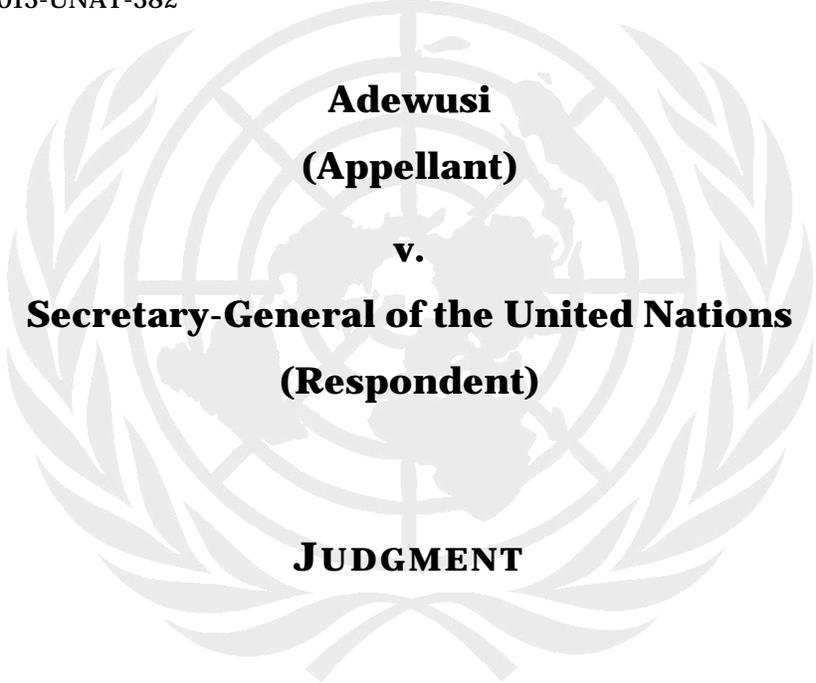




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2013-UNAT-382



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

**JUDGMENT**

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

**Case No.:** 2013-436

**Date:** 17 October 2013

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Sylvain Attoh-Mensah

**Counsel for Respondent:** Stéphanie Cartier

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Gbadegesin Adewusi against Judgment No. UNDT/2012/161, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 31 October 2012, in the case of *Adewusi v. Secretary-General of the United Nations*. Mr. Adewusi's appeal was received on 7 January 2013. The Secretary-General filed an answer on 11 March 2013.

### **Facts and Procedure**

2. The Dispute Tribunal made the following findings of fact, which are not disputed by the parties:<sup>1</sup>

... On 11 November 2010, [Mr. Adewusi] was informed that his [United Nations Mission in the Central African Republic (MINURCAT)] post was downsized due to the completion of MINURCAT's mission and [he] was, either on 11 or 17 November 2010, offered a 90 day reassignment to [the United Nations Mission in Côte d'Ivoire (ONUCI)] as a Senior Political Affairs Officer at the P-5 level. He also received a ticket to Abidjan.

... [Mr. Adewusi] was placed on an ONUCI post effective 1 January 2011. It was intended that [he] would relocate to ONUCI. This was not immediately possible due to an outbreak of violence in the Côte d'Ivoire. [Mr. Adewusi's] assignment was renewed for a further 90 days, until 30 June 2011.

... [Meanwhile, o]n 30 November 2010 [Mr. Adewusi had] applied for two positions of Chief Civil Affairs Officer and for one position of Senior Civil Affairs Officer.

... [Mr. Adewusi] could not report to Abidjan for his new assignment because of the crisis in Cote d'Ivoire so he travelled to his home country [,] Togo. All his correspondence to the Chief Civilian Personnel Officer (CCPO) at the ONUCI mission as to when he could resume duties there went unanswered.

... On 10 January 2011, [Mr. Adewusi] sent an email to Mr. Paulin Djomo, Mr. Otti and Mr. Akouete-Akue informing them of his difficulty in accessing his inbox on Webmail and requesting them to send emails directly to his personal email address.

... In mid February 2011, [Mr. Adewusi's] colleagues informed him that his name had been removed from the [United Nations] directory.

... In early April 2011, [Mr. Adewusi] received a notice from the staffing section informing him of his pre-selection for the three positions he had applied for on

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<sup>1</sup> The facts here are taken from Judgment No. UNDT/2012/161, paragraphs 5–23.

30 November 2010. He was also informed that he would be required to take written tests.

... On 21 April 2011, he sent another email to Mr. Djomo (then Officer-in-Charge of the Africa Division) explaining that he would not be able to take the written tests because of the difficulty in accessing his mail on the Webmail system. He also inquired about his administrative status. He did not receive a response to his email. He sent the same email to Mr. Otti, and to Mr. Akouete-Akue but [he] received no response.

... [Mr. Adewusi] thereupon travelled to Abidjan on 2 June 2011. On 3 June 2011, he went to the personnel section of ONUCI where Mr. Akouete-Akue informed him that he could not be taken onboard as he had not been cleared by the Field Central Review Board (FCRB).

... On 5 June 2011, [Mr. Adewusi] informed Ms. Rima Salah, the Deputy Special Representative of the Secretary-General (DSRSG) of MINURCAT[,] about the situation and requested a copy of a special report that had been submitted for her signature. She directed him to Ms. Gisela Huerta but received no response to date.

... On 9 June 2011, [Mr. Adewusi] arrived in MINURCAT and was informed by his colleagues that the written tests had already been taken. He wrote to the staffing section to inquire about the possibility of taking new tests but received no response.

... On 12 June 2011, [Mr. Adewusi] sent an email to the Ombudsman requesting assistance but the attempts at mediation were not successful.

... On 17 June 2011, [Mr. Adewusi] received payment of Daily Subsistence Allowance (DSA) for 29 days in ONUCI. On 21 June 2011, ONUCI allowed him to check in and issued him with a badge and a driving permit. On 23 June 2011, he received a letter dated 22 June 2011 informing him of the end of his temporary assignment in ONUCI and termination from [Field Personnel Division (FPD), Department of Field Support] with effect from 1 July 2011. [Mr. Adewusi], however, was not separated from the Organization but was instead placed on Special Leave Without Pay (SLWOP) until December 2011.

... On 21 August 2011 [Mr. Adewusi] sought [m]anagement [e]valuation of the decisions:

- a. not to extend his contract beyond 30 June 2011;
- b. to remove his name from the [United Nations] directory; and
- c. to disconnect his Webmail access while on assignment to ONUCI.

... [Mr. Adewusi] further alleged that the decisions (b) and (c) resulted in him not being convoked for three posts of Civil Affairs Officer. [Mr. Adewusi] filed a supplemental submission to the [Management Evaluation Unit (MEU)] on 19 October 2011.

... On 16 September 2011, [Mr. Adewusi] received an email from the staffing section informing him of the dates for taking his written tests for the three Civil Affairs positions he had applied for in November 2010. He sat the tests in October 2011. On 5 December 2011, he raised the issue of non-payment of his entitlements for his reassignment from MINURCAT to ONUCI with the CCPO of ONUCI. He sent a reminder on 14 December 2011 but received no response.

... [Mr. Adewusi] was offered a P4 post in the United Nations Integrated Mission in Timor-Leste (UNMIT) on 20 September 2011 which he took up on 7 December 2011.

... Mr. Otti informed [Mr. Adewusi] on 21 October 2011 that he had not been separated from ONUCI but had in fact been placed on SLWOP so that he would not lose out on his pension benefits since he had served for at least 36 months at the P5 level and therefore his pension benefits would be calculated at that level.

... The MEU responded to [Mr. Adewusi's] request for a management evaluation on 21 November 2011 and concluded that the impugned decisions had been rendered moot as a result of the subsequent decisions taken by the Administration to: (a) convoke him for a written assessment for the three Civil Affairs Officer Posts; and (b) to reassign him to UNMIT and place him on SLWOP in the interim. The MEU was of the view that [Mr. Adewusi's] request for compensation for regular payments of his salary from 1 July 2011 [was] non-receivable because he did not establish an underlying staff right to the same.

3. In Judgment No. UNDT/2012/161, the UNDT found that Mr. Adewusi was lawfully placed on SLWOP upon the expiry of his provisional assignment to ONUCI and was therefore not entitled to a salary from 1 July 2011 to 6 December 2011, and that there were no exceptional circumstances that would have justified placing him on special leave with full pay (SLWFP) for that period of time. As for Mr. Adewusi's claims for education and relocation grants, the UNDT concluded that those claims could not be entertained since they had not been subjected to management evaluation. However, the Dispute Tribunal found that the four-month delay in informing Mr. Adewusi of his placement on SLWOP "left [him] to labour in uncertainty as to his employment status" and "caused him much anxiety and distress", for which the UNDT awarded USD 6,000.

### **Submissions**

#### **Mr. Adewusi's Appeal**

4. Mr. Adewusi maintains that the Administration abused its authority by placing him on SLWOP without prior consultation and without his consent.

5. Mr. Adewusi also maintains that the delay in informing him of his placement on SLWOP demonstrates the Administration's deliberate intention to harm his professional interests.

6. Mr. Adewusi asserts that by not sending him the written examinations for the three posts within the prescribed time limit, the Administration failed to respect the principle of equality of candidates and he was consequently deprived of a certain chance of promotion.

7. Mr. Adewusi contends that the removal of his name from the United Nations directory was tantamount to an unjustified and abusive termination of his appointment.

8. Mr. Adewusi further contends that the amount of compensation awarded by the Dispute Tribunal is insufficient to compensate him for his damages. He is seeking compensation for pecuniary and moral prejudice in the amount of USD 80,000.

#### **The Secretary-General's Answer**

9. The Secretary-General requests the Appeals Tribunal to affirm the UNDT Judgment and reject Mr. Adewusi's appeal. The Secretary-General also requests the Appeals Tribunal to vacate or reduce the amount of compensation awarded by the UNDT.

10. The Secretary-General submits that the UNDT correctly found that the Administration placed Mr. Adewusi on SLWOP for the main purposes of protecting his pension benefits and ensuring that he could be reassigned to another mission as an internal candidate. The Secretary-General notes that his placement on SLWOP from July to December 2011 facilitated his reassignment to UNMIT and safeguarded his pension benefits at the higher P-5 level between the expiry of his appointment with ONUCI in June 2011 and his reassignment to UNMIT in December 2011. There is no legal basis for Mr. Adewusi to claim an entitlement to SLWFP.

11. The Secretary-General also submits that the Staff Regulations and Rules do not require Mr. Adewusi's consent to place him on SLWOP. Even if a requirement of consent were to be somehow inferred, Mr. Adewusi has not established any harm.

12. The Secretary-General further submits that Mr. Adewusi made allegations of the Administration's intention to harm his professional interests by placing him on SLWOP, but failed to present any evidence establishing improper motivation on the part of the Administration in making such a decision.

13. The Secretary-General maintains that while pleading for more compensation, Mr. Adewusi has not referred to any specific evidence of damage that would justify an increase in the amount of compensation awarded by the UNDT. In the view of the Secretary-General, the USD 6,000 compensation awarded by the UNDT for the delay in communicating Mr. Adewusi's SLWOP was "excessive and unwarranted".

### **Considerations**

14. This Tribunal holds that the Judgment under appeal correctly concluded that the placement of Mr. Adewusi on SLWOP enabled him, in the first instance, to preserve his pension benefits. It granted him, secondly, the opportunity of remaining a staff member of the Organization, for the purpose of applying as an internal candidate for other positions after the expiry of his contract. Thirdly, it made possible his re-location to the position that he eventually accepted.

15. Thus, the Administration adopted a protective approach with respect to Mr. Adewusi's situation; there was no abuse of authority or deliberate attempt to harm, as argued by him. These allegations have not been substantiated.

16. Due to the downsizing exercise related to Mr. Adewusi's post and his reassignment, he was not entitled to SLWOP and his consent was not required for SLWOP. Therefore, the administrative decision challenged was lawful, as the UNDT determined.

17. Whatever relevant harm Mr. Adewusi suffered for the delay in being informed of his placement on SLWOP has been compensated by the USD 6,000 awarded by the first instance court. In the absence of a cross-appeal by the Secretary-General, this Tribunal will affirm the UNDT's monetary award and the impugned Judgment.

### **Judgment**

18. The appeal is dismissed in its entirety and the UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2013 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Faherty

*(Signed)*

Judge Weinberg de Roca

Entered in the Register on this 19<sup>th</sup> day of December 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar