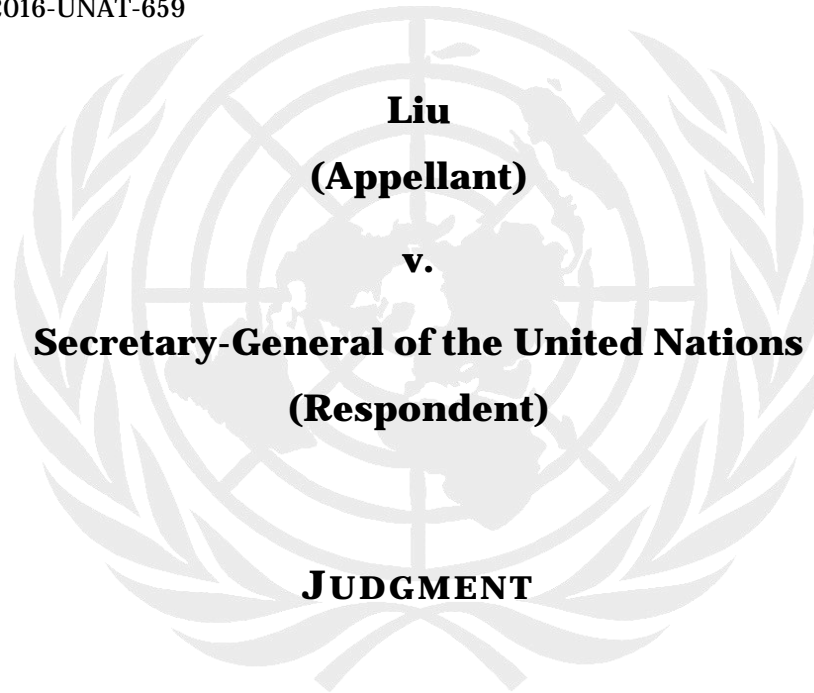




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-659



**Liu
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge Inés Weinberg de Roca Judge Luis María Simón
Case No.:	2015-869
Date:	30 June 2016
Registrar:	Weicheng Lin

Counsel for Ms. Liu:	Self-represented
Counsel for Secretary-General:	Ernesto Bondikov

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Jing Liu against Judgment No. UNDT/2015/078, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 4 September 2015 in the case of *Liu v. Secretary-General of the United Nations*. Ms. Liu filed an incomplete appeal on 4 November 2015, which was perfected on 16 November 2015. The Secretary-General filed his answer on 5 January 2016.

Facts and Procedure

2. This case concerns the non-renewal of Ms. Liu's fixed-term appointment. The facts relevant to Ms. Liu's appeal, as found by the Dispute Tribunal, are as follows:¹

... The Applicant joined the United Nations on 1 August 2007, under a fixed-term appointment as Programme Assistant (G-5 level), United Nations Office on Drugs and Crime ("UNODC") in China.

... The United Nations Platform for Space-based Information for Disaster Management and Emergency Response ("UN-SPIDER") was created as an [United Nations Office of Outer Space Affairs ("OOSA")] Programme in 2006. The programme, which is financed through funding agreements with donors, is delivered through its Headquarter Offices in Vienna, Austria, and through its Offices in Bonn, Germany and Beijing, China. The latter office became operational in January 2011.

... On 1 July 2011, the Applicant was granted a fixed-term appointment as Programme Associate (G-6) of UN-SPIDER, Beijing, China, with a letter of appointment from the United Nations Development Programme ("UNDP"). The Applicant's post at UN-SPIDER was financed through contributions from the Chinese Government.

... By interoffice memorandum dated 10 February 2012, the Chief, Space Applications Section, OOSA, informed the Head of Office, OOSA Beijing, that the UN-SPIDER Beijing Office financial operations would be shifted to UNDP China, to allow the Beijing Office greater independence and flexibility in its work.

... By email of 22 January 2013, the Chief, Space Applications Section, OOSA, informed the Head of Office, OOSA Beijing, and the Applicant that since the interoffice memorandum of 10 February 2012, by which the Beijing operation had been changed in 2013, had "created a lot of confusion in [their] work not only in Beijing but also in Vienna through 2012", he had decided to withdraw said

¹ Impugned Judgment, paras. 4-12.

memorandum. He further noted that this meant that the Beijing Office was going to operate as it had in 2011.

... As such, and although initially UN-SPIDER Beijing had been operating under UNDP Rules and Procedures, OOSA decided in January 2013 that UN-SPIDER Beijing operations [would] be shifted back to the United Nations Office at Vienna (UNOV), and that it [would work] under the latter's [Integrated Management Information System ("IMIS")] system. At the same time, the funding agreement with the Chinese Government came to an end and OOSA, Vienna started to perform some of UN-SPIDER Beijing operational activities; additionally, the post encumbered by the Applicant was downgraded and a job opening for a Team Assistant (SC-4) was advertised to reflect the decreased responsibilities.

... Email communications from 2012 and 2013 between the Applicant and her First Reporting Officer ("FRO") show some tensions between them; the communications refer, *inter alia*, to the Applicant's ePAS and to her FRO's concerns about accomplishment of some tasks by the Applicant, as well as to her communication with the FRO. In an email of 20 June 2013 to her FRO, the Applicant noted that she was feeling unwell "in view of the recent turbulences so [she had] to go home for rest".

... In her previous ePASes—i.e. cycles 2009-2010 and 2010-2011—and those for 2011-2012 and 2012-2013 when the Applicant was working as Programme Associate, G-6, at UN-SPIDER, the Applicant was rated "frequently exceeds performance expectations". The latest ePAS, namely that for the period 2012-2013, gave her the same rating although it contained a comment noting that the Applicant needed more training in IMIS.

... By letter dated 26 June 2013, the Deputy Director-General, UNOV, and the Director, OOSA, informed the Applicant that her fixed-term appointment, which expired on 30 June 2013, would be only extended by one month, namely until 31 July 2013.

... By email of Sunday, 25 August 2013 addressed to the United Nations Management Evaluation Unit at Headquarters ("MEU"), the Applicant—unrepresented at the time—requested a "possible management evaluation" of the decision not to extend her appointment, stressing that the aim of her email was to meet the 60 day time-limit for requesting management evaluation. The MEU sent her a response on 27 August 2013, advising that she had to complete the form required by MEU.

... On 29 August 2013, the Applicant's Counsel filed a request for management evaluation with the UNDP Administrator of the decision at stake. By letter dated 11 October 2013, received by the Applicant on 12 October 2013, the Officer-in-Charge, Bureau of Management, UNDP, informed her that while the request for management evaluation was found receivable, it was rejected on the merits and the decision was

being upheld. It was noted, *inter alia*, that “management considered it more appropriate, from a financial standpoint, to seek interim administrative support through a level 4 Service contract (“SC”) instead of downgrading the post to G-4”. It was further stressed that the UN-SPIDER Beijing Office was now composed of the Head of Office (P-4), a Team assistant (SC-4) and two experts provided by the Chinese Government under a non-reimbursable loan.

3. By Orders No. 121 (GVA/2015) of 16 June 2015, No. 135 (GVA/2015) of 29 June 2015 and No. 151 (GVA/2015) of 14 August 2015, the UNDT directed the parties to provide additional information and to inform it whether they were agreeable to the case being decided on the papers. The Secretary-General provided the information requested and informed the UNDT that he did not have any objections to the case being decided on the papers. Ms. Liu did not file any submission in response to the Orders.

4. On 4 September 2015, the UNDT rendered the Judgment under appeal, Judgment No. UNDT/2015/078. On its own motion, the UNDT considered the issue of receivability of the application and concluded that Ms. Liu had met the 60-day time limit to request management evaluation under Staff Rule 11.2. Turning to the merits of the application, the UNDT characterized the contested decision as the decision by the Director, OOSA, of 26 June 2013 “to terminate her contract by extending [it] one additional month”.² The UNDT found that the reason for the non-renewal of Ms. Liu’s appointment was the restructuring of the OOSA Beijing Office, which led to the abolition of the post encumbered by Ms. Liu. While Ms. Liu disagreed with the restructuring, she did not deny that it had occurred, that there was increased oversight from UNOV, and that some of the OOSA Beijing Office’s operational activities had been transferred to OOSA, Vienna. Ms. Liu also did not contest that there were plans to “downgrade” the G-6 position of Programme Associate to the G-4 level to reflect the decreased responsibilities of the position. The evidence established that a position of Team Assistant was advertised and filled through a level 4 Service Contract (SC-4) in order to replace the G-6 position previously held by Ms. Liu.

5. The UNDT was satisfied that the post encumbered by Ms. Liu no longer existed as at 1 August 2013, the day after the expiry of Ms. Liu’s fixed-term appointment on 31 July 2013. Therefore, the reasons provided for the non-renewal of Ms. Liu’s appointment were supported by

² Impugned Judgment, para. 1. In her application, Ms. Liu described the contested decision as follows: “Three days before my annual contract terminated, I received a letter to terminate my contract by extending one additional month”.

the evidence. The UNDT also noted that Ms. Liu did not provide any evidence in support of her allegations that the contested decision was ill-motivated, in particular that it was based on performance issues or otherwise related to her performance appraisals. The comments relating to the need for training in Ms. Liu's e-PAS for 2012-2013 (for which she received a rating of "frequently exceeds performance expectations") did not amount to evidence of any ill motivation for the contested decision. The UNDT rejected Ms. Liu's application.

Submissions

Ms. Liu's Appeal

6. Ms. Liu argues that the UNDT made a number of errors of fact, resulting in a manifestly unreasonable decision. The UNDT incorrectly identified the contested decision. She contested the fact that "[her] contract was termination when [her] performance issue was not solved". The UNDT also incorrectly stated that she joined the United Nations on 1 August 2007. She states that she joined on 1 April 2005.

7. Ms. Liu contends that part of the rationale given for the restructuring of the OOSA Beijing Office, namely the confusion caused by the 10 February 2012 memorandum, was not correct. She performed her administrative and financial functions satisfactorily from July 2011 to June 2013. She contends that it was not appropriate to raise the need for IMIS training in her e-PAS only at the end of the 2012-2013 performance cycle.

8. Ms. Liu asserts that the Secretary-General's submissions before the UNDT were incorrect, namely that her supervisor had discussed the changes to the operations of the OOSA Beijing Office with her before she received the notice of the non-renewal of her appointment. Ms. Liu states that she only became aware of the rationale given by the Administration for the non-renewal of her appointment after she received the outcome of her request for management evaluation.

The Secretary-General's Answer

9. The Secretary-General contends that the UNDT correctly upheld the decision not to renew Ms. Liu's appointment. The UNDT correctly concluded that the evidence established that the reason for the contested decision was the restructuring of the operational functions of the OOSA Beijing Office and the abolition of the post encumbered by Ms. Liu.

10. The UNDT correctly found that there was no evidence of improper motivation. Ms. Liu failed to discharge her burden of proving that the real reason for the contested decision was her performance.

11. Ms. Liu has not identified any errors of fact resulting in a manifestly unreasonable decision. Her appeal merely reargues and repeats arguments raised before the UNDT. She has not identified any error by the UNDT that warrants intervention by the Appeals Tribunal.

12. The Secretary-General requests that the Appeals Tribunal affirm the Judgment and dismiss the appeal in its entirety.

Considerations

13. Ms. Liu was granted a fixed-term appointment on 1 July 2011 at the G-6 level. On 26 June 2013, she was informed that her fixed-term appointment, which expired on 30 June 2013, would be only extended by one month, namely until 31 July 2013.

14. The UNDT rejected her application contesting the decision not to renew her fixed-term appointment, and she appeals that decision on the grounds that the UNDT erred on a question of fact resulting in a manifestly unreasonable decision.

15. She raises a number of arguments, only two of which were not raised before the UNDT.

16. Firstly, she alleges that she did not contest the decision to “terminate” her contract by extending it one additional month. She maintains that “I did receive the decision, but I did not accept the extension”. Instead, she claims that her contract was “terminated” when her performance issue “was not solved”.

17. It is a matter of record that the decision contested by Ms. Liu in the Dispute Tribunal was the decision not to renew her fixed-term appointment. That was also the decision in respect of which she requested a management evaluation on 29 August 2013. There was no administrative decision to “terminate” her contract on the basis of her “performance-issue” and certainly no such decision was ever submitted for management evaluation. Her claim that the non-renewal was based on a performance issue was fully considered by the UNDT.

18. Secondly, she claims that the UNDT erred when it noted that she joined the United Nations on 1 August 2007. She points out that she joined the United Nations in April 2005. This argument does not assist her. The date of her joining the United Nations is not relevant to the issue that was before the UNDT, nor has she shown how such an error has resulted in a manifestly unreasonable decision by the UNDT.

19. Her other arguments raised in the appeal are essentially identical to those raised before the UNDT. She has not identified any specific error made by the UNDT. The Appeals Tribunal has consistently stated that the appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed in the lower court. Rather, he or she must demonstrate that the court below has committed an error of fact or law warranting intervention by the Appeals Tribunal.³

20. The UNDT properly reviewed the contested decision in accordance with the applicable law. It noted that pursuant to Staff Rule 4.13(c), a “fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14(b)”. The Appeals Tribunal and the UNDT have consistently affirmed the validity of that Staff Rule and the principle that there is no expectancy of renewal of fixed-term contracts.⁴

21. The UNDT was cognizant of the Appeals Tribunal jurisprudence that “[a] non-renewal decision can be challenged in case the Administration does not act fairly, justly or transparently or if the decision is motivated by bias, prejudice or improper motive against the staff member; the latter has the burden of proving that such factors played a role in the administrative decision”.⁵ The UNDT also correctly noted that “[t]he Appeals Tribunal has consistently held that an

³ *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 30, citing *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29; and *Al-Moued v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-458, paras. 18 and 23.

⁴ *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153, para. 42; *Igbinedion v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-411, paras. 23 and 24.

⁵ Impugned Judgment, para. 35, citing *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, which referred to *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153; *Obdejn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201; and *Asaad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-021.

international organization has the power to restructure some or all of its departments or units, which includes the abolition of posts, the creation of new posts and the redeployment of staff”.⁶

22. Applying those principles, the UNDT concluded that “[Ms. Liu’s] G-6 post, funded through government contributions, did no longer exist as at 1 August 2013, that is, the day after the expiration of [her] appointment. Therefore, the reason provided for the non-extension of [Ms. Liu’s] appointment is supported by the evidence”. We find no error in that conclusion.

23. Moreover, the UNDT examined whether the contested decision was ill-motivated and concluded that Ms. Liu had not provided any evidence to support that allegation, “particularly that it was based on issues with her performance or otherwise related to her ePAS”. In that regard, the UNDT was of the view, with which we agree, that “[t]he comments in [her] ePAS 2012-2013—for which she received a rating of ‘frequently exceeds performance expectations’—with respect to training needs certainly cannot serve as evidence of any ill motivation of the non-renewal decision”.⁷

24. Having failed to establish any error of law or fact by the UNDT, the appeal fails.

Judgment

25. Judgment No. UNDT/2015/078 is affirmed and the appeal is dismissed in its entirety.

⁶ Impugned Judgment, para. 36, citing *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481 and *Gehr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-236.

⁷ *Ibid.*, para. 41.

Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Simón

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar