



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

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Judgment No. 2021-UNAT-1090

**Marius Mihail Russo-Got  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Graeme Colgan, Presiding Judge Martha Halfeld Judge Kanwaldeep Sandhu
Case No.:	2020-1410
Date:	19 March 2021
Registrar:	Weicheng Lin

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	André Luiz Pereira de Oliveira

**JUDGE GRAEME COLGAN, PRESIDING.**

1. Marius Russo-Got, formerly with the United Nations Office for Project Services (UNOPS), contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the Respondent's decision to abolish his post and not to renew his fixed term agreement (FTA). The UNDT's first Judgment (UNDT/2020/072 delivered on 13 May 2020) decided that Mr. Russo-Got's challenge to the abolition of post was not receivable because it had not been the subject of a timely request for management evaluation, but that his claim concerning the non-renewal of his FTA was receivable. In a subsequent Judgment No. UNDT/2020/088 delivered on 16 June 2020, the UNDT determined that, while receivable, his separate challenge to non-renewal failed on its merits. Mr. Russo-Got appeals against both judgments.

2. This is one of a series of judgments to be issued by the Appeals Tribunal (Appeals Tribunal or UNAT) deciding Mr. Russo-Got's grievances relating to the loss of his United Nations employment. For continuity, the same Judges are deciding each of these cases. In this Judgment, however, we deal only with the appeal against the UNDT's decision not to consider the merits of the Appellant's challenge to the decision to abolish the post that he held, and to the Judgment in which his claims relating to the non-renewal of his FTA were disallowed. For the reasons set out below, we dismiss the appeals.

**Facts and Procedure**

3. Mr. Russo-Got was first employed as a Project Manager with UNOPS in July 2016 and continued in that role on a series of FTAs. On 29 June 2018, he was informed that his post was to be abolished. However, this did not eventuate, at least immediately, and his FTA was renewed, his last extension of six months being set to conclude on 31 January 2019. During that final period, on 1 August 2018, Mr. Russo-Got and UNOPS reached an agreement to settle his then grievances. Under that agreement, UNOPS undertook to "send to [Mr. Russo-Got] all vacancy announcements for the UNOPS projects" during the period 1 December 2018-31 January 2019. Also, under that agreement, Mr. Russo-Got undertook to "submit his applications for those vacancies that he is interested in". He also agreed that UNOPS would have no obligation, financial or otherwise, towards him in respect of the claims that he raised in his management evaluation request. Mr. Russo-Got continued to be employed in an *ad hoc* position from 1 August 2018 until 31 January 2019.

4. Between August and October 2018, the Appellant applied accordingly for three other UN roles or positions, but was unsuccessful. Events around these unsuccessful applications form the basis for one of the Appellant's other appeals and we will therefore say no more about that here. There is, however, a relevant dispute about what occurred at a meeting between the Appellant and representatives of the Organisation on 25 October and, in particular whether Mr. Russo-Got was informed (or perhaps re-informed) of the abolition of his post in such a manner as to trigger the start of the 60-day period within which he had to seek management evaluation of that decision to enable him to challenge it in the UNDT.

5. The UNDT found that at the 25 October 2018 meeting Mr. Russo-Got was told that his post would be abolished at the end of January 2019 for budgetary restriction reasons, that is because there was no money to continue his role. The Appellant says, however, that it was not until 16 January 2019 that he was informed that his FTA would not be renewed after 31 January 2019. He says that he was only told at the 25 October 2018 meeting that his post might be abolished.

6. On 22 January 2019, Mr. Russo-Got received a letter confirming the non-renewal of his FTA. This referred to the 25 October 2018 meeting and said that he had then been advised of the cessation, on 31 January 2019, of the position he then held and that it was hoped that he would secure another position before that date of cessation of his post. The letter also formally advised him of the non-renewal of his contract and separation from service on 31 January 2019.

7. On 23 January 2019, Mr. Russo-Got requested management evaluation of that advice of abolition of post, the non-renewal of contract, and an additional claim that he had not been assisted sufficiently to find an alternative post. A week later (on 30 January), he was advised that he had been unsuccessful in that management evaluation exercise. He filed his application with the UNDT on 5 February 2019 contesting the abolition of his post and the non-renewal of his contract.

8. In its first Judgment on Receivability (UNDT/2020/072/Corr.1), the Dispute Tribunal rejected as not receivable his application concerning the abolition of his post. He had admitted in his application to the UNDT that he had received that advice on 25 October 2018, so that the 60-day period he had within which to seek management evaluation had expired by the time he sought the same on 23 January 2019. The UNDT concluded that the Appellant must be held to his original pleading conceding this. Despite subsequently saying that he was told only of the possibility of this abolition, he was held by the UNDT to what it decided was his earlier

admission that he had been told of the abolition of his post during the 25 October 2018 meeting. It appears that there may be some minutes of that meeting and also an audio recording of it which Mr. Russo-Got drew to the UNDT's attention. We note that at paragraph 18 of its Judgment the UNDT referred to its being "perplexed as to why no contemporary written record was made by the Administration of this meeting".

9. Nevertheless, the UNDT also concluded that it had not been shown on the evidence that he had been told at the same 25 October meeting that his FTA would not be renewed. It followed that the time for seeking management evaluation of this advice began to run on 22 January 2019 and hence his request was in time and this claim was receivable by the UNDT.

10. The UNDT subsequently heard the merits of his non-renewal claim and issued its judgment on 16 June 2020 (UNDT/2020/o88). It found against Mr. Russo-Got. It rejected the Appellant's case that a firm offer of renewal had been made to him. He had been properly informed of the non-renewal on 22 January 2019 and had failed to adduce any evidence of the bias he alleged had infected that decision. Finally, the UNDT also concluded that there was no evidence that UNOPS had failed to comply with what he claimed was its obligation to assist him with finding alternative employment as it had agreed to do.

## **Submissions**

### **The Appellant's Appeal**

11. Mr. Russo-Got requests that the Appeals Tribunal vacate the UNDT Judgment and remand the case to the Dispute Tribunal for additional findings of fact. In terms of compensation, Mr. Russo-Got seeks renewal of his appointment with UNOPS, restitution of his salary and benefits from 31 January 2019 to the date of payment, compensation for lost career opportunity, moral damages, partial reimbursement of the cost for his medical treatment, legal costs, expenses, violation of his basic rights, and violation of his privacy in the amount of EURO 10,000.

12. Mr. Russo-Got maintains that the Dispute Tribunal committed all the enumerated errors as set forth in Article 2 of the UNAT Statute, and it failed to consider the entirety of the evidence before arriving at its decision. He contends that the UNDT disregarded the essential facts surrounding the abolition of his post including the credible evidence and rationale that he had provided and made findings on the basis of "an illegal, false and flawed document". He

noted that the duties of his post continue to be performed, the funding continues to be available, and an old friend of his supervisor with no competence in project management has replaced him. The Administration's refusal to provide evidence and the lack of written records, despite the UNDT's orders to do so, demonstrated the lack of transparency and the efforts of the Administration not to leave traces of its misconduct in the official records.

13. The UNDT erred in law in finding that the abolition of his post and non-renewal of his FTA were two separate decisions.

14. The Dispute Tribunal also erred in finding the abolition of his post and the non-renewal of his FTA were taken by a person with proper authority. They were the result of abuse of authority, as it was not clear who took the decisions and there was no prescribed procedure. He alleges a failure to send him an official notification of non-renewal two months in advance of the expiry date, despite his primary supervisor's written agreement to do so, or detailed comments on his performance, or evidence of the budget restrictions.

15. The UNDT erred in finding that UNOPS did not have obligation to find him another post. UNOPS did assign his colleagues to other positions but did not do the same for him, in violation of his basic rights.

### **The Respondent's Answer**

16. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Russo-Got's appeal and affirm the UNDT Judgment.

17. He says that Mr. Russo-Got has cited all the grounds of appeal set forth in Article 2 of the UNAT Statute but has failed to demonstrate how the UNDT Judgment was defective and thus warrants the intervention of the Appeals Tribunal. Except for the arguments discussed below, Mr. Russo-Got essentially repeats his arguments already presented to the UNDT in an attempt to reargue his case before the Appeals Tribunal in a hope that the latter will reconsider his arguments afresh and come to a different conclusion.

18. The Secretary-General also submits that the Dispute Tribunal correctly found that Mr. Russo-Got's claims regarding the decision to abolish his post were not receivable within time. The Dispute Tribunal noted that Mr. Russo-Got had admitted that at the 25 October 2018 meeting he had become aware that due to budget constraints his post would

be abolished, and that the minutes that Mr. Russo-Got had prepared for the 25 October 2018 meeting were not meaningful evidence.

19. The Secretary-General maintains that the UNOPS acted fairly and transparently when it made Mr. Russo-Got aware of the budgetary reasons as the basis for the decisions to abolish his post and to not renew his FTA, and timeously and appropriately notified him of the non-renewal decision. Mr. Russo-Got has failed to demonstrate the existence of an agreement to give him a longer notice period, and his assumption that another staff member has been placed on his post is speculative without any evidence in support. The Dispute Tribunal's decision in this regard is consistent with the UNAT jurisprudence.

20. The Secretary-General stresses that, contrary to Mr. Russo-Got's assertion, the case records do not contain meaningful evidence showing that any UNOPS official authorized to do so made an express promise to renew his FTA.

21. Mr. Russo-Got has failed to provide evidence to support his accusations of bias, retaliation and improper motives. In the documents he provided, there is no mention of any event that can be construed as an episode of bias or retaliation. Nothing in his performance appraisals corroborates his allegations of retaliation.

22. Mr. Russo-Got has failed to demonstrate that UNOPS was obligated to find him an alternative post, because his service with UNOPS was not "terminated". The cases he cited were all concerned with the termination of an appointment and are therefore not applicable to the present case.

### **Considerations**

23. The Respondent is correct that the Appellant has, apparently indiscriminately, invoked all of the Article 2 grounds of appeal in support of his challenges to each of the two impugned judgments. We consider, however, that the only ground potentially available in relation to the abolition-of-post appeal is that the UNDT erred on a matter of fact resulting in a manifestly unreasonable decision: Article 2(e) of the UNAT Statute. None of the other grounds of appeal are conceivably encompassed by the Appellant's appeal. In relation to the second appeal, against the UNDT's Judgment on non-renewal of his FTA, in addition to error of fact, the Appellant might conceivably be arguing error of law under Article 2 and we will address that appeal accordingly.

24. We address first the challenge to the UNDT's conclusion that Mr. Russo-Got was advised of the abolition of his post on 25 October 2018 so that he failed to initiate the mandatory step of management evaluation within the prescribed 60 days thereafter. We consider that, rather than it being a matter of holding the Appellant to his pleadings, his admission in his application to the UNDT was one of a number of evidential elements, albeit a significant one, which allowed the UNDT to determine that he was more probably so advised on 25 October than not.

25. Despite the apparent lack of any formal record of the 25 October meeting and the absence of its production in evidence of what was said to have been a recording of that meeting, these were neutral factors in the UNDT's task of determining what Mr. Russo-Got was told at that meeting. Although the UNDT did not enumerate them in its judgment, evidential factors favouring the Respondent's case were: the stark and serious financial position faced by UNOPS requiring it to eliminate a number of roles; the earlier (29 June 2018) advice to Mr. Russo-Got that his post would be abolished, but the effects of which on him were ameliorated by temporary extensions; the creation of an *ad hoc* post for him; the agreement between the parties that UNOPS would assist him in finding alternative roles; and Mr. Russo-Got's active search for such alternative roles within the Organization. All of these point to the likelihood not only of the prospective abolition of his post, but to the Respondent's advice to this effect having been given to him on 25 October. Finally, although the Appellant asserts that this was a falsely based communication created for the purpose of trying to obscure its previous failure to advise him of his loss of post, the Respondent's letter of 22 January 2019 to Mr. Russo-Got purported to confirm that advice having been conveyed to him on 25 October. Despite his assertion, there is no credible evidence that this was a false concoction.

26. In these circumstances, it was open to the UNDT to find as it did on this issue and it cannot be said that, as the primary finder of fact, it erred in doing so. There is no question that if this was so, then the request for management evaluation was not made within time so that this claim was not receivable as the UNDT concluded. This first appeal must be, and is, rejected.

27. We turn now to Mr. Russo-Got's appeal against the non-renewal of his FTA. There are Staff Rules applicable to this cause of action.<sup>1</sup> They include:

**Article IV Appointment and promotion**

**Regulation 4.5**

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

**Rule 4.13**

**Fixed-term appointment**

(c) A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14 (b).

**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**

**Definitions**

(a) A termination within the meaning of the Staff Regulations and Rules is a separation from service initiated by the Secretary-General.

(b) Separation as a result of resignation, abandonment of post, expiration of appointment, retirement or death shall not be regarded as a termination within the meaning of the Staff Rules.

**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;

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<sup>1</sup> Staff Regulations and Rules of the United Nations (2018).



(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.

28. Mr. Russo-Got could have had no legitimate expectation of any renewal of his FTAs. Although there was no strict requirement for notice of such discontinuation without renewal, he did receive notice of the date after which there would be no renewal.

29. There are also principles that this Tribunal has stated in previous analogous cases which guide our decision on this appeal. First, the Organization is accorded a broad discretion to reorganise its operations to meet changing economic conditions, including by abolishing posts and the tribunals will not interfere in such genuine restructurings which may have resulted in losses of employment by staff. However, the Administration is obliged to act fairly, justly and transparently and without bias, prejudice, or improper motive in such exercises.<sup>2</sup>

30. Although even successive FTA renewals do not give grounds for legitimate expectation of a further renewal, an express promise of such, preferably evidenced in writing, may provide such an enforceable expectation of renewal.<sup>3</sup> There was no such express promise evidenced in this case.

31. The decisions of UNOPS both to abolish Mr. Russo-Got's post and not to renew his FTA cannot be regarded as entirely discrete and separate issues. The decision not to renew arose from the abolition of post decision; put another way, had there not been a decision to abolish his post for economic reasons, it seems likely that the Appellant's FTA would have been renewed. That would have been consistent with the manner in which he was treated between mid-2018 and early 2019. Nevertheless, the evidence establishes that UNOPS did not merely abolish the Appellant's post but attempted to assist him to find alternative work and created a temporary position to both allow him a transition to that alternative if it was found and allowed

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<sup>2</sup> See *Timothy v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-847, at para. 25.

<sup>3</sup> *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, at paras. 41-43.

him to undertake that exercise from the position of an existing, as opposed to a former, staff member.

32. Although post abolition may be a valid reason not to renew the incumbent's FTA, Mr. Russo-Got's case is that in fact his post was not abolished but that someone else was assigned to it in circumstances in which he ought to have continued on in it under a renewed FTA. However, the UNDT found that this post was not budgeted for after the Appellant's departure and that Mr. Russo-Got offered no evidence to support or corroborate his contention that it continued to be filled by another person. Although describing the evidence around this issue as "sparse",<sup>4</sup> the UNDT accepted that the post had been abolished. Mr. Russo-Got has not persuaded us that this conclusion was erroneous.

33. On the question whether the Appellant was promised a renewal of his FTA, the UNDT concluded that he had not established by evidence "a firm commitment to [renew] ...". We have not been persuaded that the UNDT reached an erroneous conclusion either in law or in fact in this regard also.

34. As to Mr. Russo-Got's complaint that notice of non-renewal was unreasonably short (a matter of only about nine days), we assume the Appellant invokes the terms of the agreement reached between the parties on 1 August 2018. Although this agreement was produced to the UNDT in evidence, it made no reference to the agreement in resolution of this claim which, we infer, relied on its terms. That may be an implication from the term of the agreement that the Appellant would continue on an FTA until 31 January 2019. However, the UNDT held that Mr. Russo-Got had "failed to substantiate that an agreement existed according to which he would be entitled to a longer notification period".<sup>5</sup> The Appellant had asserted that his contractual entitlement to notice was of two months, longer even than the 30 days' notice to which he also asserted he was entitled. The UNDT held that the Appellant's FTA expired according to its terms, that Mr. Russo-Got ought to have been aware of these and that no notice of non-renewal was required to be given to him. That being so, even if the Appellant had an agreement with UNOPS that he would receive notice (which he has not established), that could not have trumped Staff Rule 9.4.

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<sup>4</sup> Impugned Judgment, para. 22.

<sup>5</sup> *Ibid.*, para. 31.

35. We turn next to the Appellant's claim that the non-renewal decision was taken on behalf of UNOPS by a person not authorised to do so. Mr. Russo-Got claimed only the UNOPS Executive Director was empowered to decide not to renew his FTA. The UNDT held that even if it was technically correct that the Executive Director had not taken the decision (there was no evidence about who did so), this would have been an immaterial irregularity which would not have upset the lawfulness of the UNOPS decision.<sup>6</sup> We agree. This argument of Mr. Russo-Got was unavailing.

36. Next, we agree with the Respondent and the UNDT that, in the circumstances and contrary to his case on appeal, UNOPS was not obliged to find Mr. Russo-Got an alternative post. His employment was not "terminated" as that term is defined in the United Nations context. Case law confirms that there was no such obligation in respect of a staff member on an FTA as was Mr. Russo-Got.<sup>7</sup>

37. Because of the Appellant's unrepresented status in this proceeding and lack of identification of a specific alleged error in the impugned judgment, we have re-examined each ground on which the UNDT found against him. We have not been persuaded that the UNDT erred in fact or in law in its judgment on non-renewal.

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<sup>6</sup> *El Sadek v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-900; *Sall v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-889; *Mansour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-881.

<sup>7</sup> See Staff Rule 9.6, and *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902.

**Judgment**

38. The appeal against Judgment No. UNDT2020/072 of the UNDT is dismissed and the Judgment is hereby upheld. The appeal against Judgment No. UNDT/2020/088 of the UNDT is also dismissed and the Judgment is hereby upheld.

Original and Authoritative Version: English

Dated this 19<sup>th</sup> day of March 2021.

*(Signed)*

Judge Colgan, Presiding  
Auckland, New Zealand

*(Signed)*

Judge Halfeld,  
Juiz de Fora, Brazil

*(Signed)*

Judge Sandhu  
Vancouver, Canada

Entered in the Register on this 19<sup>th</sup> day of April 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar