



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

Judgment No. 2013-UNAT-303

**O'Hanlon
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Inés Weinberg de Roca, Presiding Judge Sophia Adinyira Judge Richard Lussick
Case No.:	2012-335
Date:	28 March 2013
Registrar:	Weicheng Lin

Counsel for Appellant:	Caroline Nicholas
Counsel for Respondent:	Zarqaa Chohan

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Kevin O'Hanlon against Judgment No. UNDT/2012/031, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 29 February 2012 in the case of *O'Hanlon v. Secretary-General of the United Nations*.

Facts and Procedure

2. Mr. O'Hanlon entered the service of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) on 4 March 2000, on an initial fixed-term contract of one year. His contract was extended until 19 November 2005, when he was transferred under the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations Applying the United Nations Common System of Salaries and Allowances (Inter-Organization Agreement) to the Department of Safety and Security at the United Nations Secretariat in New York, where he took up a P-4, fixed-term contract under the 100 series of the Staff Rules. On 1 July 2008, Mr. O'Hanlon was transferred to the United Nations Office at Vienna (UNOV).

3. On 29 April 2010, the Human Resources Management Service (HRMS) at UNOV advised UNOV staff members that a process was underway to perform a one-time review for possible conversion of contracts to permanent appointments, pursuant to ST/SGB/2009/10 of 23 June 2009, entitled "Consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 June 2009". Staff members who believed they met the criteria for conversion, but had not received individual confirmation of their eligibility, were invited to contact HRMS.

4. Mr. O'Hanlon contacted HRMS in this regard on several occasions. On 2 February 2011, however, he was advised that he was not eligible for conversion to a permanent appointment on the basis that, as of 30 June 2009, he had not served for five years on a 100 series appointment.

5. Mr. O'Hanlon filed an initial request for management evaluation on 1 April 2011, and submitted a complete request on 8 April 2011. He was notified on 23 May 2011 that the Secretary-General had decided to uphold the contested decision. Thereafter, he submitted an application to the Dispute Tribunal on 19 August 2011.

6. In its Judgment No. UNDT/2012/031, the UNDT found that the application was not time-barred, as argued by the Secretary-General, but was receivable, *ratione temporis*, as it had been filed within the appropriate deadlines set out in Article 8, paragraph 1, of the UNDT Statute. The Tribunal held:

Although the ... provisions of the Statute require staff members to file their application with the Tribunal within 90 days of the expiry of the response period of 45 days for the management evaluation if no response to the request was provided, when the management evaluation is received after the deadline of 45 days but before the expiry of the next deadline of 90 days, the receipt of the management evaluation in this case will result in setting a new deadline of 90 days for challenging it before the Tribunal.

7. On the merits of the case, the Dispute Tribunal rejected the application. It found that, whilst the provisions of the Inter-Organization Agreement meant Mr. O'Hanlon's service in UNRWA counted towards the minimum period of five years of employment under fixed-term contracts required for conversion to permanent appointment, ST/SGB/2009/10 "state[d] that only fixed-term contracts under the 100 series of the Staff Rules [were] considered". The Dispute Tribunal continued, "[i]t is clear that UNRWA staff operate under different rules from those that apply to staff members of the Secretariat, and while contracts under the 100 series are covered in the Staff Rules of the Secretariat, this type of appointment is not referred to in the UNRWA Staff Rules and Regulations". In sum, the UNDT agreed with the Secretary-General that Mr. O'Hanlon "[did] not meet one of the eligibility criteria".

8. Mr. O'Hanlon appealed this Judgment to the Appeals Tribunal on 26 June 2012, and the Secretary-General answered on 6 September 2012. On 12 October 2012, Mr. O'Hanlon filed a motion seeking leave to file additional pleadings in this matter. The Duty Judge, citing Article 31(1) of the Rules and Section II.A.3 of Practice Direction No. 1 of the Appeals Tribunal, held that he did not demonstrate the statutorily required exceptional circumstances justifying such pleadings. Accordingly, his motion was denied on 6 December 2012 by Order No. 117 (2012).

Submissions

Mr. O'Hanlon's Appeal

9. Mr. O'Hanlon submits that the Dispute Tribunal erred in law by refusing to interpret the provisions of ST/SGB/2009/10 by reference to their context.

10. He further submits that the UNDT erred in fact by stating that UNRWA staff members are not staff members of the Secretariat.

11. Mr. O'Hanlon contends that the UNDT disregarded substantive submissions, facts and arguments.

Secretary-General's Answer

12. The Secretary-General submits that Mr. O'Hanlon has established no errors warranting reversal of the UNDT's conclusion.

13. The Secretary-General contends that Mr. O'Hanlon did not meet one of the eligibility criteria for conversion to a permanent appointment.

14. The Secretary-General avers that Mr. O'Hanlon has not established that the UNDT disregarded his submissions.

15. The Secretary-General submits that the new evidence introduced by Mr. O'Hanlon regarding 17 other staff members should be disregarded, as it was not raised before the UNDT.

16. The Secretary-General requests the Appeals Tribunal to affirm the Judgment of the UNDT, and to dismiss the appeal in its entirety.

Considerations

17. General Assembly resolution 37/126 of 17 December 1982 decided that upon completion of five years of continuing good service, staff members on fixed-term appointments shall be given every reasonable consideration for a career appointment.

18. ST/SGB/2009/10, in Section 1, adds that to be eligible for consideration for conversion to a permanent appointment under that bulletin, a staff member must, by 30 June 2009:

- (a) Have completed, or complete, five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules; and
- (b) Be under the age of 53 years on the date such staff member has completed or completes the five years of qualifying service.

19. The Inter-Organization Agreement states that,

[i]n the case of a transferred or seconded staff member, service in the releasing organization will be counted for all purposes, including credit towards within-grade increments, as if it had been made in the receiving organization at the duty stations where the staff member actually served. In the case of a loaned staff member, service in the receiving organization will be counted as service in the releasing organization.

20. The Management Evaluation Unit (MEU) decided in Mr. O'Hanlon's case that he was not eligible for conversion because this Agreement does not oblige the United Nations to consider service under a set of non-100 series Staff Rules for the purposes of determining eligibility for consideration for conversion to a permanent appointment.

21. The UNDT Judgment affirmed, deciding that only fixed-term contracts under the 100 series of the Staff Rules are considered for the purpose of conversion to a permanent appointment and that this type of appointment is not referred to in the UNRWA Staff Rules and Regulations. UNRWA staff, according to the UNDT Judgment, operate under different rules from those that apply to staff members of the Secretariat.

22. We disagree. The Inter-Organization Agreement says that service in the releasing organization will be counted as service in the receiving organization. The principles of the UNRWA International Staff Rules are similar to those in the United Nations Staff Regulations and Rules, according to the MEU. When the Rules are similar but have a different name, according to the Inter-Organization Agreement, the service is counted as service in the receiving organization.

23. For these reasons, we find Mr. O'Hanlon was eligible on the basis of five years' continuous service and remand the case to the Administration to review if he meets the remaining criteria for conversion to a permanent appointment, taking into account all the interests of the Organization.

Judgment

24. The UNDT Judgment is reversed and the case remanded to the Administration to review if the criteria for conversion to a permanent appointment are met, taking into account all the interests of the Organization.

Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Lussick

Entered in the Register on this 24th day of May 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar