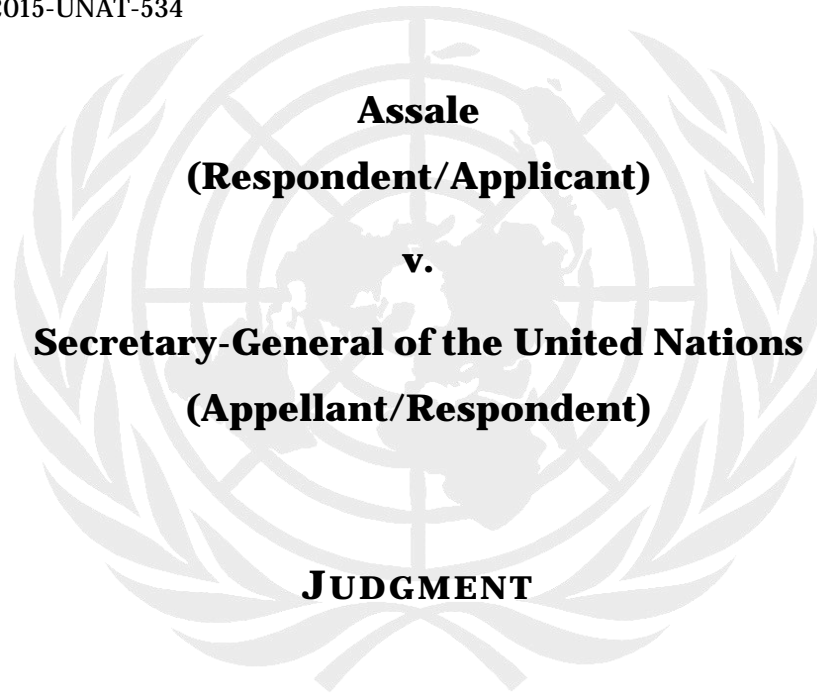




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-534



**Assale
(Respondent/Applicant)**

v.

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

JUDGMENT

Before:	Judge Rosalyn Chapman, Presiding Judge Sophia Adinyira Judge Deborah Thomas-Felix
Case No.:	2014-610
Date:	2 July 2015
Registrar:	Weicheng Lin

Counsel for Mr. Assale:	Alexandre Tavadian/Daniel Trup/OSLA
Counsel for Secretary-General:	John Stompor

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. On 25 March 2014, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi issued Judgment No. UNDT/2014/034, in the case of *Assale v. Secretary-General of the United Nations*. On 27 May 2014, the Secretary-General appealed the Judgment to the United Nations Appeals Tribunal (Appeals Tribunal), and on 18 June 2014, Mr. Philippe Tingbo Assale filed his answer.

Facts and Procedure

2. On 5 January 2010, Mr. Assale joined the United Nations Children's Fund (UNICEF or Agency) as Chief of the Child Protection Unit, Programme Section, at the P-4 level, with a duty station in N'Djamena, Chad. He had a fixed-term appointment of one year and 27 days, expiring on 31 January 2011.

3. While he was with UNICEF, Mr. Assale's first reporting officer (FRO) or immediate supervisor was the Chad Country Deputy Representative and his second reporting officer (SRO) was the Chad Country Representative. Mr. Assale received one Performance Evaluation Report (PER) covering 2010. It included Mr. Assale's work plan with goals and objectives, which was finalized on 23 May 2010; a Mid-Year Review, which was finalized on 23 September 2010; and the Year-End Review, which was finalized on 31 March 2011.

4. The Mid-Year Review rated Mr. Assale's performance in three categories: (1) progress vis-à-vis his work plan goals and objectives; (2) developmental outputs; and (3) competence. As to work plan output progress, Mr. Assale's supervisor commented "that he had [w]eak management skills [... and] [f]requent delays in delivery (donor reports, project agreements with partners, etc.)". Regarding competency, Mr. Assale's supervisor noted "weakness in leading and supervising staff [and a t]endency to keep alive conflicts instead of promoting harmonious work relations in his section". Mr. Assale commented that he considered he was "[p]rogressing as planned" with regards to the first and second categories, and noted he had "[n]o specific comments to report" regarding his ratings on competency.

5. On 27 October 2010, the Chad Country Deputy Representative sent a letter to the Chad Country Representative advising him that he would not recommend the renewal of Mr. Assale's appointment when it expired on 31 January 2011. In the letter, Mr. Assale's FRO

explained to the SRO that Mr. Assale had failed to understand and follow the Agency's operation and procedures and failed to act as a leader to his team. As a result of not managing to handle conflicts within his team, relations with partners had also suffered. The SRO acknowledged receipt of the letter and, noting he was familiar with Mr. Assale's work, agreed with the recommendation.

6. On 6 November 2010, Mr. Assale filed a complaint of harassment and abuse of authority against the Chad Country Representative with the Office of Internal Audit (OIA).

7. On 29 November 2010, the Chad Country Representative sent a letter to Mr. Assale advising him that following discussions with his FRO about his poor performance, his appointment would expire on 31 January 2011 and would not be renewed.

8. On 31 December 2010, Mr. Assale made a request for management evaluation of the decision not to renew his appointment.

9. On 21 January 2011, the Agency advised Mr. Assale that in light of his complaint against the Chad Country Representative, his appointment would be extended for one month, i.e., until 28 February 2011, to allow the OIA to complete its investigation into his harassment claim.

10. On 28 February 2011, the Deputy Executive Director of UNICEF advised Mr. Assale that his appointment would not be extended again pending finalization of OIA's Investigation Report, but "should the contested decision be reversed [by management evaluation], [he] would be reinstated with retroactive effect[] to the date of expiration of [his] current contract".

11. Mr. Assale's appointment expired on 28 February 2011, and he was separated from service.

12. On 31 March 2011, the Chad Country Deputy Representative finalized Mr. Assale's Year-End Review in his PER. The Year-End Review provided a detailed rating of Mr. Assale in three core competencies (Communication; Working with People; and Drive for Results) and six functional competencies (Deciding and Initiating Action; Leading and Supervising; Relating and Networking; Persuading and Influencing; Analyzing; and Formulating Strategies and Concepts).

13. As to the core competencies, Mr. Assale's FRO rated Mr. Assale as "Developing Proficiency" regarding the competency of "Drive for Results". He explained that "[Mr. Assale's] drive for results was weak. He was unable to improve the delivery and capitalize on the opportunities that had arised [sic] during 2010."

14. Regarding the six functional competencies, Mr. Assale was rated as "Developing Proficiency" in all functional competencies other than "Relating and Networking", the sole competency for which he was rated as "Proficient". His FRO made the following comments regarding each of the functional competencies:

- Deciding and Initiating Action – "In many circumstances, [Mr. Assale] was unable to provide guidance and adequate solutions which put several times the office in a bad position with partners";
- Leading and Supervising – "[Mr. Assale] could not demonstrate his capacity to manage a section and lead a team. [He h]as to acquire leadership skills to carry out the Chief of Section Position";
- Persuading and Influencing – "[Mr. Assale n]eeds to improve his ability to assert his own ideas and persuade others, to gain support and commitment";
- Analyzing – "[Mr. Assale has w]eak analytical skills"; and
- Formulating Strategies and Concepts – "For a new comer [sic] in UNICEF, [Mr. Assale has made a] good start towards better formulation of sound strategies and concepts and [shows a] better understanding of various organizational goals and priorities."

15. Mr. Assale neither provided a responding statement nor a rebuttal to the Year-End Review. However, in finalizing his PER on 31 March 2011, he stated:

I disagree on the mid year and end year appraisal of my supervisor. We have never discussed about my performance till in [A]ugust he [the FRO] informed me that the Representative and him have found reasons for me to leave the organisation. I expressed to him my disagreement about the reasons he evoked. Instead of commenting his comments on my PER, [by] accident I pressed finalisation button. But I expressed to him, to the HR and Operations orally my disagreement. [...] My section had in 2010 the highest [sic] performamnce [sic] rate in terms of execution of budget and activities planned.

16. On 12 July 2011, the OIA issued its Investigation Report, in which it concluded that there was no evidence to support Mr. Assale's claims of ongoing harassment and abuse of authority by the Chad Country Representative in not renewing Mr. Assale's contract, among other things. However, it noted that it was questionable whether it was appropriate for the Chad Country Representative to express his dissatisfaction with Mr. Assale's performance in front of colleagues, supervisees and a UNICEF implementing partner.

17. By letter dated 1 September 2011, the Deputy Executive Director of UNICEF, having reviewed the OIA Investigation Report, advised Mr. Assale that his request for management evaluation of the non-renewal decision was denied, and he was satisfied there were no improper motives on the part of Mr. Assale's supervisors in making the decision. Mr. Assale was also advised that "the [OIA] investigation found that the Representative exercised poor judgment in the way in which he conveyed his dissatisfaction with [Mr. Assale's] performance, particularly, by doing so in front of [Mr. Assale's] colleagues, including [Mr. Assale's] supervisees. Consequently, [UNICEF] ha[d] issued a reprimand to the Representative," pursuant to Administrative Instruction CF/AI/2009-004 on Disciplinary Process and Measures.

18. On 5 December 2011, Mr. Assale filed an application before the UNDT contesting the decision not to renew his appointment on the ground that the Agency failed to comply with its own regulations and rules. He requested compensation in the amount of 12 months' salary and entitlements which would have been due to him and "additional, commensurate compensation for moral harm". The Secretary-General filed his reply on 5 January 2012, and Mr. Assale filed a rejoinder on 1 September 2013.

19. On 25 March 2014, the UNDT issued Judgment No. UNDT/2014/034, which granted the application. The UNDT concluded, *inter alia*, that UNICEF "failed to comply with the rules governing performance appraisal and as a result of this non-compliance, [Mr. Assale] was separated from service unfairly and prematurely". Additionally, the UNDT found that "the decision not to renew [Mr. Assale's] appointment beyond 31 January 2011 was tainted by extraneous motives and was therefore not a lawful exercise of the discretion conferred upon the [Administration]". Further, the UNDT found that the Agency abused its discretion by separating Mr. Assale before the completion of the investigation into his harassment complaint. The UNDT awarded Mr. Assale 12 months' net base salary, based on the foregoing conclusions. Lastly, the UNDT referred both the Chad Country Deputy Representative and the Representative to the

Executive Director of UNICEF for accountability, and requested to be informed “of the outcome of the process on accountability”.

Submissions

The Secretary-General’s Appeal

20. The UNDT erred in concluding that the Chad Country Deputy Representative, Mr. Assale’s FRO, was obligated to employ remedial measures to assist Mr. Assale in improving his performance before a decision would be taken to renew his appointment. In erring, the UNDT applied UNICEF’s Administrative Instruction CF/AI/2011-001 on the Performance Appraisal and Rebuttal Process (2011 Administrative Instruction), which was not applicable to the decision since it did not come into effect until 17 January 2011 – after the contested decision was made. Further, under UNICEF’s Administrative Instruction CF/AI/2010-001 on Separation from Service (2010 Administrative Instruction), there is no requirement to undertake remedial measures prior to deciding not to renew an appointment based on unsatisfactory performance.

21. The UNDT erred in concluding Mr. Assale’s unsatisfactory performance was not a valid reason for the decision not to renew his appointment. The Chad Country Deputy Representative advised Mr. Assale of his dissatisfaction with his performance on several occasions between May and September 2010, as well as in the Mid-Year Review. The Administration has broad discretion regarding internal management, including the non-renewal of appointments, and poor performance is a lawful basis for the non-renewal of a fixed-term appointment. The UNDT erred on a question of law by applying the requirements for the *termination* of an appointment for unsatisfactory performance to the non-renewal of Mr. Assale’s contract. Thus, the UNDT blurred the distinction between the non-renewal of an appointment and the termination of an appointment for poor performance.

22. The UNDT erred in referring the Chad Country Deputy Representative and Representative to the Executive Director of UNICEF for accountability. First, such referral violates procedural due process since neither staff member testified before the UNDT as there was no oral hearing and, thus, they were denied the opportunity to explain their conduct. Second, the conclusions which underpinned the UNDT’s referral were flawed insofar as the UNDT applied the wrong administrative instruction in finding that the performance evaluation procedures had not been satisfied. Third, it was not open to the UNDT to consider claims of

harassment or of a hostile work environment, as such claims were not raised in Mr. Assale's request for management evaluation and had not been addressed before the filing of the UNDT application; thus, the UNDT exceeded its competence in considering *de novo* Mr. Assale's harassment claims. Finally, in light of the reprimand issued by UNICEF to the Chad Country Representative, issues regarding his conduct were moot before the UNDT.

23. The UNDT made an error of law by awarding compensation to Mr. Assale when he did not challenge the final assessment of his performance as unsatisfactory, and there is no requirement in the regulations or rules that an appointment must be continued pending an investigation into a staff member's harassment complaint. To hold otherwise would provide an incentive for a staff member whose appointment has not been renewed to file a frivolous harassment complaint in order to secure an extension of his or her appointment.

24. The Secretary-General seeks to vacate the entire Judgment and to affirm that the non-renewal of Mr. Assale's appointment was valid.

Mr. Assale's Answer

25. The UNDT correctly concluded that under the 2010 Administrative Instruction the standards for determining "unsatisfactory performance" for the purposes of the non-renewal of an appointment and the termination of an appointment are the same. Thus, UNICEF had a duty to implement remedial measures to assist Mr. Assale in improving. Moreover, UNICEF also had a duty to implement remedial measures to assist Mr. Assale in improving under the 2011 Administrative Instruction, which was in effect and applicable on 28 February 2011, the date Mr. Assale's appointment ended. Finally, under principles of international administrative law, remedial measures must be taken.

26. The UNDT correctly found that the impugned decision was not a lawful exercise of UNICEF's discretion. As early as 26 April 2010, the Chad Country Deputy Representative and Representative expressed displeasure with Mr. Assale's performance and wanted to end his appointment. This was before any appraisal had even been undertaken. Moreover, the Chad Country Representative made the impugned decision before the Year-End Review was finalized; without that Review, the decision was arbitrary. The Year-End Review was only finalized one month *after* Mr. Assale's appointment ended. This is inconsistent with

the Appeals Tribunal's decision in *Tadonki*.¹ Since Mr. Assale's PER did not rate his performance as unsatisfactory, there were no grounds not to renew his appointment.

27. The Appeals Tribunal cannot consider the Secretary-General's claim that the UNDT erred in referring the Chad Country Deputy Representative and Representative for accountability because it is merely a recommendation.

28. The UNDT did not make an error of law in awarding compensation to Mr. Assale. He was unable to rebut the Year-End Review since he was separated from service at the time it was finalized. In any event, as the UNDT found that he had been separated for reasons *unrelated* to his performance, his failure to rebut his PER was immaterial. Moreover, since the UNDT correctly found that Mr. Assale's appointment was improperly not extended, the compensation put him in the situation he would have been in if UNICEF had not acted unlawfully.

29. Mr. Assale requests that the Appeals Tribunal affirm the Judgment and dismiss the appeal in its entirety.

Considerations

Did the UNDT err in concluding the non-renewal decision was unlawful?

30. Poor or unsatisfactory performance may properly be the basis for the non-renewal of a fixed-term appointment.² As the Appeals Tribunal recently stated in *Said*:³

... There is no need for the Appeals Tribunal to define the term "poor performance." This Tribunal has already determined that a PER does not need to rate a staff member as "unsatisfactory" in order to support an agency's decision not to renew an appointment for poor performance. We have also held that a staff member whose performance was rated as "partially meeting performance expectations" had no legitimate expectancy of renewal of his contract and the non-renewal of another staff member with a similar performance rating was lawful.

¹ *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-400.

² *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 34, citing *Morsy v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-298, and *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153.

³ *Said, ibid*, para. 41, and cites therein.

31. It is undisputed that a fixed-term appointment carries no expectancy of renewal or conversion.⁴ Section 1.7 of UNICEF's Administrative Instruction CF/AI/2009-005 (Types of Appointment and Categories of Staff) provides as much. "Nevertheless, an administrative decision not to renew a fixed-term appointment can be challenged on the grounds the Agency has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive against the staff member. The staff member has the burden of proving such factors played a role in the administrative decision."⁵

32. The Dispute Tribunal concluded that the decision of UNICEF's Chad Country Representative not to renew Mr. Assale's fixed-term contract for poor performance was unlawful for several reasons. First, it determined that UNICEF had failed to provide Mr. Assale with remedial measures to improve his performance, as required by the 2011 Administrative Instruction or, alternatively, the provisions pertaining to the termination of appointments for unsatisfactory performance set forth in the 2010 Administrative Instruction. Second, the UNDT found that the non-renewal decision was unlawfully made before Mr. Assale's PER was finalized. Third, the UNDT found that the decision was tainted by extraneous motives in that the UNICEF Chad Country Representative had shown his animus towards Mr. Assale in May 2010 when he shouted at him and, thus, he "could not have exercised objective judgment" at the time he approved the FRO's recommendation not to renew Mr. Assale's appointment. Lastly, the UNDT determined that the Agency had abused its discretion by separating Mr. Assale before completion of the OIA's investigation into his harassment complaint. None of these reasons withstands scrutiny.

33. As an initial matter, the Secretary-General argues that the UNDT erroneously concluded that the 2011 Administrative Instruction applied to its review of the impugned decision. However, since the 2011 Administrative Instruction did not come into effect until 17 January 2011 – after the date of the impugned decision – this constitutes a legal error. According to the Secretary-General, the UNDT should have applied the 2010 Administrative Instruction, which was in effect on the date of the impugned decision, i.e., 29 November 2010. On the other hand, Mr. Assale argues that the UNDT correctly

⁴ See *Said, ibid*, paras. 33-34; cf. *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-279; *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153; *Syed v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-061.

⁵ *Said, ibid*, para. 34, and cites therein.

applied the 2011 Administrative Instruction since that administrative instruction was in effect on the last day of his appointment, which is the date the impugned decision was implemented.

34. We agree with the Secretary-General and determine that the UNDT made an error of law when it applied the 2011 Administrative Instruction to review the non-renewal decision. In *Hunt-Matthes*, “we restated the well-known principle of law against retrospective application of laws, noting: ‘The Appeals Tribunal recalls the general principle of law against retrospective effect/application of laws and hold that since the incident in question occurred before [the administrative issuance] was promulgated it is not applicable in this case.’”⁶ In the context of Mr. Assale’s case, the “incident in question” before the UNDT was the non-renewal decision, which was made on 29 November 2010. Since the 2010 Administrative Instruction was in effect on that date, the UNDT made an error of law in retroactively applying the 2011 Administrative Instruction.

35. The Appeals Tribunal determines that the UNDT further erred in law in concluding that it was “the duty of the Administration to take measures to remedy [failings in performance]”. This was not a “duty” or a requirement under either the 2010 Administrative Instruction or Chapter 7 of UNICEF’s Human Resources Manual, which applied to the impugned decision. As we held in *Said*:⁷

[T]here is no authority in either Administrative Instruction CF/AI/2010-001 or Chapter 7 of the Manual to support the erroneous legal conclusion that a staff member whose contract is *not renewed* for poor performance must be afforded an opportunity to improve over the course of another appointment.

Thus, the UNDT’s conclusion that the non-renewal decision was vitiated by the Agency’s failure to take remedial measures to improve Mr. Assale’s performance is without legal basis. Nevertheless, Mr. Assale had several months between the issuance of the Mid-Year Review and the end of his appointment to improve his performance. According to the PER, that did not happen.

36. Further, the UNDT erroneously concluded that both the Chad Country Deputy Representative and the Representative had “tainted” or bad motives in deciding not to renew Mr. Assale’s appointment, as shown by: (i) the concerns they expressed to

⁶ *Hunt-Matthes v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-444/Corr.2, para. 26.

⁷ *Said, ibid*, para. 42, and cites therein.

Human Resources personnel in April 2010 about Mr. Assale's performance; (ii) the May 2010 instance of the SRO's shouting at Mr. Assale in front of his supervisees about performance-related issues; and (iii) the timing of the non-renewal decision, which occurred shortly after the Mid-Year Review.

37. In our view, neither Mr. Assale's FRO nor his SRO had "tainted" or bad motives for not renewing Mr. Assale's appointment. As the Appeals Tribunal has previously noted, "[c]oncern [expressed] about a high level manager's poor performance is not an improper motive or basis for the Agency's (preliminary or ultimate) decision not to renew a fixed-term appointment".⁸ The position of Chief of the Child Protection Unit in Chad is a prominent and supervisory position, comparable to a high-level manager. Mr. Assale reported directly to the Chad Country Deputy Representative and the Representative above him. If they were concerned about his performance, it was their obligation to express these concerns, even prior to completion of any PER.⁹

38. The Mid-Year Review's ratings detailed serious deficiencies and weaknesses in Mr. Assale's progress towards achieving his work plan, outputs and competency, all of which are essential for a supervisor to be successful. Moreover, it cannot be said that Mr. Assale was unaware of his supervisors' displeasure with his performance even before he received his Mid-Year Review, as Mr. Assale acknowledged in his comments in the PER wherein he stated that his supervisors discussed his poor performance with him in August 2010. The evidence shows that even earlier than August – in May 2010 – Mr. Assale's SRO complained to him about his performance, albeit by improperly shouting at him in front of others. It is obvious that the decision not to renew Mr. Assale's appointment was based on his performance during the first nine months as Chief of the Child Protection Unit, and that decision is supported by the Mid-Year Review. Finally, it must be noted that Mr. Assale had an opportunity to improve his performance in the months prior to the Year-End Review. However, the Year-End Review did not show an improvement by Mr. Assale. Moreover, he did not make a response or rebuttal to his PER, despite having an opportunity to do so.

⁸ *Morsy v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-298, para. 24.

⁹ See, e.g., UNICEF Human Resources Manual, Section 7.2.11: "A healthy staff member/supervisor relationship is based on open communication. Supervisors have an obligation to let the staff member know on an on-going basis how he/she thinks the staff member is performing."

39. The Agency's failure to complete Mr. Assale's PER before the end of January 2011 did not invalidate the non-renewal decision, as the UNDT erroneously determined. Neither the 2010 Administrative Instruction nor Chapter 7 of the UNICEF Human Resources Manual requires that the Agency extend a staff member's fixed-term appointment pending completion of the Year-End Review or PER. Rather, the Human Resources Manual, Section 7.3.34, provided that "[t]he PER should normally be completed within one month of the end of the reporting period", which is 31 December of each year under Section 7.4.12. However, this was not a mandatory requirement.

40. The UNDT also made an error of law when it concluded that UNICEF was required to extend Mr. Assale's fixed-term appointment until the OIA issued its Investigation Report addressing his harassment complaint. The UNDT cited no legal authority for this conclusion, and there is none. Accordingly, this conclusion cannot support the UNDT's ultimate determination that the non-renewal decision was unlawful.

41. Lastly, we note that on 12 July 2011, the OIA issued its Investigation Report on Mr. Assale's harassment complaint, finding no harassment occurred. Although the UNDT could properly consider whether Mr. Assale's supervisors were biased against him, perhaps as demonstrated by their alleged harassing conduct toward him, the UNDT erred in law and exceeded its competence when it considered *de novo* whether harassment occurred and found that the Chad Country Representative had created a hostile work environment for Mr. Assale.¹⁰ Consequently, the UNDT's finding that the Chad Country Representative created a hostile work environment cannot support the UNDT's ultimate determination that the non-renewal decision was unlawful.

Did the UNDT err in awarding compensation?

42. Based upon its determination that UNICEF acted unlawfully in not renewing Mr. Assale's appointment, the UNDT ordered the Agency to pay Mr. Assale "the equivalent of one year's net base salary, at the level he was entitled to before he was separated from service". However, as discussed above, we conclude that the UNDT made several legal errors in determining that the non-renewal decision was unlawful. Thus, the UNDT's award of compensation is without basis and should be vacated.

¹⁰ *Mashhour v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-483, citing *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123, para. 25.

Did the UNDT err in referring Mr. Assale's supervisors for accountability?

43. Article 10(8) of the UNDT Statute provides that the UNDT “may refer appropriate cases to [...] the executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability”. Pursuant to this provision, the UNDT referred both the Chad Country Deputy Representative and the Representative to the Executive Director of UNICEF for “openly, consciously and deliberately flout[ing] the basic rules of the Organization in regard to: (a) the evaluation of the performance of a staff member; and (b) the prohibition against creating a hostile work environment; and (c) abuse of authority”. Additionally, the UNDT “request[ed] that the Executive Director inform [it] in confidence of the outcome of the process on accountability”.

44. On appeal, the Secretary-General argues that the UNDT's referrals of accountability must be set aside in that: (a) the UNDT applied the wrong administrative instruction in concluding that the contested performance evaluation was deficient (a basis for the referrals); (b) such referrals violated procedural due process rights since neither manager testified before the UNDT; and (c) the UNDT exceeded its competence in finding the SRO created a hostile work environment. The Secretary-General also contends that the referral of the Chad Country Representative is moot given the Agency's reprimand of him following the issuance of the OIA Investigation Report.

45. We have determined that there are no grounds to support the UNDT's conclusion that the non-renewal decision was unlawful, as discussed above. We have also determined that the UNDT exceeded its competence in finding that the Chad Country Representative had created a hostile work environment, also discussed above. Accordingly, there were no grounds for the UNDT to refer both managers (FRO and SRO) to the Executive Director of UNICEF for accountability.

46. Additionally, we also determine that the UNDT exceeded its competence when it improperly requested to be informed of the outcomes of both referrals. There is no statutory authority for that request, as the UNDT acknowledged, and the request gives the appearance that the Dispute Tribunal has become an advocate and is no longer neutral.

Judgment

47. The Secretary-General's appeal is granted and Judgment No. UNDT/2014/034 is vacated.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Thomas-Felix

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar