



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

Judgment No. 2018-UNAT-875

**Kellie
(Appellant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge John Murphy Judge Sabine Knierim
Case No.:	2018-1168
Date:	26 October 2018
Registrar:	Weicheng Lin

Counsel for Mr. Kellie:	Self-represented
Counsel for Commissioner-General:	Rachel Evers

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNRWA/DT/2018/015, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or UNRWA Dispute Tribunal and UNRWA or Agency, respectively) on 21 February 2018, in the case of *Kellie v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. Mr. Kelvin Ezekiel Kellie filed the appeal on 18 April 2018, and the Commissioner-General filed his answer on 14 June 2018.

Facts and Procedure

2. Effective 14 September 2014, Mr. Kellie was employed by the Agency as Chief, Procurement and Logistics Division (PLD), at the P-5 level, within the Administrative Support Department (ASD), at the Agency's Headquarters in Amman on a fixed-term appointment for two years to end on 13 September 2016.

3. On 4 August 2016, the Director of Human Resources (DHR) sent an e-mail informing the Directors within the Agency that the International Staffing Review (ISR) that had commenced in July 2016 would be concluded in the last quarter of 2016. For each Director, the e-mail included a list of the international posts in his or her respective department. Mr. Kellie's post was on the list. The DHR requested the Directors to provide a justification for the retention of the listed international posts. The DHR indicated that "[a]ll possible effort must be made to identify opportunities for nationalization of presently international staffed posts or reduction. In doing so, the primary focus must be placed on international posts which are non-generic in nature."

4. In a reminder e-mail dated 4 August 2016 to an officer with the International Personnel Section (IPS), Human Resources Department (HRD), Mr. Kellie requested an update on the process for his contract extension.

5. In an e-mail dated 15 August 2016, the IPS officer apologized "for not responding earlier". He went on to advise Mr. Kellie that: "the request for [Mr. Kellie's contract] extension is being processed and the extension letter will be processed within this week or at maximum early next week".

6. In a memorandum dated 15 August 2016,¹ a Human Resources Officer asked the ASD Director for advice as to whether he would recommend the extension of Mr. Kellie's appointment for another three years in accordance with the Agency's current practice and "on the basis of the continuing need for the functions performed, availability of funding and the work performance of the staff member". On 20 August 2016, the ASD Director signed off on a memorandum addressed to the Human Resources Officer, confirming the continued need for Mr. Kellie's functions and recommending that Mr. Kellie's appointment be extended for three years from 14 September 2016 to 13 September 2019.

7. However, on 21 August 2016, Mr. Kellie had a meeting with the DHR, during which he was verbally informed that his fixed-term appointment would not be renewed beyond 13 September 2016. According to a note for file dated 22 August 2016, the DHR told Mr. Kellie at the meeting that "the reasons for the [non-extension] decision were the restructuring of PLD and the ongoing [ISR]", and that "senior management had made the decision on the reduction of the P5 post" that Mr. Kellie encumbered. The DHR indicated in the note for file that before he met Mr. Kellie he had discussed the matter with the Deputy Commissioner-General and the latter had agreed to the non-extension of Mr. Kellie's fixed-term appointment.

8. After the meeting, on 22 August 2016, Mr. Kellie wrote an e-mail to the DHR, expressing his "shock" at the "totally unexpected" decision not to extend his fixed-term appointment beyond 13 September 2016 despite "all the written and verbal communication and assurances" that he had received from the IPS and the ASD Director. He requested that the non-extension decision be recorded in writing. Mr. Kellie intimated that he had signed private school contracts for his daughters, rental renewal agreements for his family in the United States and for himself in Amman, and declined other job opportunities, on the basis of his expectations for contract renewal at the Agency.

9. In a letter dated 22 August 2016, the DHR confirmed to Mr. Kellie that the Commissioner-General had decided on the non-extension of his fixed-term appointment beyond 13 September 2016, because two of the three conditions precedent for contract renewal—continuing need for the post and continued funding for the post—were "no longer met". The

¹ The memorandum was erroneously dated 15 September 2016. In light of the content of the memorandum and a subsequent recommendation dated 20 August 2016, we assume that the author of the memorandum meant 15 August 2016.

DHR informed Mr. Kellie that he was given three months' notice for the non-renewal of his contract in recognition of his length of service with the Agency.

10. On 10 September 2016, Mr. Kellie submitted a request for review of the decision not to extend his appointment. He contended that the decision was "arbitrary and wrongful" and was not supported by any explanation or management review report. He alleged that the UNRWA Administration had failed to follow the organization directives, governance and procedural frameworks and standards before taking the impugned decision. He claimed that the decision was discriminatory, because within the PLD he was the only international staff whose contract was not extended. Mr. Kellie sought either compensation in the form of three years' salary and other entitlements or reinstatement with a three-year contract.

11. In a memorandum dated 9 October 2016 addressed to the Advisory Committee on Human Resources (ACHR), the DHR proposed the non-extension of Mr. Kellie's fixed-term appointment beyond 13 September 2016 based on the determination that the revised structure of the PLD may not require staffing of the post of Chief of PLD at the P-5 level and Mr. Kellie's post was required to be vacant for possible reallocation and changes to post source and funding. The DHR requested that the ACHR endorse his proposal and make a recommendation to that effect to the Commissioner-General. The DHR further informed ACHR that, given Mr. Kellie's appointment had expired on 13 September 2016, he had been "given a three[-]month notice and [an] extension by two months until 22 November 2016 to allow for an ACHR recommendation to the Commissioner-General, as well as to provide more time [for Mr. Kellie] to secure alternative employment in case of final expiration of appointment and separation from UNRWA".

12. According to a partially-redacted excerpt from the ACHR meeting minutes dated 14 September 2016,² the ACHR, chaired by the Deputy Commissioner-General, held a meeting on an unspecified date to discuss *inter alia* the item of non-extension of Mr. Kellie's contract. The ASD Director, who had recommended Mr. Kellie for a three-year extension, recused himself from the discussion. The discussion resulted in a recommendation from all members of the ACHR that Mr. Kellie's contract not be extended "based on the proposal submitted to the International Staffing Review to abolish [Mr. Kellie's] post and the agency-wide PLD Review

² It appears that the ACHR erroneously recorded the date of the meeting as 14 September 2016. It should be noted that the UNRWA DT put 9 October 2016 as the date of the ACHR meeting. However, it is not clear on what basis the meeting date was so determined. While it is not clear when the ACHR meeting actually took place, we presume that it probably took place between 9 October and 12 October 2016.

Process included in the Post Harmonisation exercise[. The ACHR noted] the three-month notice and extension already provided to the staff member due to time pressures owing to the original contract end date of 13 September 2016". On 12 October 2016, the Commissioner-General approved the ACHR's recommendation in respect of Mr. Kellie.

13. By letter dated 9 November 2016, the DHR advised Mr. Kellie of the outcome of the ACHR discussion held "in October" on his contractual status and the Commissioner-General's decision of 12 October 2016. He informed Mr. Kellie of a further and final renewal of his contract through 31 December 2016. Mr. Kellie rejected the DHR's offer of a final extension.

14. On 5 December 2016, Mr. Kellie filed an application with the UNRWA Dispute Tribunal against the decision not to renew his fixed-term appointment.

15. In Judgment No. UNRWA/DT/2018/015 now under appeal, the UNRWA DT dismissed Mr. Kellie's application. The UNRWA DT did not find evidence of any express promise to support Mr. Kellie's claim that he had a legitimate expectation of renewal of his contract. It found that Mr. Kellie had failed to establish that the contested decision to abolish his post was discriminatory or motivated by improper reasons. As for Mr. Kellie's allegations of procedural irregularities, the UNRWA Dispute Tribunal acknowledged that the decision of 22 August 2016 not to renew Mr. Kellie's appointment beyond 13 September 2016 was tainted by a procedural irregularity as the ACHR had not been consulted before the decision had been communicated to him. However, the decision of 9 November 2016 was not tainted by any irregularity, because the ACHR had been consulted and had recommended the non-extension of Mr. Kellie's contract.

Submissions

Mr. Kellie's Appeal

16. The UNRWA Dispute Tribunal failed to exercise the jurisdiction vested in it and erred in fact and in law by ignoring crucial facts and evidence provided by Mr. Kellie. It relied mostly on the Agency's submissions to conclude that Mr. Kellie had failed to establish that there was an express promise and therefore a legitimate expectation to extend his contract. Mr. Kellie had submitted credible and concrete facts and evidence to prove that there were express promises, both verbal and written, to extend his contract. Contrary to the reason given for the non-renewal of his contract, the Agency confirmed funding for his post. The Deputy Commissioner-General

verbally reassured Mr. Kellie that his post was safe, when she clearly stated that there would be no job losses in PLD Amman. Her reassurances were confirmed by the subsequent discussions, the 2017 organizational charts, the reports and the minutes of the management review meetings, and the Deputy Commissioner-General's annotated post harmonisation II report and her talking points to the Staff Union Executive Board. Moreover, the recommendation from the ASD Director was to renew Mr. Kellie's appointment for three years. Additionally, the IPS officer's e-mail reassured Mr. Kellie that his extension letter would be ready the following week.

17. The UNRWA Dispute Tribunal ignored the crucial and undisputed facts and evidence that Mr. Kellie had provided to prove that the contested decision was procedurally wrong. The Agency failed to rescind and retract the 22 August 2016 decision and inform Mr. Kellie in writing before introducing the 9 November 2016 decision as a replacement. The latter was based on an alleged and unapproved proposal to abolish Mr. Kellie's post that had not gone through the ACHR, nor had been approved by the Commissioner-General. The 9 November 2016 decision was an *ex post facto* rationalization and an abuse of power. The ACHR meeting had no date, and its minutes were predated. The Deputy Commissioner-General and the DHR had a conflict of interest in relation to Mr. Kellie's employment situation and should have recused themselves from the ACHR session when it discussed Mr. Kellie's contract renewal. The DHR's presentation to the ACHR was misleading and tainted with procedural irregularities. All this renders the 9 November 2016 decision flawed and invalid.

18. The contested decision was discriminatory and motivated by improper and erroneous reasons. Mr. Kellie was treated unequally contrary to Personnel Directives I/104.2/Rev. 4 and I/2/Part I, which require the Agency to find a suitable post for him. He was suitably qualified to be directly appointed or redeployed to the newly reclassified post of Chief of PLD at the P-4 level. The UNRWA Dispute Tribunal also failed to consider and assess all the facts and evidence that Mr. Kellie had submitted to prove the UNRWA Administration's errors and discrepancies in the decision-making process, which led to procedural irregularities and discriminatory actions, non-extension of his contract and a flawed UNRWA DT Judgment.

19. Mr. Kellie requests that the Appeals Tribunal reverse the UNRWA DT Judgment, order the Agency to pay him for the loss of three years' salary and other related employment benefits, and further order the Agency to pay him an unspecified amount of compensation for "moral damages, emotional stress and torture proven by the Jordan Psychologist report, and the USA and UK medical reports".

The Commissioner-General's Answer

20. The UNRWA Dispute Tribunal did not err in law or in fact in its assessment of evidence and in its conclusion that Mr. Kellie had failed to establish any basis for a legitimate expectation to renew his contract. The Commissioner-General denies that the Deputy Commissioner-General ever made verbal reassurances to Mr. Kellie that his post was safe. Mr. Kellie did not make such a factual allegation in his application to the UNRWA Dispute Tribunal. The Appeals Tribunal should therefore not admit such a new allegation introduced for the first time on appeal. The e-mail from the IPS officer was clear that Mr. Kellie's extension was still being processed. There is nothing in the message promising Mr. Kellie that his contract would be renewed. More importantly, the author of the e-mail had no authority to make any such promise of contract extension. Furthermore, confirmation of continued post funding *per se* does not create a legitimate expectation of renewal of contract. Fund structure in this context is a purely budgetary issue, and not as such related to the contractual relationship between the Agency and Mr. Kellie.

21. The UNRWA Dispute Tribunal did not err in law or in fact in concluding that the Agency had acted fairly, justly and transparently in its dealings with Mr. Kellie and was not motivated by bias, prejudice or improper motive. The non-renewal of Mr. Kellie's contract was the result of the review of the entire procurement function at UNRWA, which started as early as March 2014, before Mr. Kellie joined UNRWA. The review led to the restructuring of the ASD, of which PLD was part, and the subsumption of the functions of the Chief of PLD into the new post of Chief, Central Support Services Division (CCSSD) at the P-5 level. The funding for the abolished post of Chief of PLD has been redirected to this new post. Contrary to Mr. Kellie's assertion, there was no P-4 post of Chief of PLD in the new structure to which Mr. Kellie could have been redeployed. It should be noted in this regard that Mr. Kellie applied for the newly created post of CCSSD, but he was not successful. Mr. Kellie's reliance on Personnel Directive I/104.2/Rev.4 on international staff selection policy and Personnel Directive I/2/Part I on classification of posts was misconceived, as they are either irrelevant or not applicable.

22. The UNRWA Dispute Tribunal did not err in concluding that any procedural irregularity that might have existed was superseded by subsequent action and accordingly cured. When the 9 November 2016 letter was provided to Mr. Kellie, the ACHR had been consulted and had recommended the non-renewal of his contract, and the Commissioner-General had approved the ACHR's recommendation. The minutes are an accurate summary of what transpired during the

ACHR meeting. That decision was not tainted by any irregularity. It is therefore immaterial to consider the validity of the reasons proffered in the earlier communication.

23. The remedies sought by Mr. Kellie have no legal basis, as the contested decision was lawful and was properly effectuated. There is no causal link between Mr. Kellie's medical condition and the impugned decision to warrant an award of compensation.

24. The Commissioner-General therefore requests that the Appeals Tribunal dismiss the present appeal in its entirety.

Considerations

Alleged errors of law and errors of fact, resulting in a manifestly unreasonable decision

25. According to Article 2 of the Appeals Tribunal's Statute, the competence of this Tribunal is limited to certain issues. For a first-instance decision to be vacated or overturned, an appellant must establish that the first instance tribunal, in rendering its judgment, exceeded its jurisdiction or competence, failed to exercise the jurisdiction vested in it, erred on a question of law, committed an error in procedure such as to affect the decision of the case, or erred on a question of fact, resulting in a manifestly unreasonable decision.

26. It follows that it is not enough for an appellant to disagree with the findings of fact or the conclusions of law made by the trial court. Rather, for an appeal to succeed, an appellant must persuade this Tribunal that the contested decision fulfills the objective criteria of its competence.³ In the present case, however, this did not occur.

27. As discussed, the UNRWA DT Judgment is predicated on the following main findings:

- i. There was no legitimate expectation and no express promise in writing that Mr. Kellie's contract would be renewed;
- ii. There was no evidence of bias and/or discrimination or improper motive;

³ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-707, paras. 16-18, citing *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29, in turn citing *Tsoneva v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-045.

iii. There was no obligation for the Agency to offer Mr. Kellie a post at the P-4 level;

iv. The procedural irregularity related to the first administrative decision of 22 August 2016 had no bearing on the outcome, because the second decision as embodied in the 9 November 2016 memorandum superseded the first decision, and it was not tainted with any irregularity; and

v. There was no evidence that the decision to abolish the post encumbered by Mr. Kellie was unlawful.

28. Although the appeal seems to question the validity of the International Staffing Review as it impacted on Mr. Kellie's P-5 post, leading to its abolition, we will restrict our considerations and determination in this Judgment, in line with the UNRWA DT Judgment, to the alleged unlawfulness of the non-renewal of Mr. Kellie's contract.

Procedural irregularities

29. The UNRWA DT found that the decision of 22 August 2016 was superseded by a new and procedurally regular decision, communicated by letter dated 9 November 2016. Mr. Kellie appeals this finding.

30. The Administration has a duty to correct its own errors. The interests of administrative justice require that the Agency should retain the discretion to correct erroneous decisions. To deny it such an authority on a quasi-estoppel basis would be contrary to both the interests of staff members and the Organization. How the discretion to correct or reverse a prevailing practice or a specific decision should be exercised will necessarily depend on the circumstances of any given case.⁴

31. In *Cranfield*,⁵ the Appeals Tribunal held that the Administration was entitled to correct erroneous decisions and stated *inter alia*:

In situations where the Administration finds that it has made an unlawful decision or an illegal commitment, it is entitled to remedy that situation. The interests of justice require

⁴ *Husseini v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-701, para. 23.

⁵ *Cranfield v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-367, para. 36.

that the Secretary-General should retain the discretion to correct erroneous decisions, as to deny such an entitlement would be contrary to both the interests of staff members and the Administration. How the Secretary-General's discretion should be exercised will necessarily depend on the circumstances of any given case. When responsibility lies with the Administration for the unlawful decision, it must take upon itself the responsibility therefor and act with due expedition once alerted to the unlawful act.

32. In these circumstances, we agree with the UNRWA DT that the Agency corrected the procedural irregularities that led to the taking of the 22 August 2016 decision not to extend Mr. Kellie's contract beyond 13 September 2016, by consulting the ACHR in October 2016, whose recommendation was ratified by the Commissioner-General on 12 October 2016. Although there is some confusion regarding the dates of the documents presented before the Tribunals as noted above, there is no evidence to support Mr. Kellie's contention that the ACHR meeting never occurred or that the minutes were fabricated by the Respondent to cover up a string of procedural irregularities. Contrary to Mr. Kellie's insistence, it was not a case of *ex post facto* validation or of rubber stamping a previous decision; it was a correction of a detected mistake.

33. The approved recommendation also revealed the motive for the contested decision: the abolition of Mr. Kellie's post and the Agency-wide PLD review process included in the Post Harmonization exercise. The second administrative decision, communicated by the 9 November 2016 letter, cited the same reason as ACHR's: "not to further renew [Mr. Kellie's] contract based on the proposal submitted to the International Staffing Review to abolish the post [he] currently encumber[ed] and the Agency-wide Procurement and Logistics Division review under the Post Harmonization exercise".

34. It is, hence, irrelevant to consider whether there was any discrepancy in the reasons for non-extension or sufficient funds for extension, since the second decision was not grounded on budgetary motives, but on discretionary powers related to the restructuring exercise. In the circumstances of the case, we are satisfied that the ACHR conducted an adequate review of the DHR's recommendation not to extend Mr. Kellie's contract, in compliance with the Organization Directive OD 20 entitled "Advisory Committee on Human Resources".

35. Likewise, Mr. Kellie's argument that the UNWRA DT did not consider the fact that he was not given a response to his request for decision review submitted on 10 September 2016 is without merit. In addition to the fact that there is no obligation on the Administration's part to respond to such a request,⁶ as noted, the first decision was subsequently replaced by a new one communicated on 9 November 2016. Thus, there was absolutely no need to assess any request for review of the first decision.

36. Regarding the ACHR's role in the present case, Organization Directive No. 20 establishes, among others, ACHR's responsibility to make recommendations to the Commissioner-General on proposals from the DHR regarding managed reassignment of international staff members, proposals regarding non-extension of fixed-term appointments for international staff and for the area staff at Grade 18 and above and any other human-resource related matters as deemed appropriate by the Commissioner-General or the DHR.⁷

37. Mr. Kellie's claim that the Deputy Commissioner-General and the DHR were in a conflict of interest situation and should have recused themselves from the ACHR meeting on Mr. Kellie's contract has no merit, as, on the one hand, the Deputy Commissioner-General serves *ex-officio* as Chairperson of the ACHR,⁸ and, on the other hand, the DHR attends the ACHR meetings in an *ex-officio* capacity to present proposals and items and to provide expert or technical input.⁹ We agree with the UNRWA DT that, since Mr. Kellie's evaluation performance was not the cause of the restructuring or the abolition of his post, or the consequent non-extension of his contract, there was no bar to the participation of his second supervisor in the ACHR meeting.¹⁰ By the same token, since the decision was not based on performance assessment, the fact that his Line Manager recused himself from the ACHR meeting (*inter alia* because he did not agree with the decision and was not involved in the discussion leading to it) does not have the effect of rendering the ACHR deliberations on Mr. Kellie's contract status invalid.

⁶ *Kalashnik v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-661, para. 28.

⁷ *Salem v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-589, para. 32.

⁸ Organization Directive OD 20, para. 6.

⁹ *Idem.*, para. 8.

¹⁰ Impugned Judgment, paras. 44 and 45.

38. As to the date of the ACHR meeting, the UNRWA DT found that it was held on 9 October 2016, when the ACHR recommended the non-extension of Mr. Kellie's contract.¹¹ This Appeals Tribunal did not find any countervailing evidence that could challenge this finding. The DHR memorandum to the ACHR was also dated 9 October 2016. It is true that the annexed minutes of the meeting bore the date of 14 September 2016, but this date seems to be erroneous, as it is undisputed that the ACHR meeting was held in October.¹²

39. In any event, regardless of the specific date on which the meeting occurred, the DHR's memorandum of 9 October 2016 and the ACHR meeting thereafter were at the origin of the new decision, taken on 12 October 2016 by the Commissioner-General and communicated to Mr. Kellie by the 9 November 2016 letter.

40. To that end, we are satisfied that the UNRWA DT's decision was correctly based on the applicable law and the available evidence. Mr. Kellie has failed to establish that the UNRWA Dispute Tribunal committed any error, whether of law, fact or procedure.

Non-expectancy of renewal, unless there is an express and written promise

41. We recall the well-established principle that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment.¹³ Even the renewal of the appointment of a staff member on successive contracts does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended. In order for a staff member's claim of legitimate expectation of a renewal of appointment to be sustained, it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case.¹⁴

¹¹ Impugned Judgment, para. 8.

¹² This is confirmed by the ACHR meeting minutes that Mr. Kellie attached to his appeal as Annex 45. Since the meeting is likely to have occurred after the issuance of the DHR's memo of 9 October 2016 to the ACHR and the minutes were signed on 12 October 2016 by the Commissioner-General, we assume, as noted above, that the ACHR meeting took place between 9 and 12 October 2016.

¹³ *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 25, citing *Ncube v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-721, para. 15; *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32; *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-261, para. 33.

¹⁴ *Kalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-580, para. 67.

42. Nevertheless, an administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently in its dealings with the staff member or was motivated by bias, prejudice or improper motive.¹⁵ The staff member has the burden of proving that such factors played a role in the administrative decision.¹⁶

43. When judging the validity of the Commissioner-General's exercise of discretion in administrative matters, as in the case of a non-renewal decision or of a decision for a lesser period than that expected by the staff member, the UNWRA DT determines if the decision is legal, rational, procedurally correct, and proportionate. The UNWRA DT 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 UNWRA DT to consider the correctness of the choice made by the Commissioner-General amongst the various courses of action open to him. Nor is it the role of the UNWRA DT to substitute its own decision for that of the Commissioner-General.¹⁷

44. Our jurisprudence requires a promise to renew an FTA at least to be in writing.¹⁸ Therefore, contrary to Mr. Kellie's claim, the verbal promise allegedly made to him, alone, was not sufficient to support a firm commitment or an entitlement to the renewal of his FTA.

45. Similarly, even assuming that the IPS officer, HRD, had the authority to make a promise of extension, we find that the e-mail indicating that the extension letter was being processed within the same week or early the following week cannot be regarded as a legitimate promise, as it lacked the essential elements of a proper and concrete offer of renewal, such as the duration of the extension.¹⁹

¹⁵ *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32, citing *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201 and *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153.

¹⁶ *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32, citing *Assad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-021.

¹⁷ *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 32, quoting *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

¹⁸ *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, paras. 25-27; *Igbinedion v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-411, para. 26.

¹⁹ Reference is made to the e-mail of 15 August 2016, stating that "the request for extension is being processed and the extension letter will be processed within this week or at maximum early next week".

46. Besides, what would have been the purpose of a request for recommendation from the Human Resources Officer made on 15 September 2016 which led to the recommendation of a three-year extension by the Director of ASD on 20 August 2016? In other words, what would be the purpose of seeking a recommendation from the Director of ASD *after* a decision had been taken on 15 September 2016?²⁰ The Agency's handling of Mr. Kellie's case was disorganized, as demonstrated by the lack of coordination, confusing messages to the staff member, lack of transparency and even an element of surprise.

47. While this reveals a regrettable lack of communication amongst different sections within the Agency, the interpretation of any possible promise of extension has to be consistent with the entirety of the evidence. Although Mr. Kellie had possibly expected the extension for a longer period of time, by his own volition, he rejected the final offer of extension, contained in the 9 November 2016 letter, to renew his service through 31 December 2016.

48. Mr. Kellie's argument for an expectancy of renewal is also based on the written recommendation by the ASD Director dated 20 August 2016. However, it was only a recommendation, not corroborated by the subsequent decision, as occurred in this instance.²¹ Nor does the principle of good faith call for the Agency to correct its previous decision by renewing Mr. Kellie's appointment.

49. By the same token, there was no obligation, on the part of the Agency, to reclassify Mr. Kellie's post, as he was employed under an FTA and he encumbered a P-5 level post, which was abolished in the course of a restructuring exercise, the genuineness of which we accept, since there was no evidence to the contrary.

50. In this regard, International Personnel Directive I/2/Part I is not applicable to the present case as it was issued on 13 December 2016, after the taking of the impugned administrative decision, on the day Mr. Kellie was separated from service.

²⁰ Supposing, *arguendo*, that a promise of renewal did exist in the said e-mail of 15 August 2016, it was quickly dispelled, six days later, by the decision communicated to Mr. Kellie on 21 August 2016, during his meeting with the DHR.

²¹ Reference is made to the ASD Director's recommendation signed on 20 August 2016, followed by the DHR's communication in the meeting held the next day, as noted above.

51. Neither is International Staff Personnel Directive ISPD/104.2/Rev.4 on International Staff Selection Policy effective 1 May 2015 relevant to the present case, since the purpose of ISPD/104.2/Rev.4 is to “define the Agency’s processes for international staffing, to clarify the roles and responsibilities of those involved in the selection process, and to outline the procedures involved” “through a combination of managed reassignments, optimal use of rosters of candidates and competitive selection”. The present case was not a case of managed reassignment, optimal use of rosters of candidates or competitive selection, but abolition of a post during an organizational restructuring.

52. Furthermore, the UNWRA DT examined whether the contested decision stemmed from bias, discrimination or improper motive, as alleged by Mr. Kellie, but concluded that Mr. Kellie had not provided any evidence to support his allegation. The fact that other staff members remained in service did not have an impact on the legality of the non-renewal of Mr. Kellie’s FTA, as they had a different status.²² In that regard, the UNWRA DT was of the view, with which we agree, that “other international staff members within the Department held different positions at different grade levels; therefore, a true comparison cannot be made. Furthermore, it is clear from the case file that some of these international staff members have since been separated from the Agency.”²³ There is no countervailing evidence suggesting that this reason was invalid or untrue. There was no other evidence indicating that the Agency in other respects had acted unreasonably or unfairly in rejecting the recommendation for extension of Mr. Kellie’s appointment beyond 2016.

53. We are satisfied that the UNRWA DT’s decision was correctly based on the applicable law and the available evidence. Mr. Kellie has failed to establish that the UNRWA DT committed any error, whether of law, fact or procedure, in concluding that he had not produced any evidence amounting to a promise of renewal for the period he had expected. If no unlawfulness is established, no compensation shall be awarded.

54. For these reasons, the appeal is dismissed in its entirety.

²² *Kacan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-582, para. 26.

²³ Impugned Judgment, para. 40.

Judgment

55. The appeal is dismissed and Judgment No. UNRWA/DT/2018/015 is hereby affirmed.

Original and Authoritative Version: English

Dated this 26th day of October 2018 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Knierim

Entered in the Register on this 20th day of December 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar