



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

Judgment No. 2014-UNAT-451

**Sannoh
(Respondent/Applicant)**

v.

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

JUDGMENT

Before: Judge Sophia Adinyira, Presiding
Judge Mary Faherty
Judge Richard Lussick

Case No.: 2013-520

Date: 27 June 2014

Registrar: Weicheng Lin

Counsel for Mr. Sannoh: Duke Danquah

Counsel for Secretary-General: Zarqaa Chohan/John Stompor

JUDGE SOPHIA ADINYIRA, PRESIDING.

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/2013/095, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 2 July 2013 in the case of *Sannoh v. Secretary-General of the United Nations*. The Secretary-General appealed on 3 September 2013, and Mr. Benedict Sannoh answered on 4 November 2013.

Facts and Procedure

2. The following findings of fact, which are taken from Judgment No. UNDT/2013/095, are not contested:¹

... The Applicant joined the United Nations on 17 September 2003 under an appointment of limited duration. He served in different peacekeeping operations before he took up a fixed-term appointment on 1 February 2008 as Senior Human Rights Officer at the P5 level. He was thereafter reassigned for one year on 16 September 2009 as Chief Human Rights Officer at the D-1 level in the Human Rights Section in [the United Nations Mission in Sudan (UMMIS)].

... A Concept of Operations for the Human Rights presence in South Sudan (CONOPS) was formulated in February by a team [led] by the Applicant. According to the CONOPS report, the future [United Nations Mission in South Sudan (UNMISS)] was to have a Human Rights Section with a proposed staff of 119 to be headed by a Human Rights Officer at the D-1 level.

... On 26 June 2011, UNMIS Information Circular No. 327/2011 announced the formation of a Comparative Review Panel (CRP) to review the transition of international posts in UNMIS, and set out the criteria to be considered and subject to review by the CRP.

... [The Department of Peacekeeping Operations (DPKO)] initiated efforts to put together a start-up team for the new UNMISS and requested that the Office of the High Commissioner for Human Rights (OHCHR) send their representatives for this team. On 29 June 2011, the Chief of Africa Section I in OHCHR nominated the Applicant to serve as Chief Human Rights Officer on the start-up team. On the same day, DPKO advised OHCHR that the [Special Representative of the Secretary-General (SRSG)] Designate had rejected the Applicant's nomination, and had asked to review additional names.

¹ Judgment No. UNDT/2013/095, paras. 17-42.

... On 1 July 2011, the Director of the Africa Branch, OHCHR conveyed its position to DPKO that the Applicant was well suited for the assignment, as he was familiar with the human rights situation and was closely involved in the inter-agency task force that had designed the Mission. In spite of this endorsement the Applicant was not appointed to the CRP.

... From July 2011, the interim Chief of Staff of UNMISS assisted with the start-up of the new mission. He was part of the Mission Leadership Team (MLT) comprising a group of senior managers which advised on critical administrative and human resources during the start-up phase. It examined the senior level posts required by the new mission including the head of Human Rights. It submitted a number of proposed staffing tables to the United Nations Headquarters (UNHQ), which required a review of the Senior P-5 and above posts. The holder of the post would transition if the functions of the post did not change between missions but not if the functions had significantly changed.

... On 9 July 2011, when UNMISS was officially established, the SRSG Designate for UNMISS formally took up her post. At that time the post of Chief Human Rights Officer remained at the D-1 level.

... On 15 July 2011, the Under-Secretary-General for the Department of Field Support (USG/DFS) sent a fax to the Directors of Mission Support in UNMIS and the United Nations Interim Security Force for Abyei (UNISFA) noting the concern of the Security Council in its resolution 1996 to reduce costs in the staffing of the new mission, to encourage the optimizing of resources and to do more with less.

... During this time, the 75 staff members in the Human Rights Section were moved to Juba except the Applicant. The Applicant kept enquiring about what was happening but was told there was a hold up in his transfer.

... On 27 July 2011, the Chief Civilian Personnel Officer (CCPO) at UNMIS informed the Applicant that “following the completion UNMIS (*sic*) mandate, the human resources post-matching and comparative review exercises regarding transition of international staff from UNMIS”, he could neither be transitioned to UNMISS nor to the United Nations Interim Security Force for Abyei (UNISFA). The letter also served as notice of completion of his appointment with UNMIS and consequently the termination of his appointment effective 31 August 2011.

... On 28 July 2011, the Applicant sought management evaluation of this decision. On the same day, the CCPO informed him in writing that:

Following completion of the UNMIS mandate, the human resources post-matching and comparative review exercises regarding the transition of the international staff from UNMIS, we are pleased to inform you that you have been identified for reassignment to the UNMISS. Your new duty station will be Juba.

...

Please note that, your post will be subject to review and eventual competitive selection. Your travel will take place no later than 31 July 2011.

... As this action effectively rescinded the 27 July 2011 administrative decision, the MEU considered his request moot and closed his file. The Administration later described the first letter as a mistake and the second letter as a correction.

... The Applicant's Personnel Action (PA), recording the transition of the Applicant to UNMISS, was not finalised until 9 October 2011. It stated that this was a provisional reassignment from UNMIS to UNMISS effective 4 August 2011 as Chief Human Rights Officer at D-1/2 and that the UNMISS "email of 29/9/11 refers".

... Email correspondence at this time, shows that the Chief of Staff led a working party at the end of July to analyse the Security Council resolution and to address a number of matters including Human Rights. During this time, the Applicant was involved with the drafting of texts on the Human Rights Division for budget submissions.

... The Applicant took up his duties with UNMISS in Juba to perform the functions of Chief Human Rights Officer at the D-1 level on 4 August 2011. He was placed on a temporary post funded through General Temporary Assistance (GTA) Funds/Technical Cooperation for the duration of his assignment. The post was to expire on 15 September 2011.

... On 19 August 2011, the Applicant was seriously injured and required hospitalization following an arbitrary arrest and assault by South Sudan Police. On 24 August 2011, he was flown to the United States for medical treatment and remained on sick leave until 30 June 2012.

... On 27 August 2011, the Chief of Staff of UNMISS sent an email to the SRSG stating as follows:

Last night I was called by [...] the Acting Director of the Field Operations and Technical Cooperation Division, OHCHR in Geneva. After discussing the staffing table and budget (they'd heard New York was seeking more cuts), he turned to [the Applicant].

He indicated that [the Applicant] would likely be gone for several weeks for medical attention and leave. In light of this, they were thinking of finding us a temporary replacement. He wanted to know if we would be amenable to that. They didn't have a lot of staff members available for such assignment, so it might be for only "three or four weeks". He also wanted to know if we were still planning on a D 2 Human Rights (*sic*).

... On 8 September 2011, the vacancy announcement (Number 11-HRI-DFS-425421-RJUBA) for Director of Human Rights for UNMISS at the D-2 level went out with a deadline for applications on 8 October 2011. The Applicant saw the advertisement on 15 September 2011 while he was on sick leave and applied for the post by the deadline. The selection process was led by OHCHR under the Memorandum of Understanding between OHCHR and the Administration.

... His contract at the D-1 level was scheduled to expire on 15 September 2011 but on 3 October 2011 his contract was renewed until 15 January 2012, "pending the recruitment process of the new D-2 Director of the Human Rights Division".

... On 24 October 2011, the Applicant requested management evaluation of the decision to "reclassify the post of Chief Human Rights Officer in the Human Rights section of UNMISS at the D-2 level."

... On 27 October 2011, the report of the Secretary-General to the General Assembly on the UNMISS budget for the period of 1 July 2011 to 30 June 2012 requested the creation of a D-2 post to head the upgraded Human Rights Division. The Secretary-General noted that the UNMISS Division of Human Rights would be headed by a Director at the D-2 level which was critical to the sensitivity of the issues involved to reflect "the prominence of human rights in the mandate of the [m]ission." The Secretary-General emphasized the Director's level of "responsibility of the overall performance and discharge of its human rights mandate, and for overseeing the strategic direction, management and operations of the Division in Juba and at the State and Country level."

... On 9 and 10 November 2011, interviews for the D-2 post were conducted. The Applicant was among the five candidates who were interviewed but he was not selected.

... On 1 December 2011, the [Management Evaluation Unit (MEU)] concluded that the decision to classify the post at the D-2 level was not taken out of personal animosity towards the Applicant, but rather was based on an objective, operational rationale. It found that the contested decision entailed a legal exercise of discretion.

... By letter dated 13 December 2011, the Applicant was informed that, as a result of the change in UNMISS staffing effective January 2012, his D-1 post would be abolished effective 31 December 2011 and that he would be retained in service against another post for administrative purposes only until the expiry of his appointment. UNMISS also informed the Applicant that his details would be submitted to Field Personnel Division (FPD) for further advice, and where possible, reassignment to other missions.

... His contract was renewed from 15 January to 15 April 2012 then again from 16 April to 30 June 2012. The Chief Medical Officer of Peacekeeping Medical Services Division wrote to the UNMIS Director of Mission Support stating that "all medical documents attached to [the Applicant's] memo dated 19 June 2012 have been received

and reviewed at the Medical Services Division. Based on the information submitted, sick leave has been approved through 30 June 2012. [The Applicant] is fit to return to duty as of ... 2 July 2012.”

... On 15 July 2012, the Applicant was informed by the Chief Civilian Personnel Officer (CCPO) of UNMISS that his post “was abolished as 1 January 2012 (sic) and you were duly informed of the fact, both in January and in my latest email to you dated 3 July 2012. In this connection, the mission is processing your separation from UNMISS effective 30 June 2012 COB.” The Applicant’s contract expired on 30 June 2012 and on that day he was separated.

3. Mr. Sannoh appealed. In Judgment No. UNDT/2013/095, the Dispute Tribunal determined that the D-2 post was a new post created to meet the needs of UNMISS and that the decision to fill the D-2 post through a competitive selection process was lawful under ST/AI/2010/3 entitled “Staff selection system”. However, the Dispute Tribunal also determined that Mr. Sannoh met the conditions of UNMIS Information Circular 334/2011 entitled “Update to UNMIS Staff regarding the UNMIS Draw-down Process”, as at 30 June 2011 his fixed-term appointment was due to expire “shortly”, on 31 August 2011, and that he should have had his appointment extended for one year. The Dispute Tribunal further determined that as he was provisionally reassigned to a D-1 post in UNMISS, which was eventually abolished, Mr. Sannoh was entitled to a termination indemnity under Annex III to the Staff Rules. While rejecting Mr. Sannoh’s claim for lost salary, the Dispute Tribunal ordered that his contract be extended from 30 June 2012 to 31 August 2012, or in the alternative, that he be paid one month’s net base salary at his functional level at the time of the contested decision. Moreover, the UNDT ordered that Mr. Sannoh be paid termination indemnity in accordance with Staff Regulation 9.3 and Annex III to the Staff Rules.

The Secretary-General’s Appeal

4. The Secretary-General submits that the UNDT erred in ordering both an extension of Mr. Sannoh’s appointment from 30 June 2012 through 31 August 2012 *and* payment of a termination indemnity, contrary to the Organization’s regulatory framework. Neither UNMIS Information Circular No. 334/2011, on which the UNDT relied, nor the Staff Regulations and Rules establish any obligation on the part of the Organization to extend the appointment of staff members and to pay a termination indemnity. The regulatory framework allows for either an extension of appointment or payment of termination

indemnity. The Secretary-General notes that in the present case Mr. Sannoh was provisionally reassigned to UNMISS and his fixed-term appointment was effectively extended up to 30 June 2012 and his appointment was not shortened or terminated in any manner prior to the date of its expiration. The Secretary-General thus submits that Mr. Sannoh was not eligible for payment of termination indemnity.

Mr. Sannoh's Answer

5. Mr. Sannoh submits that the Dispute Tribunal correctly interpreted UNMIS Information Circular No. 334/2011 in ordering the extension of his appointment and the payment of a termination indemnity. The payment of termination indemnity and the extension of contract are not mutually exclusive. The UNDT made such an order within its discretion to ensure that justice was done.

6. In respect of the termination indemnity, Mr. Sannoh submits that he was entitled to it as a matter of law. When his contract expired on 16 September 2011, he was entitled to a renewal for one year up to 15 September 2012, as per UNMIS Information Circular No. 334/2011. It should be noted that the Administration “prematurely curtailed” his contract on 30 June 2012, some two months prior to the date it was due to expire had it been properly extended. His situation thus fell squarely within the scope of UNMIS Information Circular No. 334/2011, entitling him to a termination indemnity. Mr. Sannoh submits that the UNDT's order to extend his contract and pay him a termination indemnity is consistent with the UNDT's earlier decision in *Tolstopiatov*, and should therefore be upheld.²

Considerations

7. The issue raised in this appeal is whether the UNDT erred in ordering both an extension of Mr. Sannoh's appointment and payment of a termination indemnity.

Regulatory framework

8. The section “Extension of Contracts” of UNMIS Information Circular No. 334/2011 reads in part:

² *Tolstopiatov v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/012.

Staff with fixed-term appointments that are due to expire shortly will have their appointments extended for one year. Should a staff member's function no longer be required by the mission prior to the expiration of his/her fixed-term appointment, a termination indemnity may be payable in accordance with Staff Regulation 9.3 and Annex III of the Staff Rules.

Staff Regulation 9.3(c) provides:

If the Secretary-General terminates an appointment, the staff member shall be given such notice and such indemnity payment as may be applicable under the Staff Regulations and Staff Rules. Payments of termination indemnity shall be made by the Secretary-General in accordance with the rates and conditions specified in annex III to the present Regulations;

9. The Secretary-General submits that the regulatory framework allows for either an extension of appointment or payment of a termination indemnity, but not both.

10. Mr. Sannoh's D-1 post was transitioned to UNMISS after post-matching and comparative review exercises. Therefore, the UNDT correctly held that:

[H]e was reassigned, albeit provisionally, to the new mission in accordance with the provisions of Information Circular 218/2011 which stated:

In cases where the number of posts in the new mission is equal to or higher than the number of posts, under the same occupational group and level, staff members currently encumbering those posts in UNMIS will automatically be reassigned to the new mission.³

11. On whether Mr. Sannoh's contract should have been extended for one year during the transition, the UNDT held:

Information Circular No. 334/2011 regarding the "Update to UNMIS Staff regarding the UNMIS Draw-down Process" was issued to UNMIS staff on 30 June 2011. The circular stated:

This message addresses the extension of appointments of international and national staff transiting to the new missions, follow on assignments and the applicable procedures for the reduction of staff following the expiration of the UNMIS mandate on 9 July 2011.⁴

³ Judgment No. UNDT/2013/095, para. 93.

⁴ *Ibid.*, para. 94.

After quoting part of the section “Extension of Contracts” in UNMIS Information Circular No. 334/2011, the Dispute Tribunal went on to state:

The Information Circular does not define “shortly”. In the context of the entire Circular it can be taken to apply to appointments which were due to expire during the transition period of July and August in order to ensure the continuity of appointment of staff members who were to be transitioned to UNMISS. As at 30 June 2011 when this Circular was issued, the Applicant’s fixed term appointment was due to expire on 31 August 2011.⁵

12. The UNDT rightly held that Mr. Sannoh met the conditions of UNMIS Information Circular No. 334/2011 as, at 30 June 2011, his fixed-term appointment was due to expire shortly. As his function was required by the new mission, he was reassigned. In light of this, he should have had his appointment extended for one year.

13. The Secretary-General contends that the UNMIS Information Circular on which the UNDT relied was intended to provide staff with information regarding the UNMIS draw-down process and not to create additional rights for staff beyond what they have in the Staff Regulations and Rules. We do not think this position is correct because due to the special circumstances of the draw-down process, UNMIS Information Circulars No. 218/2011 of 1 June 2011, No. 327/2011 of 26 June 2011 and No. 334/2011 of 30 June 2011 were issued in addition to the Organization’s Regulations and Rules to govern the transition and comparative review process to the new mission (UNMISS). So these three Information Circulars were not merely issued for information purposes; they also provided the legal framework for the transition from UNMIS to UNMISS.

14. We affirm the UNDT’s finding; Mr. Sannoh was periodically given extensions but totalling less than a year, which was a breach of his entitlement under the Information Circulars. Accordingly, we hold that Mr. Sannoh was entitled to compensation for the breach of that right; which we fix at one month’s net base salary.

Termination Indemnity

15. The Secretary-General further takes issue with the UNDT’s order of both the extension of contract and the payment of termination indemnity. Mr. Sannoh, on the other hand, contends that he was entitled to the termination indemnity as a matter of law.

⁵ *Ibid.*, para. 96.

16. We note that UNMIS Information Circular No. 334/2011 provides:

Where the staffing table for the new missions reflects new posts or where the functions of a post change by more than 30%, the post will be filled through the regular competitive selection process and not through the comparative review process.

...

For those staff members who are not selected or provisionally reassigned to a position, their appointment may be terminated for reasons of reduction in staff or abolishment of post in accordance with Staff Regulation 9.3 and would be eligible for payment of the applicable termination indemnity under Annex III of the Staff Rules.

17. In view of the above, the UNDT held that: “On the facts in this case the Applicant was provisionally reassigned to a D-1 Post in UNMISS which eventually was abolished. He was therefore entitled to a termination indemnity under Annex III of the Staff Rules.”⁶

18. We affirm this decision. Mr. Sannoh was entitled to a termination indemnity in accordance with the law. We are satisfied that such indemnity and the award of a month’s salary are not mutually exclusive.

Judgment

19. The appeal is dismissed and the UNDT Judgment is affirmed.

⁶ *Ibid.*, para. 100.

Original and Authoritative Version: English

Dated this 27th day of June 2014 in Vienna, Austria.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Lussick

Entered in the Register on 29th day of August 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar