, Ms. Rees received an invitation to attend a meeting with the HC and the DHC, which she advised she could not attend, given her illness. She then received a memorandum from the HC dated 18 June 2009, which notified her that, effective 1 July 2009, she would be reassigned from her position to a post specifically tasked with undertaking thematic research and advocacy on the issue of sexual orientation and human rights. Her supervisor would be the Director of RRDD.

23. On 22 June 2009, Ms. Rees requested the Secretary-General to review the decision to reassign her. That same day, she requested suspension of action before the Geneva Joint Appeals Board (JAB). By letter dated 30 June 2009, she was informed that the Secretary-General had accepted the JAB's recommendation to grant her request for suspension of action. On 6 July 2009, Ms. Rees requested management evaluation of the reassignment decision.

24. On 24 July 2009, Ms. Rees received the minutes of the 9 June meeting. She e-mailed the Director of RRDD, expressing her disappointment at their content and the "clear motivation behind it". She recalled that she had requested assistance on how to address the "intimidation and harassment from the DHC". The RRDD answered that she had seen no evidence of intimidation and harassment and pointed out that there were procedures available to raise such allegations.

25. Ms. Rees wrote to the Office of the Ombudsman seeking advice about options to redress harassment and discrimination against OHCHR staff. On 13 August 2009, the UNDT ordered a further suspension of action until Ms. Rees was informed about the result of the management

evaluation. That same day, Ms. Rees was notified that the Secretary-General had decided to uphold the decision to remove her from her post. However, that decision was to be coupled with a process of consultation and, failing a satisfactory outcome for both sides, she would be offered priority consideration for selection to suitable available vacancies.

26. On 21 August 2009, the HC wrote to Ms. Rees, advising that she intended to put into effect the original decision to reassign her and asking her to meet, upon her return to the office, with senior management to discuss her new post of Advisor on Sexual Orientation Issues. On 24 August 2009, Ms. Rees replied, challenging the HC's decision in light of the UNDT's suspension of action.

27. Between 23 September and 18 December 2009, the parties engaged in mediation under the auspices of the Office of the Ombudsman, which ultimately proved to be unsuccessful.

28. On 4 January 2010, Ms. Rees filed an application before the UNDT.

29. By memorandum dated 1 March 2010, Ms. Rees was given notice that her appointment would not be renewed beyond 31 March 2010. The memorandum stated that Ms. Rees had indicated that the post she had been offered was not acceptable to her and that she had not applied for any vacancies. She was told to advise if she were to apply for any vacancy in the future, so that "appropriate action" could be taken.

30. After Ms. Rees had left the Organization, the Director of RRDD asked the former Chief of RRDB to prepare a retrospective evaluation of Ms. Rees' performance.

31. On 29 April 2010, Ms. Rees requested management evaluation of the decision not to renew her appointment. On 14 June 2010, she received a negative reply and, on 9 September, she filed an application against this decision before the UNDT.

32. The UNDT disposed of both applications in Judgment No. UNDT/2011/156, which was issued on 6 September 2011. The UNDT found that the Secretary-General failed to consult with Ms. Rees in good faith or to comply with the performance review requirements of ST/AI/2002/3; breached Ms. Rees' due process rights; and, had no lawful basis for making decisions based on the assessment of Ms. Rees' performance.

33. The UNDT further found that the decision to reassign Ms. Rees was not a lawful exercise of the Secretary-General's discretion as the performance evaluation procedures had not been followed. The circumstances of her reassignment, including the decision to cancel Ms. Rees' mission, led to the impression that the action was being taken because of serious wrongdoing by her. The UNDT concluded that the decision was potentially prejudicial to her.

34. With respect to the non-extension of Ms. Rees' appointment, the UNDT found that it was not a valid exercise of the Secretary-General's discretion. The Secretary-General, while arguing otherwise, decided not to renew Ms. Rees' appointment based on her performance. The UNDT concluded that, in the absence of a PAS (Performance Appraisal System), the Secretary-General acted unlawfully when he did not renew Ms. Rees' appointment. Finally, the UNDT found that Ms. Rees had not been constructively dismissed.

35. The UNDT ordered the rescission of the decision to reassign Ms. Rees and the decision not to renew her appointment.

36. On 25 November 2011, the UNDT issued its Judgment on Compensation, Judgment No. UNDT/2011/201. The UNDT set the amount of compensation in lieu of rescission at two years' net base salary plus the applicable post adjustment, entitlements and benefits, reduced by any net take-home pay from 1 April 2010 to 31 March 2012. The UNDT also awarded four months' net base salary as compensation for moral damages. The UNDT ordered interest on these amounts. It also ordered the removal of a performance evaluation memorandum from Ms. Rees' Official Status File and placement of copies of its two Judgments in the case therein.

Submissions

Secretary-General's Appeal

On the reassignment decision

37. The Secretary-General submits that the UNDT erred in law and fact in finding that the decision to reassign Ms. Rees was unlawful. The Secretary-General has broad discretion to reassign staff members and a reassignment is proper if the new post is at the staff member's grade; the responsibilities involved correspond to his level; the functions to be performed are commensurate with the staff member's competencies and skills; and, he has substantial

professional experience in the field. The Secretary-General submits that the reassignment of Ms. Rees met all these criteria.

38. The Secretary-General submits that the UNDT erred in law and fact in concluding that the Organization had not provided a factual basis for finding that Ms. Rees was lacking in performance and failed to meet the relevant due process requirements. The Secretary-General lists numerous meetings and emails exchanged between 24 July 2008 and 9 June 2009, which demonstrate that “she was given ample notice about her performance”. Over a period of ten months, she was given “systematic, consistent, detailed feedback”. She had at least six meetings with the HC, the DHC and the Director of RRDD to discuss their concerns about her work. In those meetings, she had regular opportunities to ask for clarification, to explain her position, and demonstrate that she made efforts to remedy the situation. She, however, failed to accept the advice and to take the opportunity to make the suggested improvements.

39. The Secretary-General submits that the UNDT erred in law and fact in concluding that the absence of a formal appraisal under ST/AI/2002/3 automatically vitiated any decision by the Administration based on performance reasons, without considering that the absence of a performance appraisal was directly attributable to Ms. Rees who, despite numerous reminders, refused to initiate the performance appraisal process.

40. The Secretary-General contends that the UNDT erred in law and fact in concluding that the principal reason for the reassignment was Ms. Rees’ performance and in analyzing the validity of the reassignment decision solely on that basis. The UNDT erred in fact in failing to consider the second reason for the reassignment decision, which was the HC’s decision to focus more attention and resources on the issue of discrimination based on sexual orientation.

41. Finally, the Secretary-General submits that the UNDT erred in law and fact in finding that the reassignment decision was vitiated by the Organization’s alleged failure to consult with Ms. Rees, which, in turn, breached her due process rights. A staff member does not have a right to consultation prior to a reassignment decision. Also, in the present case, OHCHR undertook extensive discussions with Ms. Rees about her reassignment.

On the non-renewal decision

42. The Secretary-General submits that the UNDT erred in law and fact in concluding that the non-renewal decision was motivated by the managers’ assessment of Ms. Rees’ performance

and was unlawful in the absence of a completed performance appraisal. He submits that, given Ms. Rees' consistent refusal to take up her new reassignment; her refusal to report to her previous supervisor; and, her refusal to apply for other vacancies in OHCHR, the HC properly exercised her discretionary authority in deciding not to renew Ms. Rees' appointment.

43. The Secretary-General requests that the Appeals Tribunal vacate the aforementioned findings.

On compensation

44. Should the Appeals Tribunal uphold the Judgment on the Merits, the Secretary-General requests that it find that the UNDT erred in law and exceeded its competence in setting the amount of compensation in lieu of rescission; that the UNDT erred in law and fact in awarding moral damages; and, that it erred in law and fact and exceeded its competence to the extent that it awarded compensation in excess of two years' net base salary without a proper evidentiary basis to do so.

45. The Secretary-General requests that the Appeals Tribunal annul the Judgment on Compensation in its entirety.

Ms. Rees' Answer

On the reassignment decision

46. Ms. Rees submits that the UNDT correctly concluded that the decision to reassign her was unlawful because it was improperly motivated. Although it purported to reassign Ms. Rees for her alleged underperformance, the Administration had failed to complete an objective assessment of her performance. The position to which the Administration sought to reassign her was not adequate, which equally reveals that the decision was not properly motivated.

47. Ms. Rees submits that the UNDT correctly concluded that the Secretary-General violated her due process rights. The Administration did not provide a factual basis for its claim that it informed Ms. Rees of its purported concerns about her performance. Ms. Rees submits that the Secretary-General contradicts himself by, on the one hand, arguing that Ms. Rees was reassigned for performance issues whilst, on the other hand, adducing evidence on the importance of the new post to which she was assigned. The Administration failed to meet the required standards of

due process in reassigning her based on an assessment of her performance without providing a formal and proper evaluation of her performance. Finally, the UNDT correctly found that the Administration's failure in consulting with Ms. Rees vitiated the reassignment decision, which, in turn, breached her due process right.

On the non-renewal decision

48. Ms. Rees submits that the UNDT correctly held that the decision not to extend her fixed-term appointment was unlawful. The UNDT found that the non-renewal decision was motivated by Ms. Rees' underperformance. In the absence of a PAS to verify the views of the Administration about Ms. Rees' performance in compliance with ST/AI/2002/3, the UNDT correctly concluded that the non-renewal decision was unlawful.

On compensation

49. Ms. Rees submits that the UNDT made no errors in determining the amount of compensation.

50. Ms. Rees requests that the Appeals Tribunal reject, in their entirety, the appeals against the Judgment on the Merits and the Judgment on Compensation. She requests an oral hearing on both appeals.

Considerations

Preliminary issue

51. This Tribunal held in *Kasyanov*:

We believe that UNDT's Judgment on merits is not a final judgment, in that Adams, J. made substantive findings, but left the issue of remedy to be studied and resolved in the future. The Judgment became final only when the UNDT issued the judgment on compensation on 9 February 2010, the subject of the present appeal. It is this final judgment that is appealable to the Appeals Tribunal. When a party appeals that final judgment, he or she can challenge not only the judgment on compensation but also the judgment on merits.¹

¹ *Kasyanov v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-076, para. 24.

52. Thereafter, relying on *Kasyanov*, some parties, while properly filing their appeal after the judgment on compensation had been delivered, chose to file two separate appeals, one against the judgment on the merits and the other against the judgment on compensation.

53. This is procedurally wrong. What this Tribunal sought to convey in *Kasyanov* is that only one appeal is to be filed after the final judgment has been delivered. The appeal may be against both judgments on the merits and on compensation or against compensation only.

54. The Secretary-General has repeated this procedural error and filed two appeals involving the same case. We therefore consolidate the two cases.

Appeal on the merits

55. The appeal on the merits raises two main issues: whether the UNDT erred in law and fact by finding that the decision to reassign Ms. Rees was unlawful; and, whether the UNDT erred in law and fact by concluding that the decision not to extend Ms. Rees' fixed-term appointment was unlawful.

On the re-assignment decision

56. At the hearing before the UNDT, the Administration argued that there were two reasons for reassigning Ms. Rees. On the one hand, the Administration said it wanted to focus more attention and resources on the issue of discrimination based on sexual orientation and Ms. Rees was well qualified for that. On the other hand, the Administration said it reassigned Ms. Rees for performance reasons.

57. Staff Regulation 1.2(c) provides that “[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations”.

58. It is for the Administration to determine whether a measure of such a nature is in its interest or not. However, the decision must be properly motivated, and not tainted by improper motive, or taken in violation of mandatory procedures. An accepted method for determining whether the reassignment of a staff member to another position was proper is to assess whether the new post was at the staff member's grade; whether the responsibilities involved corresponded to his or her level; whether the functions to be performed were

commensurate with the staff member's competence and skills; and, whether he or she had substantial experience in the field.²

59. The UNDT found that none of these factors existed with respect to the position to which the Administration purported to reassign Ms. Rees. The UNDT specifically found that there could not have been an adequate position since there was no position at the time the Administration purported to reassign her. The UNDT stated, at paragraph 81:

The plan to reassign the Applicant from her position was implemented before a proper constituted post was available to be offered to her. At the time of the reassignment, on 18 June, there was no post for her to be assigned to, just a name of a position yet to be established. The terms of reference for a position entitled Senior Human Rights Office, Advisor on Sexual Orientation Issues were not judged classifiable at P-5 until 10 July. The decision to reassign was made hastily and without proper planning. The circumstances of the reassignment, including the misconceived decision to cancel her mission to Colombia at the last minute, led to the impression that the action was being taken because of some serious wrongdoing by her. The decision was potentially prejudicial to the Applicant's reputation.

We affirm the finding by the UNDT.

60. The Administration also argued that another reason for the reassignment was Ms. Rees' performance. The Secretary-General submits that the UNDT erred in law and fact in concluding that the Administration had not provided a factual basis for finding that Ms. Rees was lacking in performance and failed to meet the relevant due process requirements.

61. The Secretary-General submits that Ms. Rees was given ample notice of senior management's concerns about her performance, had adequate opportunity to comment, and, indeed, did comment on the concerns raised.

62. The Secretary-General puts forward a chronology of interactions with Ms. Rees in which the Administration purported to give her informal feedback. The Secretary-General submits that these informal communications met the due process standards. In support of this assertion, the Secretary-General referred to *Riquelme*, *Saaf*, and *Gabriel-Van Dongen*.³

² Cf. *Allen v. Secretary-General of the United Nations*, Judgment. No.2011-UNAT-187, affirming UNDT Judgment No. 2010/212.

³ Judgment No. UNDT/2010/107; UNAdT Judgment No. 954; Judgment No. UNDT/2011/197.

63. The Appeals Tribunal does not find these cases applicable. As counsel for Ms. Rees rightly submits, in these cases the former Administrative Tribunal and the UNDT made an exception to the rule that a formal evaluation was required based on the evidence that, at the very least, the staff member had been given extensive notice of any performance concerns and the opportunity to provide written comments on those concerns.

64. In *Riquelme*, the UNDT held that the Organization met the due process standards by giving an informal and continuing process of review by way of setting specific tasks and analyzing the outcome.

65. The Appeals Tribunal recalls the jurisprudence that it is imperative that the Administration adheres to the rule of law and standards of due process in its decision-making. Given that Ms. Rees' performance was the principal reason for the decision to reassign her, the Administration was required to provide a performance-related justification for its decision. This could have been properly done with the PAS, in accordance with ST/AI/2002/3.

66. The Administration sought to blame Ms. Rees for the absence of a PAS, claiming that she, as a staff member, had to initiate the process.

67. In the present case, the UNDT specifically made a finding that the Secretary-General did not meet the standard. The UNDT said in paragraphs 71 to 72:

In this case the Respondent relies on the Director of RRDD's attempts to constructively guide the Applicant as a substitute for the PAS. In spite of the Director of RRDD's undoubted good intentions, this process failed to meet the high standards of due process set by STA/AI/2002/3. The DHC's identification of the Applicant's alleged shortcomings as early as 2008 was not discussed appropriately with the Applicant so that she could take steps to rectify the situation. The Applicant was never put on fair notice that her performance was likely to lead to a reassignment away from her managerial post as head of WRGU. She was not formally assessed against her work plan.

While in hindsight, the Director of RRDD's meeting with the Applicant on 10 March 2008 to discuss a work plan might be construed as the development of an improvement plan as contemplated by the PAS, this was not conveyed to her at the time. Further, the Applicant was not asked to provide a review of her own performance that could be discussed at the meeting. She had no formal opportunity to comment on or to seek a rebuttal of the opinions that had been reached about her performance.

68. The UNDT correctly found that Ms. Rees had been informally criticised and humiliated based on inconsistent and subjectively-held biases. She was never given an opportunity to comment on or rebut the negative opinions that her supervisors purportedly held.

69. We affirm the decision of the UNDT that the reassignment of Ms. Rees was unlawful. Accordingly, the appeal is dismissed on this ground.

On the non-renewal decision

70. The Secretary-General submits that the UNDT erred in law and fact in concluding that the non-renewal decision was motivated by the managers' assessment of Ms. Rees' performance and was unlawful in the absence of a completed performance appraisal.

71. We take note of the jurisprudence that, in the absence of a PAS to verify the views of management about the performance of a staff member in compliance with ST/AI/2002/3, the Administration's decision of non-renewal of contract based on non-performance or under-performance may be successfully contested.

72. The Secretary-General, however, submits that the non-renewal of Ms. Rees' appointment was ultimately due to the exhaustion of options to retain her within OHCHR, and not due to an assessment of her performance. The Appeals Tribunal notes that after Ms. Rees had objected to her reassignment, and following the Management Evaluation Unit's recommendation, the Administration made several efforts through mediation to try to retain her services. These efforts were not successful as, without changing Ms. Rees' reporting lines, the new post was unacceptable to her. Furthermore, Ms. Rees refused to apply for any vacant P-5 position within OHCHR, saying she wanted a D-2 position.

73. The Secretary-General submits that given Ms. Rees' consistent refusal to take up her new assignment, her refusal to report to her previous supervisor, and her refusal to apply for other vacancies within OHCHR, the HC properly exercised her discretionary authority in deciding not to renew Ms. Rees' appointment when it expired.

74. The Appeals Tribunal notes that given the situation that developed in the RRDB, the workplace environment and the interpersonal relationships had become unsustainable for all concerned.

75. The UNDT recognised that “it is for management to organize its affairs in the best interest of the Organization and that it may involve placing a staff in a position for which they might not have much appetite”. Although these remarks were made in relation to the finding by the Dispute Tribunal that Ms. Rees was not constructively dismissed, the Appeals Tribunal finds that the same arguments could be used to argue that the non-renewal of her fixed-term appointment was reasonable in the circumstances.

76. We consider Ms. Rees’ conduct in this respect unreasonable. No staff member has the right to select his or her own supervisors. No organization can be compelled to keep such a staff member who insists on retaining his or her post while refusing to report to a supervisor who he or she claims has discriminated against him or her or created a hostile work environment.

77. The staff member reserves the right to seek redress through informal or formal complaint procedures pursuant to ST/SGB/2008/5. Ms. Rees was advised to submit a formal complaint of harassment against the DHC and the Director of the RRDD but, having failed to do so, her insistence on different reporting lines is without merit. She cannot insist on a restructuring of the Organization to suit her wishes.

78. In the circumstances, the Appeals Tribunal finds that the HC properly exercised her discretionary authority not to renew Ms. Rees’ fixed-term appointment. The appeal on this ground succeeds and the order of rescission by the Dispute Tribunal is set aside.

Appeal on compensation

79. In its Judgment on Compensation, the UNDT held that two administrative decisions violated Ms. Rees’ rights: her re-assignment and the non-renewal of her appointment. It rescinded both decisions, but stated that alternate compensation to rescission could only be set in the case of non-renewal. The UNDT set the amount of compensation as an alternative to the rescission of the non-renewal of her appointment in the amount of two years’ net base salary plus the applicable post adjustment, entitlements and benefits, to be reduced by her net take-home pay from 1 April 2010 to 31 March 2012.

80. This Tribunal has set aside the order of rescission of the non-renewal. Accordingly, the aforementioned award of compensation by the UNDT is hereby set aside.

Rescission of reassignment

81. The UNDT ordered the rescission of the reassignment of Ms. Rees. This Tribunal, looking at the circumstances of the case and the fact that she is no longer in service, finds the rescission of the reassignment unsuitable. Ms. Rees is, rather, entitled to compensation for moral damages and we will consider the issue under the heading of moral damages below. We therefore set aside the order of rescission

Moral damages

82. The UNDT found in this case that Ms. Rees suffered moral damage because of a number of aggravating circumstances in the case of the reassignment decision. The Dispute Tribunal found on the evidence that the period around the reassignment decision caused most stress to Ms. Rees and, accordingly, awarded her four months' net base salary.

83. We find this amount inadequate due to the aggravating nature of the stress she went through even though it is difficult to assess the moral damages she suffered. We therefore enhance the compensation to an amount of six months' net base salary.

Judgment

84. The appeal is allowed in part. The decision of the UNDT on the unlawfulness of the reassignment is affirmed. The appeal against the non-renewal of the fixed-term appointment is allowed. The appeal against the award of compensation in the amount of two years' net base salary and post adjustment entitlements, reduced by Ms. Rees' net take-home pay from 1 April 2010 to 31 March 2012, is allowed and the award is hereby set aside. The award of four months' net base salary for moral damages is enhanced to six months' net base salary.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Simón

(Signed)

Judge Lussick

Entered in the Register on this 18th day of January 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar