UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2017-UNAT-721

Ncube

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Rosalyn Chapman Judge John Murphy
Case No.:	2016-958
Date:	31 March 2017
Registrar:	Weicheng Lin

Counsel for Mr. Ncube:	Daniel Trup, OSLA
Counsel for Secretary-General:	Zarqaa Chohan

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/069, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 7 June 2016, in the case of *Ncube v. Secretary-General of the United Nations*. The Secretary-General filed his appeal on 8 August 2016, and Mr. Pios Ncube filed his answer on 15 August 2016.

Facts and Procedure

2. The following facts are taken from the UNDT Judgment:[1]

> ... The Applicant joined the Office for Coordination of Humanitarian Affairs (OCHA) as a National Professional Officer in Zimbabwe in 2007. On 11 July 2010, OCHA deployed him to Afghanistan on a one-year fixed-term appointment as a Humanitarian Affairs Officer at the P3 level. His appointment was extended through 20 March 2012, and not renewed thereafter.
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> ...
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> [From July 2010 until March 2012, Mr. Ncube worked under the direction of the OCHA Head of Office in the Humanitarian Reporting Section (HRS). Upon entry of duty, he was not designated a First Reporting Officer (FRO) and not assisted in providing a work plan.]
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> ... On 27 September 2010, the new Head of Office of OCHA for Afghanistan, Mr. Tim Pitt, re-assigned the Applicant to the Donor Relations Section. His position title remained the same. [No FRO was designated, no work plan established and no midpoint review conducted (until July 2011 when Mr. Ncube had already been reassigned). On 10 March 2011, Mr. Ncube was transferred to the Cluster Coordination Unit (CCU) under the supervision of Ms. Jessica Bower, Humanitarian Affairs Officer, where he assumed "materially different" duties.]
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> ... The Applicant had almost completed one year of continuous service as Humanitarian Affairs Officer when, on 3 July 2011, he was asked to attend a meeting with Mr. Pitt, Mr. Inganji, Deputy Head of Office, and the Finance Officer. The Applicant was informed that his contract would not be renewed because of poor performance. [Mr. Pitt, who - as Mr. Ncube was subsequently informed - served as his FRO, left the mission on 14 July 2011 without completing Mr. Ncube's evaluation for the performance appraisal cycle 2010-2011. The acting OCHA Head of Office decided to extend Mr. Ncube's appointment until 10 August 2011.]

[1] Impugned Judgment, paras. 1 and 33-48.

... In August 2011, the Applicant was rated as "partially meets expectations" [by Mr. Inganji who was given the task to complete Mr. Ncube's e-PAS as FRO and Second Reporting Officer (SRO)] .... [Mr. Ncube] filed a rebuttal against that appraisal of his performance.

... At the same time, the Applicant was informed that he would be placed on a probationary three-month fixed-term contract, and given a three-month work plan with the stipulation that "the staff member [was] to prove himself within the three months or face termination of employment".

... A work plan was signed on 11 August 2011 by Mr. Inganji, Ms. Jessica Bowers ... and the Applicant. Mr. Andrew Wyllie, the subsequent Head of Office (who took over from Mr. Pitt), told the Applicant that his appraisal for the period April 2011 to March 2012 would be based on this work plan, and would determine the extension of his contract.

... On 9 September 2011, the Rebuttal Panel issued its decision and found a number of substantive irregularities in the process to the extent that it concluded it was "unable to evaluate the contents of the e-PAS, until the procedural irregularities described have been fixed".

... In August 2011, the Applicant became aware that a number of micro evaluation reports were written by Mr. Inganji and Ms. Bowers to appraise him, which were submitted to Mr. Wyllie. These evaluations formed the basis of a further three-month extension through to 10 February 2012. The extension was also to allow for the existing performance evaluation issues to be properly addressed.

... The Applicant sought management evaluation of the decision not to extend his contract on 15 November 2011. The request for management evaluation raised the performance appraisal and extension of contract issues he had thus far faced.

... On 7 December 2011, Mr. Inganji contacted the Applicant whilst he was on leave to inform him that he would be appraising his performance as his ... SRO. No mention was made of the ... FRO's appraisal.

... The Applicant heard no more about this performance review until 23 January 2012, when he was summoned to a meeting with the Head of Office, Mr. Wyllie, to discuss his contract which was due to expire on 10 February 2012. The Head of Office asked the Applicant for "a solution and a way forward given the adverse performance reports".

... On 8 February 2012, the Management Evaluation Unit (MEU) decided that since the Applicant's contract was to be extended through 15 March 2012, his request for review was "moot". There was sufficient time, they said, for the Applicant to "receive the outstanding performance appraisal document from [his] supervisors and follow up as appropriate".

> ... On 12 February 2012, the new Head of Office, Mr. Aidan O'Leary, informed the Applicant that his performance would be re-appraised, and that a single assessment would be conducted for the period 11 July 2010 to 21 January 2012. Ms. Bowers was assigned as his FRO for the purposes of this omnibus appraisal.
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> ... The omnibus appraisal found the Applicant to have fallen short of performance expectations, and recommended that his contract not be renewed.
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> ... The Applicant filed a second rebuttal on 14 February 2012. On 15 March 2012, the Rebuttal Panel found that this e-PAS had "been compiled as a performance appraisal by the FRO/SRO, without first agreeing on a work plan, then performing a mid-year review, and finally performing an evaluation". It concluded that whilst there was "sufficient evidence of the S/M's underperformance in Afghanistan, [it is] of the view that multiple irregularities occurred in the process of the performance evaluation". Notwithstanding those findings, the Panel upheld the performance appraisal rating.
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> ... On 16 March 2012, the Applicant was informed by the Head of Office that his contract with OCHA would not be renewed.
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> ... On 23 March 2012, the Applicant filed his second request for management evaluation. [The] MEU found against the Applicant on 9 May 2012.

3. On 11 May 2012, Mr. Ncube filed an application with the UNDT in New York challenging OCHA's decision to separate him from service on grounds of unsatisfactory performance. On 1 November 2013, the UNDT in New York issued Order No. 281 (NY/2013) transferring the case to the UNDT in Nairobi. The UNDT rendered its Judgment on 7 June 2016 finding that the non-renewal of Mr. Ncube's contract was "unlawful, as the decision was made in breach of his due process rights".[2] It awarded 12 months' net base salary in lieu of rescission of the impugned decision "for wrongful termination of his contract".[3] Moreover, the UNDT ordered payment of USD 10,000 as moral damages for "harm suffered as result of a breach of his fundamental right that resulted from a denial of due process", holding that "[w]ith or without the amendment [to Article 10(5)(*b*) of the UNDT Statute and Article 9(1)(*b*) of the Appeals Tribunal Statute] both the UNDT and [the Appeals Tribunal] have invariably assessed evidence of harm on evidence given either *viva voce* or inferred from documentary evidence".[4]

[2] *Ibid*., para. 136.
[3] *Ibid*., para. 142.
[4] *Ibid*., paras. 141 and 143.

Submissions

The Secretary-General's Appeal

4. The Secretary-General submits that the UNDT erred in finding that the Administration failed to provide a performance-related justification for its decision not to renew Mr. Ncube's fixed-term appointment. He contends that under Staff Regulation 4.5(c) and Staff Rule 4.13(c), a staff member has no right or expectation of renewal of a fixed-term appointment. As consistently affirmed by the Appeals Tribunal, the non-renewal of a fixed-term appointment remains within the Administration's discretion.

5. In accordance with Section 10.4 of Administrative Instruction ST/AI/2010/5 (Performance Management and Development System), the Administration may decide not to renew an appointment where performance shortcomings are not rectified following remedial actions. The Administration has in fact provided a performance-related justification since the Appeals Tribunal jurisprudence suggests that to this effect it is sufficient to give the staff member the opportunity to comment on or rebut negative opinions of his or her supervisor. As consistently held by the Appeals Tribunal, where a staff member has been put on notice regarding his or her performance and has been given an opportunity to improve, his or her failure to improve is sufficient to justify the non-renewal. In compliance with this standard, Mr. Ncube was fully informed that the renewal of his appointment was contingent on the improvement of his performance and he did not manage to rectify his performance shortcomings. In addition, pursuant to Section 15.5 of ST/AI/2010/5, the Administration is bound to take into account the performance ratings resulting from a rebuttal panel, which in this case have been negative despite procedural irregularities in the performance appraisal process.

6. Furthermore, the Secretary-General argues that the UNDT erred in awarding Mr. Ncube 12 months' net base salary "for wrongful termination of his contract" in lieu of rescission of the impugned decision. He contends that the award is unwarranted because Mr. Ncube was in fact not wrongfully "terminated". Rather, his fixed-term contract, for which he did not and could not have any expectation of renewal, simply was not renewed upon its expiry. Contrary to the UNDT's holding, under Staff Rule 9.6, a separation from service as a result of the expiration of a fixed-term appointment is not to be equated with a termination of the staff member's employment.

7. It is the Secretary-General's submission that the UNDT also erred in awarding moral damages. In his view, the award is not warranted because Mr. Ncube's due process rights were fully respected during the performance evaluation process. In addition, he states that the UNDT misapplied Article 10(5)(*b*) of its Statute by not taking into account the amendment introduced by General Assembly resolution 69/203 which requires the request for compensation to be "supported by evidence". The amendment restricts the UNDT's powers considering that the General Assembly has repeatedly stated that the UNDT and the Appeals Tribunal can only exercise the authority provided for in their respective Statutes. The UNDT holding relies upon the case of *Asariotis*[5] which was rendered before the amendment came into effect. In more recent cases such as *Maiga*,[6] the Appeals Tribunal reaffirmed the principle that an award of moral damages must be supported by evidence. Mr. Ncube, however, has not adduced any specific evidence to support his "bare assertion" that he had suffered moral harm.

8. Therefore, the Secretary-General respectfully requests the Appeals Tribunal to vacate the UNDT Judgment in its entirety.

Mr. Ncube's Answer

9. Mr. Ncube submits that the Secretary-General fails to acknowledge in his appeal that the UNDT founded its Judgment on procedural irregularities that resulted in the denial of Mr. Ncube's due process rights. The dispositive issue for the UNDT "was not whether the performance-related issues cited by [the Secretary-General] justified its decision not to renew [Mr. Ncube's] appointment, it was ... the Administration's habitual and improper [deviation] from the required process rendering any performance-related justification unlawful". The appeal, however, does not mention the rules and procedures governing performance evaluation and does not provide any reason for the non-compliance with the procedure set out in Administrative Instruction ST/AI/2010/5, in particular the lack of establishment of a work plan and identification of a FRO from the outset as well as the absence of continuous feedback and communication from the FRO and the lack of a properly constituted mid-point review pursuant to Section 7 of ST/AI/2010/5.

[5] *Asariotis v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-309.
[6] *Maiga v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-638.

10. According to Mr. Ncube's submission, the Administration undertook "superficial attempts at procedural compliance", namely the 2010-2011 performance evaluation which was rejected by a rebuttal panel for procedural errors, the 2011-2012 performance evaluation displaying a lack of communication on the part of Mr. Ncube's then FRO Ms. Bowers and the creation of an overall assessment conducted by Ms. Bowers including for a period whilst she admittedly had no knowledge of his activities. Such attempts demonstrate "the Administration's efforts to concoct a performance-related justification for non-renewal". Granting the appeal would thus "allow for separation on the basis of an alleged poor performance without providing adequate support or proper recording".

11. Regarding the award of in-lieu compensation, Mr. Ncube refers to the possible grounds for termination as contained in Staff Rule 9.6(c) and submits that in the context of this decision, his separation should be "viewed within the prism of termination" since his appointment "did not simply end – his separation was inextricably linked to the Administration's efforts to concoct a performance justification for ... non-renewal" so that in fact, it constituted an improper termination.

12. With respect to the award of moral damages, Mr. Ncube argues that the UNDT correctly concluded that the abuse of his due process rights as a result of his being subjected to a flawed process "intended by the Administration to separate him regardless of the rules and regulations" warranted an award of moral damages. He refers to Appeals Tribunal's jurisprudence acknowledging the UNDT's authority to order compensation for the violation of a staff member's legal rights[7] and to determine its own method for assessing damages on a case-by-case basis.[8] Mr. Ncube invites the Appeals Tribunal to hold, based on the deference typically afforded to the UNDT, that the UNDT did not exercise its discretion in a "manifestly unreasonable" manner when reviewing the evidence and determining that the harm supported an award of damages.

13. Mr. Ncube respectfully requests the Appeals Tribunal to uphold the UNDT Judgment.

[7] *Appleton v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-347, para. 20.
[8] *Faraj v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-587, para. 27.

Considerations

Did the UNDT err in its finding that the Administration failed to provide a performance-related justification for its decision not to renew Mr. Ncube's fixed-term appointment?

14. In our view, the UNDT erred in finding that the Administration failed to provide a performance-related justification for its decision not to renew Mr. Ncube's fixed-term appointment. When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.[9]

15. The starting point for the examination of the lawfulness of the decision not to renew Mr. Ncube's appointment is the well-established principle that appointments of limited duration carry no expectation of renewal.[10]

16. As provided in Staff Regulation 4.5(c) and 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" and "[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)".

17. However, our case law requires the Secretary-General to provide a reasonable explanation when a staff member's fixed-term appointment is not renewed.[11] If the reason not to renew an appointment is related to the staff member's poor performance, the Secretary-General has to present a performance-related justification for the non-renewal decision.[12]

[9] *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 40, citing *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.
[10] *Schook v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-216, para. 3.
[11] *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201.
[12] *Das v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-421, para. 26, citing *Rees v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-266, para. 65.

18. To justify a decision based on poor performance, it is not sufficient to give informal feedback to the staff member. The Administration should usually follow ST/AI/2010/5 and produce an e-PAS.[13] If the Administration can present an e-PAS which is in full accord with the provisions in ST/AI/2010/5, it is then up to the staff member to prove that the content or the findings of the e-PAS are not correct. If, on the other hand, the e-PAS suffers from procedural irregularities, an evaluation can only be upheld if it was not arbitrary and if the Administration proves that it is nonetheless objective, fair and well-based.[14] The purposes and goals of the performance appraisal system include the protection of the Organization's efficiency and the staff member's accountability.

19. Staff Regulation 1.3(a) and Staff Rule 1.3(a) provide as follows:

> Staff Regulation 1.3(a)
>
> Staff members are accountable to the Secretary-General for the proper discharge of their functions. Staff members are required to uphold the highest standards of efficiency, competence and integrity in the discharge of their functions. Their performance will be appraised periodically to ensure that the required standards of performance are met;
>
> Staff Rule 1.3(a)
>
> Staff members shall be evaluated for their efficiency, competence and integrity through performance appraisal mechanisms that shall assess the staff member's compliance with the standards set out in the Staff Regulations and Staff Rules for purposes of accountability.

It would not be in accord with those provisions if the Secretary-General was forced to renew the appointment of an unqualified staff member merely because there are procedural errors in the evaluation process, provided that the procedural errors are not so serious and substantial as to render the evaluation process unlawful or unreasonable or as to violate the due process rights of the staff member in question.

20. In the present case, we find that the decision not to renew Mr. Ncube's appointment has to be upheld despite the fact that his 2012 e-PAS suffered from procedural irregularities. Like the rebuttal panel, we think that the flaws of the 2012 evaluation process do not render the appraisal unlawful or unreasonable. In our view, the decision not to renew Mr. Ncube's appointment was justified because the Secretary-General has proved that the overall evaluation of Mr. Ncube as

[13] *Rees v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-266, para. 65.
[14] *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-400, para. 56.

"does not meet expectations" was not arbitrary but, rather, objective, fair and well-grounded and Mr. Ncube's due process rights were fully respected within the evaluation process.

21. It is true that Mr. Ncube's 2012 e-PAS suffered from a procedural irregularity which mainly resulted from the fact that the Administration chose to evaluate the whole period of Mr. Ncube's appointment at OCHA Afghanistan (July 2010 until January 2012) although the flaws of the first 2011 e-PAS regarding the period between July 2010 and March 2011 could not be rectified, especially as it was not possible to reach the former Head of Office, Mr. Pitt. However, the 2012 e-PAS contains a performance evaluation for the period 10 March 2011 to 31 January 2012, which complies with the provisions of ST/AI/2010/5. With regard to the work plan only having been established on 11 August 2011, we take into account that it is the staff member's duty to set up such a work plan together with the FRO (Section 3.2 and 6.3 of ST/AI/2010/5), and that both Mr. Wyllie and Ms. Bowers have testified that Mr. Ncube did not accept Ms. Bowers as his FRO. So, in our view, the delay in establishing the work plan lay mainly within the responsibility of Mr. Ncube. Concerning the question as to whether a "written performance improvement plan" under Section 10.2 of ST/AI/2010/5 had to be prepared, we note that, since the 2011 e-PAS had been set aside by the 9 September 2011 rebuttal panel decision, there was no "end of the performance cycle appraisal" as "partially meets performance expectations"; further, following the testimonies of Mr. Wyllie, Ms. Bowers and Mr. Inganji, the August 2011 "Action Plan" clearly had the purpose of giving Mr. Ncube a chance to improve his performance and can thus be regarded as a performance improvement plan.[15]

22. We are convinced that the 2012 e-PAS overall appraisal of Mr. Ncube's performance as "does not meet expectations" is a fair and correct rating of Mr. Ncube's abilities. The following examples clearly show that it was reasonable of the reporting officers to come to this conclusion:

As to "Client Orientation", the 2012 e-PAS states:

> ... The staff member was not always diplomatic when dealing with staff. It is worth highlighting that Pios involved himself in a heated argument with the Country Representative of UNHCR ... regarding a monthly report that he shared publically. According to UNHCR the information included in the report was not correct and put the organization in a difficult position. Pios refused to correct the information and indulged in

[15] We note, in addition, that in case a staff member does not cooperate within the evaluation process, the reporting officers have discretion as to whether the evaluation process shall proceed outside the electronic application or whether the non-compliance will be recorded in the staff member's e-PAS and reflected in his or her overall rating (Section 4.2 of ST/AI/2010/5).

> [an] unnecessary heated argument with senior staff without even informing the OCHA management. UNHCR complained officially to OCHA and even threatened to pull out from [Humanitarian Country Team (HCT)] participation. ...

As to "Planning and Organization", the 2012 e-PAS states:

> Pios needs to be organized. This is demonstrated when the [Head of Office] asked him to organize meetings for .... Pios who had been designated as the focal point for the visit, made conflicting appointments for her to meet with various partners. On one occasion, a meeting was cancelled and Pios forgot to inform the visitor. ...

As to "Team Work", the 2012 e-PAS states:

> Pios is not a team player. During the [Consolidated Appeal Process (CAP)] 2011, he was tasked to compile the reports that were emanating from all sections, clusters etc. ... To release a document that would be read by millions of people globally, it was necessary to go through the written text word by word. Pios did not like this and claimed that he was uncomfortable [with] other colleagues correcting his work .... At one occasion, in a meeting chaired by the [Deputy Head of Office (DHoO)] to review the CAP document, Pios got annoyed when he was asked to explain the meaning of a certain phrase in the document. He quit the meeting, slammed the door behind him and walked away from the meeting ... .

23. Additionally, Mr. Ncube obviously had great difficulties to accept a woman as his superior. In his 2012 e-PAS, his FRO Ms. Bowers comments: "Linked to this, throughout my tenure as Pios' supervisor, he has regularly presented difficulties to the dynamics of our unit by disregarding my authority and guidance or instruction provided to the point where I would need to bring a senior male staff to direct him to follow my instructions." In an organization like the United Nations it is of vital importance that a supervisor's authority is respected regardless of his or her gender.

24. There is, in our view, no doubt, that the factual findings and the appraisal in the 2012 e-PAS are correct. Mr. Wyllie, Ms. Bowers and Mr. Inganji have all testified that Mr. Ncube was underperforming. We find them to be credible witnesses. Their testimonies are consistent. All three of them have confirmed independently that in various situations and in different regards, Mr. Ncube's performance did not meet the standards required of staff members of the United Nations.

25. On the other hand, we do not find that the testimonies of Mr. Ncube and Mr. Ayalew before the UNDT cast doubt on the 2012 appraisal. Not being the reporting officer, Mr. Ayalew's testimony as to Mr. Ncube's performance is of no great value. Additionally, Mr. Ncube has a strong personal interest in the matter; and Mr. Ayalew is his colleague and friend. The UNDT erred in finding that Ms. Bowers was not communicating. This finding is only supported by the testimony of Mr. Ayalew, who is, as just stated, Mr. Ncube's friend. Mr. Wyllie and Mr. Inganji have testified to the contrary and their statements are supported by documentary evidence, namely the e-PAS.

26. Finally, we are convinced that Mr. Ncube was informed about his performance shortcomings at an early stage, and that he was given ample opportunity to improve his performance and also to comment on the appraisal by the reporting officers. The documentary evidence shows that Mr. Ncube's due process rights were fully respected in the evaluation process.

27. This becomes clear from the 2012 e-PAS itself. It is written in an objective, consistent and careful way. The record shows that the reporting officers have spent a lot of time and effort informing Mr. Ncube of his shortcomings and trying to help him improve his performance. Numerous meetings were held to discuss performance issues.

28. The findings in the 2012 e-PAS are supported by the testimonies of Mr. Wyllie, Ms. Bowers and Mr. Inganji. They have emphasized that Mr. Ncube received constant feedback, that the August 2011 "Action Plan" was established to improve his performance, and that he had ample opportunity to comment on the alleged shortcomings. There are no signs that one or more of Mr. Ncube's superiors acted in bad faith or that there could have been bias or discrimination against him.

29. In sum, we come to the conclusion that there was a performance-related justification for not renewing Mr. Ncube's appointment and, consequently, that this decision was lawful and the UNDT made an error of law in concluding otherwise and rescinding the non-renewal decision.

Did the UNDT err in awarding in-lieu compensation and compensation for moral injury?

30. Article 10(5) of the UNDT Statute provides as follows:

> As part of its judgement, the Dispute Tribunal may only order one or both of the following:
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> *(a)* Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;
>
> *(b)* Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

31. As we do not uphold the UNDT's order to rescind the impugned administrative decision not to renew Mr. Ncube's appointment, there can be no order of in-lieu compensation. We further note that the UNDT erred in its reasoning for awarding in-lieu compensation because an administrative decision not to renew a staff member's fixed-term appointment does not constitute a case of "termination", as stipulated by Staff Rule 9.6(b).

32. As there was no violation of Mr. Ncube's due process rights and he has presented no evidence for non-pecuniary harm, there is no basis to award compensation for moral injury.

Judgment

33. The appeal is upheld and Judgment No. UNDT/2016/069 is hereby reversed.

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)	*(Signed)*	*(Signed)*
Judge Knierim, Presiding	Judge Chapman	Judge Murphy

Entered in the Register on this 26th day of May 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar