



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

Judgment No. 2013-UNAT-341

Appellee
(Respondent/Appellant on Cross-Appeal/Applicant)
v.
Secretary-General of the United Nations
(Appellant/Respondent on Cross-Appeal/Respondent)

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Luis María Simón
Judge Mary Faherty

Case No.: 2012-378

Date: 21 June 2013

Registrar: Weicheng Lin

Counsel for Appellee: Cédric Vareil
Counsel for Secretary-General: Paul Oertly

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2012/110, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 20 July 2012 in the case of *Applicant v. Secretary-General of the United Nations*. The Secretary-General appealed on 14 September 2012 and the Appellee answered on 23 November 2012. That same day, the Appellee submitted a cross-appeal and the Secretary-General answered on 23 January 2013.

Facts and Procedure

2. On 1 September 2009, the Appellee commenced a two-year fixed-term appointment through 31 August 2011, with the Office of Staff Legal Assistance (OSLA), Office of Administration of Justice. The Appellee was initially based in Beirut and was transferred to Geneva in June 2010.

3. Upon the expiry of her two-year appointment on 31 August 2011, and pending the completion of her performance appraisals for 2009-2010 and 2010-2011 and her rebuttals of these appraisals, the Appellee's appointment was extended for one month until 30 September 2011, and then successively until 11 November 2011, 11 December 2011, 11 March 2012 and 11 June 2012. Effective 12 June 2012, her appointment was renewed for one year.

4. Before the UNDT, the Appellee filed two separate applications, contesting (a) the first decision to extend her fixed-term appointment for only one month, until 30 September 2011; and (b) the subsequent decisions to only renew her appointment for short periods of time, until 11 December 2011.

5. On 20 July 2012, the UNDT in Geneva issued Judgment No. UNDT/2012/110, disposing of both applications. The UNDT considered the three decisions to extend the Appellee's appointments broadly on a monthly basis from 1 September to 11 December 2011. The UNDT found that each of these decisions actually comprised two decisions, one to extend the Appellee's appointment and the other to set a date beyond which her appointment would *not* be renewed. The UNDT found that the Appellee's applications against the former were not receivable since they concerned decisions that did not adversely affect her. With respect to the latter, the UNDT found that the applications had been "withdrawn", since her

appointment had been extended until 11 June 2013. The UNDT therefore found it not necessary to rule on the Appellee's pleas to rescind these decisions. The UNDT found that the Appellee had suffered no material harm from the series of renewals for short periods of time since her appointments were renewed and since, at the time of its Judgment, she was still working for the Organization.

6. The UNDT, however, found that insofar as the contested subsequent decisions "terminated" her appointments, those decisions, even if subsequently "withdrawn", were liable to cause disruption to the Appellee's living conditions during the time they were in effect.

7. The successive decisions to "terminate" the Appellee's appointment on dates that were postponed several times were based on the Appellee's underperformance, although her appraisal for the first cycle had been contested and her appraisal for the second had not been finalized. The UNDT concluded that the successive decisions to terminate the Appellee's appointment had been based on mistaken grounds, were thus unlawful and entitled her to compensation for moral damages. The UNDT held that the harm resulted from the fact that the Appellee had remained in great uncertainty, "at least for the period from September 2011 to May 2012", "owing solely to the Administration's delay in evaluating her performance for both the 2009-2010 and 2012-2011 cycles". The UNDT found that the medical certificate produced by the Appellee revealed that the situation in which the Administration wrongfully placed her caused her significant stress, and it awarded moral damages in the amount of CHF 10,000 with interest, on that basis.

Submissions

The Secretary-General's Appeal

8. The Secretary-General requests the Appeals Tribunal to find that the UNDT erred in accepting the Appellee's applications challenging the short-term extensions of her appointment as receivable and to vacate the Judgment in its entirety.

9. Alternatively, should the Appeals Tribunal accept that the Appellee's applications were receivable, the Secretary-General requests this Tribunal to find that the UNDT erred in finding that the contested decisions were unlawful and erred in awarding compensation for moral damages. Accordingly, the Secretary-General requests the Appeals Tribunal to reverse

the Judgment in its entirety, or, in the alternative, to vacate or reduce the award of moral damages.

The Appellee's Answer

10. The Appellee submits that the Secretary-General's appeal is not receivable. The UNDT neither exceeded its competence nor did it err on a question of law when it concluded that the applications were partially receivable.

11. The Appellee submits that the UNDT correctly concluded that the short-term extensions were unlawful and committed no error by awarding compensation for moral damages. The Appellee requests the Appeals Tribunal to dismiss the appeal in its entirety.

The Appellee's Cross-Appeal

12. The Appellee requests the Appeals Tribunal to determine that the UNDT erred in finding her requests to rescind the contested decisions not receivable. She further claims that the compensation awarded by the UNDT is not sufficient for the harm suffered.

The Secretary-General's Answer to the Cross-Appeal

13. The Secretary-General submits that the cross-appeal has no basis and should be dismissed in its entirety.

Considerations

14. A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service (Staff Rule 4.13(c)).

15. This Tribunal "concur[s] with the former Administrative Tribunal which held that, unless the Administration has made an 'express promise ... that gives a staff member an expectancy that his or her appointment will be extended', or unless it abused its discretion, or was motivated by discriminatory or improper grounds in not extending the appointment, the non-renewal of a staff member's fixed-term appointment is not unlawful".¹

¹ *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153, para. 47.

16. As established by this Tribunal in *Syed*, fixed-term appointments have no expectancy of renewal or conversion to any other type of appointment.²

17. In the instant case, the Appellee's appointment expired on 31 August 2011 and was extended for periods of one to three months, pending the completion of the performance appraisals for 2009-2010 and 2010-2011. The appointment continued through a series of sequential extensions to allow completion of the review of the Appellee's performance appraisal and her rebuttal process. Effective 12 June 2012, her appointment was renewed for one year.

18. The UNDT found that the Appellee had suffered no material harm from the series of renewals for short periods of time since her appointments were renewed and at the time of the Judgment she was still working for the Organization. This Tribunal agrees.

19. Turning to the Appellee's cross-appeal, this Tribunal empathizes with the inevitable frustration, disappointment and distress that the Appellee may have experienced as a consequence of the uncertainty during the appraisal and rebuttal proceedings. However, we find that the Dispute Tribunal erred in law in awarding compensation in the absence of any procedural errors or any breach of her legal rights while expressly affirming that the Appellee suffered no material harm.³

Judgment

20. For the above reasons, the appeal of the Secretary-General is upheld and the award of damages is vacated. The Appellee's cross-appeal is rejected.

² *Syed v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-061.

³ See *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-095.

Original and Authoritative Version: English

Done in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding
21 June 2013

(Signed)

Judge Simón
28 June 2013

(Signed)

Judge Faherty
28 June 2013

Entered in the Register on this 26th day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar