



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

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Judgment No. 2021-UNAT-1088

**Richard Geegbae**  
**(Respondent/Applicant and Appellant on Cross-Appeal)**  
**v.**  
**Secretary-General of the United Nations**  
**(Appellant/Respondent and Respondent on Cross-Appeal)**

**JUDGMENT**

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Before:	Judge Graeme Colgan, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2020-1406
Date:	19 March 2021
Registrar:	Weicheng Lin

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Counsel for Richard Geegbae: George G. Irving

Counsel for Secretary-General: Noam Wiener & Jiyoung Kwon

**JUDGE GRAEME COLGAN, PRESIDING.**

1. Both parties appeal against the Judgment of the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) issued on 30 April 2020, which concluded that Richard Geegbae's fixed term appointment (FTA) had not been lawfully terminated in all respects.<sup>1</sup> The UNDT ordered rescission of the termination and, alternatively, awarded Richard Geegbae (Mr. Geegbae) a sum equivalent to five and a half months of his net-base salary. For the reasons set out below, we dismiss both the Secretary-General's appeal and Mr. Geegbae's cross-appeal.

**Facts and Procedure**

2. Mr. Geegbae was formerly a Logistics Assistant with the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO) having been engaged in that role at the FS-4 (Field Service Assistant) level on a FTA in 2009. In 2015, Mr. Geegbae was reassigned to another post and to the role of Administrative Assistant, one in a different occupational group. His last annual FTA was from 1 July 2017 to 30 June 2018.

3. On 29 June 2017, the General Assembly approved a reduced MONUSCO budget for the 2017-2018 year. On 4 August 2017, all MONUSCO staff members were advised of this budget reduction and, as a result of this, of an impending process to reduce posts. From that date, leaders of the mission were advised to increase staff vacancy rates to reduce expenditure.

4. On 22 August 2017, mission leaders were provided with a list of required staff reductions and priority recruitments. Among the post reductions were the role held by Mr. Geegbae as Administrative Assistant. Mr. Geegbae was advised accordingly on the same day, including that a comparative review process (CRP) would be used to reduce the supernumerary establishment of Administrative Assistants in his section. He was asked to submit his updated personnel history profile and recent performance reports for the purpose of this comparative analysis.

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<sup>1</sup> *Geegbae v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/061 dated 30 April 2020 (Impugned Judgment).

5. The CRP began on the same day, 22 August 2017. Its Terms of Reference included the potential for what were called “dry cuts”, that is where a post or function proposed for reduction did not have a comparator post or function in the same category or at the same level within the same section. In these circumstances, incumbents of such posts would not be subjected to a comparative review.

6. The CRP exercise categorized Mr. Geegbae as being in the Administration category of staff although he was qualified for and rostered into the Logistics occupational group. At the conclusion of the CRP, Mr. Geegbae and another FTA-holding FS-4 level Administrative Assistant’s posts were considered to be “dry cuts” while two other FS-4 level Administrative Assistants who held continuing appointments were designated for retention in their posts.

7. On 25 August 2017, Mr. Geegbae was informed that his appointment would be terminated with effect from 30 September 2017 due to there being “no other posts in [his] section with the same functional title in the same category, at the same grade which is encumbered by somebody with a contractual modality which could take precedence over [his] as per the Staff Rules.”

8. Between 22 August and 5 September 2017, the CRP Panel (the Panel) conducted the comparative review process of 430 staff members covering 67 functions and “unanimously agreed that the process for identifying which of the functions/posts are deemed as dry cut was fair and transparent.” The Panel transmitted its report to the Compliance Review Committee (CRC) which concluded that the Panel had followed the correct procedures.

9. On 2 October 2017, Mr. Geegbae received an “Advance notification of termination of appointment with MONUSCO”. Mr. Geegbae was informed that he was among those identified for retrenchment in the CRP and his FTA would be terminated subject to the approval of the Under-Secretary-General, Department of Management (USG/DM).

10. On 20 October 2017, the USG/DM approved the termination of 146 MONUSCO staff members (including Mr. Geegbae), and on 26 October 2017, Mr. Geegbae was notified of his termination with effect from 31 October 2017.

11. On 27 October 2017, Mr. Geegbae requested management evaluation and suspension of action, and on 8 November 2017, the Management Evaluation Unit (MEU) informed Mr. Geegbae that the Secretary-General had granted suspension of action during pendency of the management evaluation.

12. In November 2017, Mr. Geegbae applied for three job openings at the FS-4 level but was not selected to fill any of the positions.

13. On 18 December 2017, Mr. Geegbae filed an application with the Dispute Tribunal in which he challenged the Administration's decision to terminate his FTA, including by claiming that the Organization did not fulfil its obligation to make a good faith effort in accordance with Staff Rule 9.6(e) to find him an alternative available post (the Contested Decision).

14. On 2 January 2018, in response to his management evaluation request, the Chef de Cabinet upheld the Contested Decision. This included advice that his complaint that his 2015 movement from a Logistics to an Administrative role was not receivable as it was time-barred. As to his prospective separation for redundancy, the Chef de Cabinet concluded that Staff Rule 9.6(e) required the Organization to retain continuing employees over those holding FTAs, like Mr. Geegbae. Thus, Mr. Geegbae and the other Administrative Assistant holding an FTA were identified as "dry-cuts" and were not subject to the CRP. On 16 January 2018, Mr. Geegbae's FTA ended, and he was separated from the service of the Organization.

15. On 23 July 2018, Mr. Geegbae gained a temporary appointment as a P-3 (Professional) Logistics Officer in MONUSCO. Upon the expiry of this temporary appointment, he separated finally from the service of the Organization on 1 February 2019.

### **The UNDT Judgment**

16. The Judgment of the UNDT was issued on 30 April 2020. It reviewed the two central claims made by Mr. Geegbae: (i) whether the decision to abolish his post and to terminate his FTA was tainted by improper motives; and (ii) whether the Organization complied with its obligations to make all reasonable efforts to place Mr. Geegbae in available suitable posts as per Staff Rule 9.6(e).

17. The Dispute Tribunal reasoned that pursuant to Staff Regulation 9.3(a)(i) and Staff Rule 9.6(c)(i), the Secretary-General may terminate the appointment of a staff member following the abolition of posts. Further, the Organization can also abolish posts provided that it complies with its duty to act fairly, justly and transparently in dealing with staff members.<sup>2</sup> The UNDT considered that the onus of proving ill-motivation rested on the staff member.<sup>3</sup>

18. The Dispute Tribunal was not persuaded by Mr. Geegbae's argument that he was placed in harm's way by the prejudicial actions of his managers, who reassigned him to the Administrative Assistant post purportedly knowing that such post would likely be abolished in the future. It reasoned that because budget cuts which prompted the reduction of staff came two years later in 2017, Mr. Geegbae could not show that his managers acted with improper motives in 2015.

19. Turning to the second issue, the UNDT considered that pursuant to Staff Rule 9.6(e) and following the judgment of this Tribunal in *Timothy*,<sup>4</sup> the Administration is to make reasonable and good faith efforts to find suitable placements for redundant staff members whose posts have been abolished. This duty, however, had to be reciprocated by the staff members affected. The Dispute Tribunal reasoned that when Mr. Geegbae had applied for a particular position known as Job Opening 81519, he met his obligation (as a staff member) to do so by showing his interest in the position. However, MONUSCO failed to consider the applicant on a preferred or non-competitive basis for this job opening. Instead, it opened the positions to competition, conducted written assessments and interviews of applicants, including Mr. Geegbae, and selected other appointees who were promoted to the reclassified posts. In so doing, the UNDT found that the Administration had acted in violation of Staff Rule 9.6(e).

20. The Dispute Tribunal also noted that the Chief of the Logistics Operations Unit in MONUSCO (Chief of Logistics) had acted improperly when he dissuaded Mr. Geegbae from taking the written test, telling the latter that the job opening in question was "to get someone

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<sup>2</sup> *Matadi et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-592; *Bali v. v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-450; *Hersh v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-433.

<sup>3</sup> *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201; *Azzouni v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-081.

<sup>4</sup> *Timothy v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-847.

rostered for a position they are already occupying so they can select them after a reclassification ... you are rostered already so why waste your time”.<sup>5</sup>

21. Hence, the Dispute Tribunal found that the Contested Decision (his severance from service) was unlawful and rescinded it. As an alternative to reinstatement, the UNDT ordered that Mr. Geegbae be paid a sum equivalent to five months and 15 days’ net-base salary. The UNDT did not award moral damages as it said Mr. Geegbae had not submitted any evidence to support his claim to these.

### **Submissions**

#### **The Secretary-General’s Appeal**

22. The Secretary-General filed an appeal to the United Nations Appeals Tribunal (the Appeals Tribunal or UNAT) on 29 June 2020, and Mr. Geegbae filed an answer and a cross-appeal on 7 August 2020, to which the Secretary-General filed his answer on 9 October 2020. The Secretary-General seeks the vacating of the UNDT Judgment in its entirety.

23. The Secretary-General’s first ground of appeal is that the UNDT erred in law by confounding the obligations of the Organization vis-à-vis staff members holding permanent or continuing appointments, with those holding FTAs.

24. Distinguishing Mr. Geegbae’s case from the circumstances underlying the UNAT Judgment in *Timothy*,<sup>6</sup> the Secretary-General argues that because Mr. Geegbae did not hold a permanent or continuing appointment, but rather a FTA, he could have held no legitimate expectation of its renewal. As a result, “the special relationship between the Organization and staff members holding permanent or continuing appointments expounded upon by the UNAT and its predecessor, the United Nations Administrative Tribunal, does not exist in [Mr. Geegbae’s] case.” Thus, the Secretary-General argues, the UNDT erred in the law when it concluded that the employer had an obligation to retain staff members holding FTAs in addition to that to staff members holding permanent or continuing appointments.

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<sup>5</sup> Impugned Judgment, para. 41.

<sup>6</sup> *Supra*, note 4.

25. Staff Rule 9.6(e) creates an order of precedence, whereby staff members holding FTAs are in a superior position to staff members holding temporary appointments. There is no obligation on the Organization towards the staff-member on FTAs to consider them on an equal priority basis in order to find another suitable post. This is supported by UNAT's Judgment in *Zachariah*.<sup>7</sup> That Judgment imposes an obligation of precedence on the Organization only for staff members holding permanent or continuing appointments. It provides no obligation to consider, on a preferred or non-competitive basis, staff members with FTAs. If the UNDT Judgment is left to stand, it would eviscerate the distinction, granting staff members on FTAs from downsizing precedence over other staff members holding continuing or permanent appointments.

26. Alternatively, the appellant says that the UNDT erred in fact and in law when it held that the Administration did not fully comply with its obligations to make all reasonable and good faith efforts to find Mr. Geegbae a suitable alternative position. Further, if the Appeals Tribunal were to hold that the Organization had the obligation to find a suitable position for Mr. Geegbae on a preferred or non-competitive basis, the UNDT nonetheless erred in fact and in law: (i) when it held that the Administration did not fully comply with its obligations as required under Staff Rule 9.6(e) and (ii) when it held that Mr. Geegbae fully met his obligation by showing his interest in the position when he applied for Job Opening 81519. The Secretary-General contends that Mr. Geegbae failed that requirement because he did not take a written test.

27. Next, the Secretary-General argues that Mr. Geegbae did not meet his obligations with respect to the formal requirements for his job application. He applied for three Logistics Assistant positions at the FS-4 level, for which he was considered, but not selected. The UNDT determined two of those non-selection decisions were lawful as the Organization had offered those positions to staff members with continuing appointments. The point of contention came in regard to Mr. Geegbae's application and non-selection to a position of Logistics Assistant at the FS-4 Level in MONUSCO (JO 81519), for which he was shortlisted and invited to take a written test. Mr. Geegbae never responded to that invitation and although the Chief of Logistics dissuaded Mr. Geegbae from taking the test, he should nevertheless have taken it. Although the persuasive advice of the Chief of Logistics "was regrettable, it by no means

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<sup>7</sup> *Zachariah v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-764.

precluded [Mr. Geegbae] from continuing to pursue the application.” The Chief of Logistics had told Mr. Geegbae the job opening (JO 81519) was purportedly “to get someone rostered for a position they are already occupying so they can select them after a reclassification in SCM and you are rostered already, so why waste your time.” Mr. Geegbae should have known better than to follow this advice because under the Staff Regulations and Rules, he had the right to apply for the position and to be fully and fairly considered. By choosing not to go through with the written assessment, Mr. Geegbae chose to withdraw from the selection process for JO 81519 and was not part of the 484 screened applicants who went through the technical assessment. As Mr. Geegbae failed to meet the technical requirements, the Administration could not lawfully consider his application for that job opening.

28. The Secretary-General also submitted that the UNDT erred in law when it held that “MONUSCO failed to consider [Mr. Geegbae] on a preferred or non-competitive basis for this job opening.” The Administration did not have a duty to consider Mr. Geegbae for the JO 81519 because he had failed to take the technical assessment.

29. Next, the appellant argues that the Administration was acting within its authority when it required Mr. Geegbae to take the written test. The UNDT erred when it held that “[i]t is irrelevant that [Mr. Geegbae] did not respond to a written test invitation since administering a written test to job candidates who were not entitled to priority consideration was already in violation of staff rule 9.6(e).” The Administration was acting within its authority when it decided to administer a written test to determine each applicant’s suitability. Even if Mr. Geegbae was on the roster for FS-4 Logistics Assistant positions, his roster membership did not guarantee his suitability for the position.<sup>8</sup> Thus, it was a reasonable request by the Organization to administer a written test and within what constitutes all reasonable and good faith efforts to find Mr. Geegbae a suitable alternative position.

30. Penultimately, the incumbents who took the written test and were selected for the positions, were entitled to take the written test, to be considered for the positions which were a classification of their own posts. The incumbents of those posts were also on fixed-term appointments which were being re-classified. Furthermore, the Administration did not have an obligation to limit the administration of the written test only to candidates whose posts were

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<sup>8</sup> *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-762, para. 29.



being abolished. To the contrary, the Administration had the right to administer the written test to a wide group of candidates to determine the most suitable one(s) for the position(s).

31. Finally, the fact that other staff members took the written test did not prevent Mr. Geegbae from doing so himself. It was within a hiring manager's authority to assess the skills of a wide pool of candidates, including permanent, continuing, fixed-term and temporary appointees, in the event that candidates who merited priority consideration were not found to be suitable for the vacant positions.

### **Mr. Geegbae's Answer to the Secretary-General's Appeal**

32. Mr. Geegbae argues that both the UNDT and appellant glossed over an important detail in that in 2015 Mr. Geegbae was removed from his post as Logistics Assistant and reassigned to a different occupational group as Administrative Assistant. The CRP that took place in 2017 considered him in the Administration category although he was qualified for and rostered in the Logistics occupational group. As such, there is no evidence that the CRP took into account Mr. Geegbae's experience in the Logistics category when it made the "dry cut." Therefore, following the principles established in *Haroun*,<sup>9</sup> the CRP was improper.

33. Citing Staff Regulation 4.4, Mr. Geegbae argues that the Organization owed him a duty of care even though he was a fixed-term appointee, because at that time his contract had not expired. Even though not afforded the same preference as permanent or continuing staff, or those recruited through competitive examination, the Respondent contends that he still had the protection of Staff Rule 9.6(e). Therefore, he had a right to be retained and the Organization had the corresponding obligation to retain him in service "in any of the available suitable posts in which his services could be effectively utilized with due regard to relative competence, integrity and length in service."

34. Next, Mr. Geegbae says that he had applied for some 18 posts in 2017, and most importantly he was rostered for FS-4 and FS-5 logistics posts. As such, he was suitable for the FS-4 logistics post in MONUSCO (JO 81519 involving two identical positions), both because he was rostered and shortlisted for the post and ought to have been selected on a

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<sup>9</sup> *Haroun v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-909.

non-competitive basis due to abolition of his post. Instead, two lower-level FS-3 staff were selected and promoted into the positions.

35. The competitive technical assessment therefore obviated the purposes of the roster and of Staff Rule 9.6(e). Importantly, Mr. Geegbae points out that the Secretary-General did not even deny and called it “regrettable”, what the Chief of Logistics had told him regarding the logistics posts being earmarked for the FS-3 fixed term incumbents.

36. As such, Mr. Geegbae argues that the Organization seeks to absolve itself of all liability and is unable to point to any rule excluding him from consideration on a non-competitive basis for the two positions after he had expressed interest by applying and was found fully qualified by virtue of being shortlisted. The appellant’s reading of Staff Rule 9.6(e) effectively annuls its purpose if fixed-term appointees are required to take a competitive test for every post for which they apply. As such, the Organization has failed to fully comply with its obligation to assist him in any of the numerous applications he had submitted.

### **Mr. Geegbae’s Appeal**

37. Mr. Geegbae filed a cross-appeal on 7 August 2020, the same day he filed his answer, and the Secretary-General replied on 9 October 2020. In his cross-appeal, he is seeking additional compensation for non-pecuniary loss and for loss of opportunity caused by professional dislocation.

38. Mr. Geegbae also claims that the Dispute Tribunal erred when it considered that the decision to abolish his post was not tainted by improper motives. The UNDT did not accord importance to the procedural irregularity by which he was treated as an Administrative Assistant for review purposes. As such, the CRP failed to include him in the right category. Notably, in April 2015, he was unlawfully removed from his Logistics post to the Administrative Assistant post. The reason for this given to him at the time was that his Logistics post was being “nationalized”, but this never happened, and another staff member was placed in that post in 2016 through external recruitment. Mr. Geegbae also submitted that the Administrative Assistant post to which he was transferred had already been targeted in 2014 for abolition and termination of the then incumbent.<sup>10</sup> Mr. Geegbae says he tried to get back in the Logistics occupational group and expressed interest in a FS-5 Logistics Assistant position

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<sup>10</sup> Mr. Geegbae’s application to UNDT, Annex 17 – Non-Renewal of Contract of [PC].

in Entebbe, Uganda, but never received a response.<sup>11</sup> Therefore, the Director of Mission Services changed his temporary assignment in the Administrative occupational group into a permanent one without his knowledge or consent.

39. Mr. Geegbae argues that the proper time to challenge this action was when it produced concrete effects on his contractual status. He encountered these concrete effects of the 2015 decision to reassign him to the Administrative occupational group (the 2015 Reassignment Decision) when the MONUSCO Chief Human Resources Officer (CHRO) e-mailed him on 22 August 2017 advising him that a number of posts in his section would be reduced.

40. Therefore, not only did the Organization fail to make reasonable efforts to find him a suitable post, but it also placed him in harm's way: (i) when the Organization reassigned him to the Administrative occupational group; (ii) when his original Logistics post was never nationalized; (iii) when the CRP did not consider him in the Logistics group, and (iv) when he was not considered for available vacancies in accordance with his rights.

41. For these breaches, Mr. Geegbae requests additional compensation in the amount of one year's net base pay for harm to *dignitas* and for loss of opportunity caused by his professional dislocation.<sup>12</sup>

### **The Secretary-General's Answer to Mr. Geegbae's Appeal**

42. The Secretary-General answers Mr. Geegbae's cross-appeal by reiterating that: (i) the UNDT erred in law and exceeded its jurisdiction when it held that the Organization's obligation to find Mr. Geegbae a suitable position is equal to the Organization's obligation vis-à-vis staff members holding permanent or continuing appointments in similar circumstances, and (ii) the UNDT erred when it held the Organization did not fully comply with its obligations and made all reasonable and good faith attempts to find Mr. Geegbae a suitable position.

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<sup>11</sup> Cross-appeal, Annex 2.

<sup>12</sup> See *Civic v. Secretary-General of the United Nations*, Judgment No. UNDT/2019/188; *Finniss v. Secretary-General of the United Nations*, Order No. 116 (NY/2016).

43. The UNDT correctly held that Mr. Geegbae's 2017 separation was unrelated to his 2015 reassignment. The crux of Mr. Geegbae's cross-appeal is based on the assertion that the decision to separate him was tainted by improper motives. There are four grounds that support the UNDT Judgment.

44. First, UNDT was correct when it held Mr. Geegbae did not prove his 2015 reassignment was unlawful. Mr. Geegbae did not provide UNDT with any evidence that he was misled into leaving his Logistics Assistant post for the Administrative Assistant post. The Secretary-General submits there is no evidence in the record that the Logistics post was abolished or reclassified. Also, the evidence Mr. Geegbae submitted only showed that the Logistics post was being considered by a CRP to determine whether it should be abolished or reclassified. However, there is no evidence showing the final determination of the CRP of what actually happened, that is whether the post was indeed abolished. Finally, Mr. Geegbae only stated "upon information and belief" that the Logistics post was subsequently filled by "external recruitment." Mr. Geegbae did not show how this recruitment exercise, if it happened, may have been unlawful.

45. Second, the UNDT was correct when it held Mr. Geegbae did not prove his supervisors knew in 2015 that he would be separated in 2017 for the abolition of his post. Mr. Geegbae claimed that he was supposed to be reassigned to the Administrative post as a temporary position, but instead he was placed in a permanent post that was slated for abolition. However, Mr. Geegbae did not show that the Administrative post he was reassigned to was already slated for abolition in 2015. In fact, the decision to abolish the post was prompted by General Assembly budget cuts two years later in 2017.

46. The documents dated September 2014 that Mr. Geegbae submitted regarding the non-renewal of contract of another staff member whom we will call PC and who allegedly occupied the same Administrative post that Mr. Geegbae took over, only shows PC's FTA set to expire on 30 September 2014 but was extended to 31 October 2014. And second, nothing in the documents suggests that the post previously held by PC is the very same post later occupied by Mr. Geegbae. And even if it is the same post, it does not prove that the Administration had acted in a discriminatory manner and planned how to separate Mr. Geegbae from service in a downsizing exercise two years into the future.

47. Third, the Secretary-General argues the UNDT was correct when it held Mr. Geegbae did not prove his reassignment was tainted by improper motives. The onus of proving improper motives lies on the staff member contesting the decision. Mr. Geegbae not only did not prove improper motives, but he also did not even state what the improper motivations were, and as such the UNDT was correct when it held that he had not discharged that burden of proof.

48. Fourth, Mr. Geegbae's claim regarding his 2015 reassignment was time-barred. Although not addressed by the UNDT, it should have dismissed Mr. Geegbae's 2015 claims pertaining to his 2015 reassignment as not receivable as no timely request for management evaluation was made to contest such a decision at the time.

49. It is undisputed that the reassignment was not challenged at the time, and instead Mr. Geegbae is claiming that "the concrete legal effects of the 2015 decision only manifested themselves in 2017." Mr. Geegbae is trying to muddy the distinction between the 2015 Reassignment Decision and the 2017 decision to separate him from service. However, while a timely request for management evaluation was made regarding the 2017 decision, such request cannot incorporate a review of a 2015 administrative decision. As such, the Appeals Tribunal should dismiss Mr. Geegbae's claims regarding the 2015 Reassignment Decision as not receivable.

### **Considerations**

50. We will address the Secretary-General's appeal first because if it succeeds, Mr. Geegbae's appeal will fall away. The first ground is that the UNDT erred in law by conflating the Organisation's obligations towards staff on permanent or continuing appointments which imposed on it certain obligations of post retention or replacement, which obligations it did not have to Mr. Geegbae as a FTA staff member. Decision of this ground turns on the interpretation and interrelationships of a number of United Nations Staff Regulations and Rules. These include:

#### *Regulation 4.5 (c) Appointment and promotion*

A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service;

...

*Regulation 9.3 (a) (i) Separation from service*

The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of his or her appointment or for any of the following reasons:

(i) If the necessities of service require abolition of the post or reduction of the staff.

...

*Rule 4.13 (c) Fixed-term appointment*

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).

...

*Rule 9.4 Expiration of appointments*

A temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment.

...

*Rule 9.6 Termination*

Reasons for termination

(c) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of the appointment or on any of the following grounds:

(i) Abolition of posts or reduction of staff;

...

Termination for abolition of posts and reduction of staff

(e) Except as otherwise expressly provided in paragraph (f) below and staff rule 13.1, if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, staff members shall be retained in the following order of preference:

(i) Staff members holding continuing appointments;

(ii) Staff members recruited through competitive examinations for a career appointment serving on a two-year fixed-term appointment;

- (iii) Staff members holding fixed-term appointments.

When the suitable posts available are subject to the principle of geographical distribution, due regard shall also be given to nationality in the case of staff members with less than five years of service and in the case of staff members who have changed their nationality within the preceding five years.

51. The Secretary-General seeks to distinguish this present case from that considered by this Tribunal in *Timothy*,<sup>13</sup> arguing that because Mr. Geegbae did not hold a permanent or continuing appointment, but rather only a FTA, he could have had no expectation of a renewal of that status.

52. The Staff Regulations and Rules set out above must be interpreted and applied congruently if that is possible, that is in a manner that avoids conflict between them because the General Assembly could not have intended such a situation of conflict. So, while under Staff Regulation 4.5(c) and Staff Rule 9.4 which appears simply to repeat that regulation, the holder on a FTA can have no expectancy of its renewal or conversion (to a continuing appointment), that must be read subject to a limited class of exceptions in the following circumstances.

53. First, pursuant to Staff Regulation 9.3 (which is also apparently simply repeated by Staff Rule 9.6(c)), if the necessities of the service (in which the FTA staff member is engaged) require this, or the post held by the FTA staff member must be abolished or reduced, and so long as the Secretary-General gives reasons for such a termination of the FTA staff member's agreement, this may be effected before the FTA's expiry.

54. Second, Staff Rule 9.6(e) creates another exception to Staff Regulation 4.5(c). It applies generally to all staff, but also includes specific provisions for those holding FTAs. It applies to terminations of staff attributable to abolitions of posts or reductions in numbers of staff. It is also conditional for its application on the availability of other suitable posts in which staff members' services can be utilized effectively, and the Organisation must also have regard to staff members' relative competencies, integrity, and lengths of service. In the foregoing circumstances staff will be "retained" in an order of priority favouring, first, those with continuing appointments; second, holders of FTAs of more than two years' duration who were recruited competitively; and third and finally, other FTA holders.

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<sup>13</sup> *Supra*, note 4.

55. Mr. Geegbae was, at the material time, on a one-year FTA which had effect from 1 July 2017 until 30 June 2018. His FTA was intended by MONUSCO to be terminated on 30 September 2017, that is before its expressed expiry nine months later. The Organisation's actions thus amounted to a termination of his FTA (and thereby of his employment), rather than the FTA's expiry (and thereby also the end of his employment) at its date of its conclusion. He was therefore subject to the Staff Rule 9.6(e) exception to what would otherwise have been his non-expectation of renewal or continuance of employment. He was, however, in the lowest priority category for retention of his post under Rule 9.6(e)(iii) set out above.

56. So, for Mr. Geegbae, if there were other suitable posts in which his services could be used effectively having regard to his competencies, integrity and the length of his service, Mr. Geegbae was entitled to be retained on staff for one of such positions if any remained after their filling first by existing staff with continuing or permanent appointments and then other existing holders of FTAs of more than 2 years' duration.

57. Mr. Geegbae applied for several posts, and the Organisation was obliged to apply the foregoing prioritizations to those applications, if they were applicable. It is necessarily implicit in these arrangements that the Organisation could not simply be a passive responder to Mr. Geegbae's applications and claims. It had an obligation to fulfill its commitment to retaining him in employment by attempting to identify applicable positions and at least to draw these to his attention. Mr. Geegbae had a co-relative obligation to respond to such potential appointments as were identified by pursuing his interest in them. He did so in these cases.

58. Next, we address the argument that, if the Secretary-General had such an obligation, the UNDT erred in finding that he had not met his obligation to find Mr. Geegbae a suitable alternative position. This is an allegation of error of fact. As our summary of the facts records, a number of positions were identified, and Mr. Geegbae pursued his interest in these. So, while it cannot be said that the Organisation breached its duty to identify alternative roles and bring these to Mr. Geegbae's attention, the important point is rather what it did about applying his priority entitlements. For reasons set out elsewhere in this Judgment, we have concluded that the UNDT was correct in concluding that the Organisation failed to apply those priority considerations to the particular job vacancy for which Mr. Geegbae applied and in which the Organisation purported to require him to compete with allcomers.



59. The Secretary-General's third ground of appeal is that the UNDT erred further in fact by concluding that Mr. Geegbae met his obligations to the Secretary-General in respect of his job application formalities. This refers to Mr. Geegbae's non-pursuit of that same job application after having been persuaded by the Chief of Logistics of the futility of pursuing this because it was a foregone conclusion that the incumbent would retain the position and so inferring that the vacancy-filling exercise was just a charade. As the UNDT also concluded, it is simply untenable that in these circumstances Mr. Geegbae should be expected to have continued to participate in the appointment process and that he should suffer for not having done so. Not only has the Secretary-General not persuaded us that the UNDT was wrong, but we too have concluded that it was manifestly correct to have rejected this ground of appeal.

60. Next for the Secretary-General it is said that Mr. Geegbae was required to undertake a written test for a job opportunity and that his failure or refusal to do so relieved the Organisation of any further obligations to assist him to obtain that position. We agree with the UNDT that, given his entitlements to preferential treatment under Staff Rule 9.6(e), Mr. Geegbae was not required to compete with other applicants in an open market for any roles that met the conditions in Staff Rule 9.6(e) as was the effect of purporting to require him to undergo a written test. Staff Rule 9.6(e) addressed otherwise what such written testing was intended to identify: the application of the rule took into account "relative competence" and "integrity" based not on universal written testing but on the staff member's record of employment with the Organisation. This error by the Organisation was a further manifestation of its failure to apply the Staff Rule 9.6(e) methodology to Mr. Geegbae's situation.

61. Further, the UNDT was not in error in concluding that Mr. Geegbae was entitled to rely upon what transpires to have been the correct assurance of his superior that he did not need to sit the written test. Mr. Geegbae was entitled to treat this advice as coming from the Organisation's agent or representative, and it would be unconscionable to then hold Mr. Geegbae's compliance with that advice against him, thereby allowing the Organisation to profit from its own advice which was, indeed and in a sense, correct although not for the erroneous reason proffered by the Chief of Logistics to Mr. Geegbae.

62. For the foregoing reasons, we do not consider that the UNDT erred in concluding that the Organisation breached its obligations to Mr. Geegbae under Staff Rule 9.6(e).

63. The Secretary-General's appeal being unsuccessful, we move now to Mr. Geegbae's appeal. It is two-pronged. First, he says that the UNDT wrongly declined to compensate him for the harm suffered to his dignity by the Secretary-General's wrongful actions, and for the losses of opportunities he suffered because of his professional dislocation. The UNDT dealt with this application made to it by referring, correctly, to Article 10.5(b) of the Dispute Tribunal Statute (UNDT Statute) as requiring Mr. Geegbae to prove three elements: harm, illegality and a causative nexus between the latter and the former. Concluding that Mr. Geegbae had not adduced any evidence to support his claims for moral damages, the UNDT dismissed these claims. We do not need here to reiterate the debate whether the clear statutory requirement for "evidence" supporting such claims, requires both evidence from sources other than the complainant and that such must also be expert evidence. This element of Mr. Geegbae's appeal can be determined by noting that his pleadings do not identify at all how the UNDT is alleged to have erred in this regard. They simply and very briefly reiterate the claim that he had made to the UNDT. In these circumstances, the UNDT's decision rejecting his claim to moral damages must stand.

64. Second, Mr. Geegbae alleges that the UNDT erred in considering that the decision to abolish his post was not infected by improper motives, and that he was improperly categorized as an Administrative Assistant in the CRP, instead of as a Logistics Assistant, part of a different occupational group. We consider, however, that not only do Mr. Geegbae's submissions fail to establish that the UNDT erred in this regard, but that it was manifestly correct. Mr. Geegbae claimed that, in 2015 he was unlawfully re-assigned occupationally. At best for Mr. Geegbae and by his own account, however, he became aware of this (including the effect of it on his employment status) in 2016 but he did not take timely action to challenge or dispute this. It was simply too late to do so in 2017 or subsequently as Mr. Geegbae purported to do when the events at the heart of this case arose. Nor have his submissions persuaded us that the UNDT was wrong to conclude that there was no evidence of Mr. Geegbae's suspicion that his 2015 reassignment was effected knowing that the role to which he was reassigned would, several years later, be abolished.

65. For the foregoing reasons, Mr. Geegbae's cross-appeal must be and is declined.

**Judgment**

66. The Secretary-General's appeal is dismissed. Mr. Geegbae's cross-appeal is dismissed. Judgment No. UNDT/2020/061 of the UNDT is hereby upheld.

Original and Authoritative Version: English

Dated this 19<sup>th</sup> day of March 2021 in New York, United States.

*(Signed)*

Judge Colgan, Presiding  
Auckland, New Zealand

*(Signed)*

Judge Murphy  
Cape Town, South Africa

*(Signed)*

Judge Raikos  
Athens, Greece

Entered in the Register on this 15<sup>th</sup> day of April 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar