



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

Judgment No. 2019-UNAT-930

Chemingui
(Respondent/Appellant on Cross-Appeal)
v.
Secretary-General of the United Nations
(Appellant/Respondent on Cross-Appeal)

JUDGMENT

Before: Judge Martha Halfeld, Presiding
Judge Sabine Knierim
Judge John Raymond Murphy

Case No.: 2019-1226

Date: 28 June 2019

Registrar: Weicheng Lin

Counsel for Mr. Chemingui: Brandon Gardner, OSLA

Counsel for Secretary-General: Amy Wood/Noam Wiener

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/112, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 21 November 2018, in the case of *Chemingui v. Secretary-General of the United Nations*. The Secretary-General filed the appeal on 21 January 2019, and Mr. Mohamed Chemingui filed his answer on 15 March 2019. On the same day, he filed a cross-appeal, to which the Secretary-General filed his answer on 13 May 2019.

Facts and Procedure

2. Mr. Chemingui joined the Economic and Social Commission for Western Asia (ESCWA) in Beirut, Lebanon, on 28 August 2012, as a Senior Economist (P-5) and Chief of the Regional Integration Section (RIS) in the Economic Development and Integration Division (EDID), ESCWA, under a two-year fixed-term appointment (FTA) against an established/regular budget post. He was internationally recruited following a competitive examination. His FTA was subsequently renewed for another two years through 29 August 2016.

3. In April 2015, Mr. Moctar Mohamed El Hacene, Director of EDID, mentioned to Mr. Chemingui informally that there was a possibility of him being reassigned. Subsequently, he sent Mr. Chemingui a temporary job opening (TJO) for the post of Regional Adviser on Trade (P-5) within EDID. The TJO specified that the duration of need was 364 days, the appointment against the TJO post was “on local basis” and the Regional Advisor would be under the general guidance of the Executive Secretary of ESCWA (ES/ESCWA) and report directly to Mr. El Hacene.

4. By memorandum dated 5 May 2015, Mr. David Iyamah, Director of the ESCWA Administrative Services Division, informed Mr. Chemingui of the decision of the ES/ESCWA to laterally reassign him from his position of Chief of RIS/EDID to the post of Regional Adviser on Trade within EDID with effect from 1 June 2015. Staff Regulation 1.2(c) and paragraph 2(5) of Administrative Instruction ST/AI/2010/3 (Staff selection system) were cited as the statutory basis for the reassignment. Mr. Iyamah further informed Mr. Chemingui that his benefits, entitlements, seniority, contractual modality and eligibility for consideration for a continuing appointment would not be affected by his reassignment. Attached to Mr. Iyamah’s memorandum was a document titled “Regional Adviser, Trade – P5”,

which had three sections: “Organizational Setting and Reporting Relationships”, “Responsibilities” and “Competencies”. They were identical to the corresponding sections in the TJO that Mr. El Hacene had shared with Mr. Chemingui in April 2015.

5. On 7 May 2015, Mr. Chemingui wrote to Mr. Iyamah to express his concerns and seek clarification on the contractual status and funding source for the Regional Adviser post to which he was being laterally reassigned.

6. Mr. Iyamah responded to Mr. Chemingui on the same day as follows:

Thank you very much for your email. Your concerns are noted. However, the Regional Adviser post on Trade is being created as we speak and will have a post number like any other post in ESCWA. It will be a classified post at the P5 level and we will let you know the post number once it is established. While this particular post is not specifically approved by the General Assembly, it is still a regular budget post funded by the Regular Programme of Technical Cooperation (RPTC), which is approved by the General Assembly. This programme has been in existence for many years and, in terms of predictability or security, it is as safe or unsafe as all posts in ESCWA, which are all also subject to biennial General Assembly approval.

Let me also reiterate that your reassignment to the Regional Adviser post in no way affects your contractual arrangement. You will remain a fixed term staff member and your benefits and entitlements will not be affected. The same applies to your eligibility for consideration for a continuing appointment, which will also not be affected.

7. On 13 May 2015, Mr. Chemingui requested a management evaluation of the decision to laterally reassign him to the Regional Adviser post. On 16 July 2015, he received a response from the Under-Secretary-General for Management that the Secretary-General had decided to uphold the impugned decision.

8. By Order No. 240 (NBI/2015) dated 21 July 2015, the Dispute Tribunal suspended the implementation of the impugned decision for a preliminary five days, until 28 July 2015, to allow time for it to properly hear and decide on the application for suspension of action. In its Order No. 245 (NBI/2015) dated 28 July 2015, the Dispute Tribunal concluded that the decision to reassign Mr. Chemingui to a general temporary assistance (GTA) funded post was *prima facie* unlawful; that his application for suspension of action was urgent; and that the implementation of the impugned decision would cause Mr. Chemingui irreparable harm. It therefore ordered suspension of the decision “pending informal consultation and

resolution between the parties or the determination of the substantive application in the event that mediation fails”.

9. Also on 21 July 2015, Mr. Chemingui filed an application on the merits with the Dispute Tribunal against the decision to laterally reassign him to the TJO post of Regional Adviser on Trade, in which he contended *inter alia* that the decision could be tainted by improper motives. In the Respondent’s Reply filed on 21 August 2015, the Secretary-General submitted *inter alia* that there was no evidence that the contested decision was tainted by improper motives.

10. On 24 August 2015, the Secretary-General appealed the UNDT Order No. 245 (NBI/2015) to the Appeals Tribunal on the basis that the reassignment or transfer of a staff member was a form of appointment and therefore subject to the exemption prescribed in Article 10(2) of the UNDT Statute and Article 14 of the UNDT Rules of Procedure, meaning that a reassignment decision was not amenable to suspension.

11. The Appeals Tribunal, by its Judgment No. 2016-UNAT-641 dated 24 March 2016, rejected the Secretary-General’s appeal as not receivable. It held that the Dispute Tribunal had not exceeded its competence or jurisdiction when it ordered the suspension of the reassignment decision until the determination of the merits of Mr. Chemingui’s case.

12. The UNDT proceedings on the merits of the case continued and resulted in the issuance of the impugned Judgment on 21 November 2018. It is not clear whether, in the interim, Mr. Chemingui still functioned as the Chief of the RIS/EDID, but it is clear that the TJO post for the Regional Adviser on Trade remained vacant.

13. In its Judgment now under appeal, the Dispute Tribunal found that the reassignment decision was unlawful and ordered its revocation. The UNDT rejected the Secretary-General’s argument that the reassignment decision would not affect Mr. Chemingui’s contractual situation as he would still be paid at the P-5 level and would be eligible for consideration for a continuing appointment. It determined that the reassignment to the TJO post of Regional Adviser on Trade carried significant risks and disadvantages for Mr. Chemingui, and the reassignment did not satisfy the *Rees* test as a proper reassignment.¹ In its view, the words “all necessary safety and security arrangements” in Staff Regulation 1.2(c) were not

¹ *Rees v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-266.

“merely limited to physical safety and security”.² However, the Dispute Tribunal rejected, for lack of evidence, Mr. Chemingui’s claim that the reassignment decision was a retaliatory measure and was tainted by improper motives.

14. This is the subject of the instant appeal and cross-appeal.

Submissions

The Secretary-General’s Appeal

15. The Dispute Tribunal erred in law and in fact in concluding that the reassignment decision was unlawful. The decision was consistent with the statutory framework and the Appeals Tribunal’s jurisprudence on reassignments. Determining the seniority of a post by focusing on whether it involved the exercise of managerial responsibilities without taking into consideration other aspects such as the post’s complexities, sensitivities and exposure to senior officials reflects the Dispute Tribunal’s misleading understanding of that position. The reassignment decision fell entirely in the ESCWA Administration’s prerogatives; it was not biased or based on any improper motive.

16. The Dispute Tribunal also erred in law in concluding that there was a legal entitlement to assignment to a post similarly established in terms of the funding of the post, and in interpreting Staff Regulation 1.2(c) to mean that reassignments guaranteed staff members the same level of contractual security. Neither the Staff Regulations nor ST/AI/2010/3 confer any such entitlement. Mr. Chemingui’s Letters of Appointment make no reference to the nature of the financing of his assignment. This was a fundamental misunderstanding of the nature of contractual security within the Organization as well as the legitimate expectations of staff members. Contractual security derives from the type of appointment and not from the nature of the post encumbered or the modality of funding of the post. At the time of reassignment in 2015, Mr. Chemingui held a two-year FTA. Given the length of his service with the Organization, he would have been eligible for consideration for a continuing appointment. The reassignment decision did not adversely affect any of his legitimate expectations, his right to entitlements and benefits, or his eligibility for consideration for a continuing appointment.

² Impugned Judgment, para. 40.

17. The Secretary-General requests that the Appeals Tribunal vacate the Dispute Tribunal's findings in relation to the lawfulness of the reassignment, but leave intact the Dispute Tribunal's conclusion that the contested decision was not tainted by improper motives.

Mr. Chemingui's Answer

18. The Dispute Tribunal correctly concluded that the decision to reassign Mr. Chemingui from a regular budgeted post to a GTA-funded post without his express consent and without a lien on his original post was unlawful. Prudent staff members, such as Mr. Chemingui, attach considerable weight to the funding source of the position when deciding to accept a particular appointment, as posts budgeted outside of the regular process have a less regular funding scheme, rendering them more precarious. The terms and conditions of a temporary post are different in nature, and a separate administrative issuance governs the practice of temporary appointments. Had the post of Chief of the RIS/EDID been temporary in nature, Mr. Chemingui would not have applied for it.

19. A fixed-term appointment comes with the possibility that it may not be renewed, but a temporary appointment brings with it the certainty that it will end. Thus, by reassigning him to a temporary appointment, the ESCWA Administration robbed Mr. Chemingui of the contractual certainty associated with his regular budgeted post of Chief of the RIS/EDID, and unilaterally altered an implied term and condition of his appointment, which requires the Administration to ensure that the post type to which a staff member is reassigned contains the equivalent terms and conditions of appointments.

20. The contested decision to reassign Mr. Chemingui was unlawful because it lacked any urgency and/or legitimate basis. The present case is analogous to *Rees*,³ in that no post existed when it was decided to reassign Mr. Chemingui to this temporary position, no discussion or communication took place regarding the urgent necessity of creating the post of Regional Advisor on Trade in EDID; no consideration was given to assigning Mr. Chemingui with a lien on, or the right to return to, his fixed-term post; no consideration was given to the specificities and financial budgeting of the temporary post before the decision was taken to reassign Mr. Chemingui; and the TJO post of Regional Advisor on Trade remains vacant and is currently unbudgeted. All this suggests that there were other improper considerations, highlights the artificial and transient nature of the TJO post, and underscores the nefarious intent of the

³ *Rees v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-266.

ESCWA Administration to reassign a staff member who dared to question the authority of the ES/ESCWA.

21. The Dispute Tribunal correctly determined that it was consequential to Mr. Chemingui that he was being reassigned from a position with managerial functions to a post without a leadership or managerial role, and that such a reassignment would likely reduce his career prospects.

22. Mr. Chemingui requests that the Appeals Tribunal dismiss the appeal in its entirety.

Mr. Chemingui's Cross-Appeal

23. The Dispute Tribunal erred in concluding that the reassignment decision was not tainted by improper motives. The Administration's improper motives are evident on their face, demonstrated by its unwillingness to either transfer or recruit any other person to fill the TJO post or provide a lien for Mr. Chemingui to return after the completion of the TJO reassignment, and by the fact that the Administration has not actually needed a staff member to perform the functions of the TJO position, which has remained vacant for the past four years.

The Secretary-General's Answer to Cross-Appeal

24. Mr. Chemingui's cross-appeal is not receivable and should therefore be rejected because he prevailed before the Dispute Tribunal, which granted the relief that he sought by revoking the reassignment decision.

25. Should it find Mr. Chemingui's cross-appeal receivable, the Appeals Tribunal should nonetheless find his claim of improper motivation non-receivable because it was not included in his request for a management evaluation. For the same reason, the Dispute Tribunal erred by not rejecting the claim of improper motivation as non-receivable, though it reached a correct conclusion that the claim was unfounded.

26. The new evidence that Mr. Chemingui has submitted to the Appeals Tribunal in the form of a 10-page e-mail to the ES/ESCWA dated 2 November 2017 is not admissible, because he did not seek leave to submit additional evidence into the record and because the

additional evidence is not new and was available to him while the case was pending before the Dispute Tribunal.

27. Mr. Chemingui is wrong to claim that the fact that the TJO position remains open “speaks for itself” in demonstrating that the reassignment decision was improperly motivated. Firstly, he is in no position to put himself in the Administration’s place and make determinations as to the Administration’s staffing policies. Secondly, as the Administration maintains that Mr. Chemingui is the best candidate for the TJO position, it has held the position open for him, initially when it contested the UNDT order of suspension and when the Administration believed it would prevail on the merits before the Dispute Tribunal. The Secretary-General adds that he still maintains the position open for Mr. Chemingui in case he prevails in his current appeal against the Dispute Tribunal’s order to revoke the reassignment decision.

28. The Secretary-General requests that the Appeals Tribunal dismiss the cross-appeal in its entirety.

Considerations

Preliminary issue: new evidence attached to the cross-appeal

29. To his cross-appeal, Mr. Chemingui annexed a copy of an e-mail that he claimed was his harassment complaint. His purpose was to produce evidence of improper motives behind his reassignment to a more precarious post so that he could be more easily separated from the Organization. However, a party should not be allowed to submit additional evidence to the Appeals Tribunal, which was available to it while its case was pending before the UNDT. A party should not argue a different position on appeal than at the first instance.⁴

30. In the present case, the e-mail dated 2 November 2017 attached to Mr. Chemingui’s cross-appeal is not admissible, as correctly pointed out by the Secretary-General, because Mr. Chemingui did not seek leave to submit this document and, moreover, the e-mail of 2 November 2017 should have been submitted to the UNDT before it issued the impugned Judgment on 21 November 2018.

⁴ *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042, para. 32.

Receivability of the cross-appeal

31. In his cross-appeal, Mr. Chemingui raises again the issue of improper motives behind the reassignment that was rejected by the UNDT in its reasoning.

32. Article 9 of the Rules of Procedure of the Appeals Tribunal (Rules), under the title “Answers, cross-appeals and answers to cross-appeals”, provides, in relevant part:

1. The respondent’s answer shall be submitted on a prescribed form.

...

4. Within 60 days of notification of the appeal, a party answering the appeal may file a cross-appeal, accompanied by a brief which shall not exceed 15 pages, with the Appeals Tribunal stating the relief sought and the grounds of the cross-appeal. The cross-appeal may not add new claims.

In the present case, we find that the cross-appeal is irreceivable, since Mr. Chemingui is the prevailing party at the first instance level and he does not claim to broaden the order of the Dispute Tribunal, but just to maintain it by means of an additional argument that had already been rejected by the UNDT. Mr. Chemingui does not need a cross-appeal to raise this additional argument of improper motives in the decision, as the party who does not seek to modify the UNDT’s order is entitled to raise other lines of reasoning in the answer to the appeal that could simply be alternative reasons to affirm the judgment, without enlarging his/her rights or lessen those of the other side.

33. In the premises, while we dismiss the cross-appeal as not receivable, we will consider Mr. Chemingui’s arguments to affirm the UNDT Judgment as if they were part of his answer to the appeal.

The Appeal: rescission of the reassignment

34. In reaching its conclusion that the reassignment decision was unlawful, the UNDT based its decision on the finding that the reassignment did not meet the requirements of Staff Regulation 1.2(c), particularly regarding the guarantee of all necessary safety and security arrangements for Mr. Chemingui to carry out the responsibilities entrusted to him.

35. Specifically, the UNDT found that: i) the ES/ESCWA had discretion to reassign Mr. Chemingui to another post within the Commission under Section 2.5 of ST/AI/2010/3, but this discretion had to be exercised in accordance with Staff Regulation 1.2(c); ii) the post to which Mr. Chemingui had been reassigned was meant to be temporary in nature and therefore time bound, and thus, less stable when compared with the post he was encumbering; iii) the reassignment to the post of Regional Adviser carried significant risks and disadvantages for Mr. Chemingui, contrary to the requirement of safety and security established by Staff Regulation 1.2(c), which was not limited to physical safety and security, but also involved operational needs and restructurings, particularly related to the funding, duration and stability of the new post; and iv) Mr. Chemingui would be relieved of his managerial and leadership functions in the new position, and this could arguably result in negative consequences for his career prospects.

36. The applicable law is as follows:

Staff Regulation 1.2

Basic rights and obligations of staff

General rights and obligations

(c) Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them;

ST/AI/2010/3 “Staff selection system” (21 April 2010)

Section 2 General provisions

2.5 Heads of departments/offices retain the authority to transfer staff members within their departments or offices, including to another unit of the same department in a different location, to job openings at the same level without advertisement of the job opening or further review by a central review body. Heads of mission retain the authority to transfer staff members, under conditions established by the Department of Field Support, within the same mission, to job openings at the same level without advertisement of the job opening or further review by a central review body.

37. In his appeal, the Secretary-General claims that Mr. Chemingui’s reassignment was consistent with the statutory framework and the Appeals Tribunal jurisprudence, since there was broad discretion in assigning employees to different functions, particularly for operational or

restructuring reasons, provided that there was no evidence of abuse of power. The letter of appointment clearly states the possibility of reassignment to any of the activities or offices within the Organization, in accordance with the established rules and procedures.

38. The Secretary-General argues that the level of responsibilities should not be assessed based on the single criterion of managerial duties, since the post to which Mr. Chemingui was reassigned involved a set of complex aspects with significant implications for trade and economies for Member States in the region. Moreover, he argues that the UNDT erred when it found that the level of contractual security derived from the nature of the post (whether it was temporary or not) or how it was funded (by regular budget approved by the General Assembly or by the General Temporary Assistance funds), since it derived from the type of appointment (temporary, fixed-term or permanent). In Mr. Chemingui's case, there could not be any expectancy of renewal, since he held a fixed-term appointment.

39. It is undeniable that the Secretary-General, the ES/ESCWA in the present case, has broad discretion in staff management, including reassignment or transfer. However, such discretion is not unfettered. The principle of good faith and fair dealings still applies. A reassignment decision must be properly motivated, and not tainted by improper motive, or taken in violation of mandatory procedures. It can then be impugned if it is found to be arbitrary or capricious, motivated by prejudice or extraneous factors, or was flawed by procedural irregularity or error of law.⁵

40. As settled in our jurisprudence, an accepted method for determining whether the reassignment of a staff member to another position was proper is to assess whether the new post was at the staff member's grade; whether the responsibilities involved corresponded to his or her level; whether the functions to be performed were commensurate with the staff member's competence and skills; and, whether he or she had substantial experience in the field.⁶

41. After having carefully reviewed the circumstances of the case at hand, the Appeals Tribunal finds that the UNDT did not err in its Judgment, although we differ in our reasoning. While the interpretation by the UNDT of the term "safety and security" enshrined in Staff Regulation 1.2(c) seems to be beyond the scope of the norm, we accept that the discretionary

⁵ *Abdullah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-482, para. 60.

⁶ *Rees v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-266, para. 58.

power of reassigning Mr. Chemingui to the post of Regional Adviser was not exercised in a reasonable manner.

42. Firstly, the funding source of a temporary post to which a staff member is being assigned is part of the legitimate considerations by which it is possible to evaluate the lawfulness of a reassignment decision.⁷ In *Teo*, it was settled that a post with GTA-funding had less secure funding on a long-term basis when compared to a regular post, and the difference between the two was consequential to an individual who was trying to secure a position within the Organization.⁸ Although we agree that there can be no expectancy of renewal, it is undeniable that a TJO post carries in itself the certainty of an end, while a post funded by the regular budget is less precarious by nature.⁹

43. The TJO to which Mr. Chemingui was reassigned was temporary in terms of duration and funding source. As governed by ST/AI/2010/4/Rev.1 (Administration of temporary appointments), and stated in General Assembly resolution 63/250, “temporary appointments are to be used to appoint staff for seasonal or peak workloads and specific short-term requirements for less than one year but could be renewed for up to one additional year when warranted by surge requirements and operational needs related to field operations and special projects with finite mandates”. Temporary assignments are normally 364 days in duration and 729 days at the maximum. These short-term opportunities can be drawn on (a) to respond to an unexpected and/or temporary emergency or surge demand involving, for example, a natural disaster, conflict, violence or similar circumstances; (b) to meet a seasonal or peak work requirement of limited duration that cannot be carried out by existing staff members; (c) to temporarily fill a position whose incumbent is on special leave, sick leave, maternity or paternity leave or on assignment; (d) to temporarily fill a vacant position pending the finalization of the regular selection process; and (e) to work on a special project with a finite mandate.

⁷ *Teo v. Secretary-General of the United Nations*, Judgment No. UNDT/2018/107, not appealed.

⁸ See *ibid.*, para. 55.

⁹ In this regard, it is true that Mr. Chemingui appears to confuse between the concepts of *appointment* and *assignment*. His appointment was undisputedly a fixed-term one. However, for each appointment there might be various assignments, as established by Staff Regulation 1.2(c) and Section 2.5 of ST/AI/2010/3. The type of contract may remain the same, although the assignments can be of a different nature.

44. According to Section 2.7 of ST/AI/2010/4/Rev.1, upon reaching the limit of service under one or several successive temporary appointments as set out in the section, or, exceptionally, 729 days as permitted under section 14, the staff member shall be required to separate from the Organization. Accordingly, in the case at hand, the position to which Mr. Chemingui was reassigned was clearly less secure when compared to the post he was encumbering at the time. The reassignment was hence consequential to his job security.

45. Secondly, the present case is analogous to *Rees*.¹⁰ In *Rees*, the Appeals Tribunal reaffirmed the UNDT's finding that there could not have been an adequate position at the time of the reassignment, since there was no post for the staff member to be assigned to, just a name of a position yet to be established. The decision to reassign a staff member under these circumstances was made hastily and without proper planning.¹¹ When Mr. Chemingui was informally told of a plan to remove him from his post of Chief of the RIS/EDID, in April 2015, there was no post for him to be assigned to, just a name of a position yet to be established. There was no discussion or consultation prior to that informal notification, not to mention the lack of managerial responsibilities in the new post.

46. Thirdly, the TJO was not established in accordance with ST/AI/2010/4/Rev.1, under which a TJO is created to respond to an unexpected emergency, meet a seasonal or peak work requirement, or for a special project with a finite mandate. ESCWA's unwillingness to transfer or recruit any other individual to fill the TJO post and the fact that the TJO has remained vacant for four years demonstrate that the TJO lacked any urgency or legitimate basis. The explanation given by the Secretary-General that the TJO post was kept open for four years because he believes that Mr. Chemingui is the best candidate and he still believes that he would prevail at the Appeals Tribunal level does not make sense when that TJO was supposed to have been created to cope with the required need of urgency and seasonal or peak work. No apparent negative impact on ESCWA's mandate delivery appears to have been caused by the fact that the TJO post has remained vacant for four years. This, in addition to the claim that Mr. Chemingui would be the best candidate for the position of Regional Adviser on Trade, reinforces the finding that the TJO was created for no valid operational purposes, but rather to serve as a pretext to reassign Mr. Chemingui, who would, in addition, have no right to return to his original post of Chief of the RIS/EDID after completion of duty on the TJO post.

¹⁰ *Rees v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-266.

¹¹ *Ibid.*, para. 59.

47. Regarding the claim of improper motives in the reassignment, the UNDT dismissed this specific ground of appeal because the claim was both vague and unsupported by any evidence. We partially disagree. In his UNDT application, Mr. Chemingui submitted that the contested decision had been tainted by improper motives and taken in response to his challenge of an administrative decision of ESCWA in 2014 and that the impugned decision was used to disadvantage him so that his eventual non-renewal would be legitimized.¹² This is not a vague argument. Rather, it is a clear and precise statement. On the other hand, we find no evidence of the alleged improper motives that could justify an award of compensation for harm in the present case.

48. Considering the foregoing, we find that the UNDT did not err in its finding that the decision to reassign Mr. Chemingui was unlawful and should be rescinded.

¹² Impugned Judgment, para. 21 (d).

Judgment

49. The appeal is dismissed, the cross-appeal is not receivable and Judgment No. UNDT/2018/112 is affirmed.

Original and Authoritative Version: English

Dated this 28th day of June 2019 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Knierim

(Signed)

Judge Murphy

Entered in the Register on this 19th day of August 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar