



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

Judgment No. 2021-UNAT-1091

**Leobard Antoine Houenou
(Appellant)**

v.

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

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2020-1409
Date:	19 March 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Robbie Leighton, OSLA
Counsel for Respondent:	Francisca Lagos Pola

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Mr. Leobard Antoine Houenou contested the decision not to extend his temporary appointment with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) beyond 30 September 2017. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed his application, finding that the non-extension decision was a proper exercise of discretion in light of the mission's budgetary situation. For reasons set forth below, we affirm.

Facts and Procedure

2. Mr. Houenou was employed from 26 February 2017 by MINUSCA to work on the construction of hard wall accommodation for MINUSCA's military and police contingents (Hard Wall Project). Mr. Houenou was appointed on a four-month-three-day temporary appointment, expiring on 30 June 2017. He worked for MINUSCA without a letter of appointment (LOA) until 05 May 2017.

3. On 28 April 2017, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) recommended a reduction of USD 18,873,200 in the proposed MINUSCA budget for 2017-2018.

4. On 9 June 2017, the Chief of the Engineering Section initiated a within-mission loan request of a post from the Service Delivery Section, on an exceptional basis, for one year from 1 July 2017 to 30 June 2018 so as to "extend appointment of Construction Civil Engineer [Mr. Houenou] for the Hardwall Project currently underway". The Chief of the Engineering Section indicated his plan to return the post to the releasing section by June 2018 (subject to review). The Chief of Service Delivery Section, the Chief of Human Resources Office and the Chief of Finance and Budget all signed the loan agreement. On 22 June 2017, the Director of Mission Support (DMS) of MINUSCA also signed the loan agreement.

5. In late June 2017, MINUSCA was subjected to a further budget reduction of USD 19,907,300. On 29 June 2017, the Under-Secretary-General for Department of Field Support (USG/DFS) sent MINUSCA a code cable requesting a plan of measures to reduce mission expenditure in light of the budget reductions. The budget shortfall in staffing costs amounted to USD 30 million for MINUSCA.

6. However, on the same day, a human resources officer at MINUSCA raised a request for the extension of Mr. Houenou's temporary appointment. The extension request was signed by the human resources officer and the Chief of the Engineering Section (Mr. Houenou's immediate supervisor) recommending a further extension of Mr. Houenou's appointment for one year to 30 June 2018. Mr. Houenou also signed the request on 30 June 2017 acknowledging his discussions with his immediate supervisor on the matter. The Officer-in-Charge (OiC) of the Division for Mission Support, in the absence of the DMS, on 12 July 2017, approved the recommendation for the one-year extension of Mr. Houenou's contract and signed the request form. The DMS' stamp was affixed at the bottom of the request. MINUSCA's Human Resources then raised a personnel action to reflect the approved extension of Mr. Houenou's appointment to 30 June 2018. A new security badge showing the expiration date of 30 June 2018 was issued to Mr. Houenou. No letter of appointment was issued extending Mr. Houenou's appointment to 30 June 2018.

7. However, when the DMS returned a few days later, on 17 July 2017, he decided to "curtail" the duration of the extension of Mr. Houenou's appointment from one year to three months to 30 September 2017. He accordingly reversed the approval granted in his absence. The form granting the extension was altered to: i) white out the signature of the human resources officer; ii) change the dates and replace the final approval with an extension to 30 September 2017; iii) add the signature of the DMS; and iv) date the approval 17 July 2017. No discussions on the changed duration of contract were held with Mr. Houenou either before or after 17 July 2017.

8. On 18 August 2017, there was an exchange of e-mails within the MINUSCA human resources office requesting that Mr. Houenou's appointment be curtailed. On the same day, MINUSCA HR raised another personnel action indicating that Mr. Houenou's temporary appointment was to expire on 30 September 2017. Mr. Houenou was not made aware of the new personnel action or the curtailed term of his contract, for he went on leave towards the end of August 2017 and returned from leave in September 2017.

9. In a memorandum dated 13 September 2017, the human resources officer, MINUSCA, advised Mr. Houenou of the upcoming completion of his appointment on 30 September 2017 and the check-out formalities. In another memorandum dated 19 September 2017, the Chief Human Resources Officer, MINUSCA, clarified to Mr. Houenou that his temporary appointment was not being extended beyond 30 September 2017 due to budget constraints

and upon a further review of operational and programmatic requirements, and that he had been given a two-week notice in accordance with the rules governing the administration of temporary appointments.

10. On 26 September 2017, Mr. Houenou submitted a request for management evaluation regarding his separation by way of non-renewal on 30 September 2017. The next day, he filed an application for a suspension of action with the Dispute Tribunal.

11. On 4 October 2017, the Dispute Tribunal issued Order No. 167 (NBI/2017), in which it granted Mr. Houenou's application for a suspension of the contested decision, pending management evaluation, finding *inter alia* a case of *prima facie* illegality for the fact that the loan agreement had been unilaterally altered in mid-July 2017, and that Mr. Houenou had not been informed of the new expiration date of his appointment until two weeks prior to its expiry.

12. On 10 November 2017, the Management Evaluation Unit (MEU) recommended that the decision to separate Mr. Houenou by non-renewal be upheld. The MEU noted the high costs and delivery delays of the Hard Wall Project for which Mr. Houenou had been recruited, and the MINUSCA management's decision to outsource the project as part of its implementation of the austerity measures in the midst of a difficult budgetary situation. While upholding the non-renewal decision, the MEU found that there was maladministration in Mr. Houenou's separation from MINUSCA due to the failure to notify him of the revised recommendation regarding the expiration of his contract and recommended that he be paid one-month salary as compensation. The USG for Management informed Mr. Houenou of the Secretary-General's decision to endorse the findings and recommendation of the MEU.

13. On 14 November 2017, Mr. Houenou filed an application with the UNDT to contest the non-renewal of his temporary appointment with MINUSCA beyond 30 September 2017. In Judgment No. UNDT/2020/070 dated 12 May 2020, the UNDT rejected Mr. Houenou's application on the basis that he enjoyed no legitimate expectation of renewal.

14. Mr. Houenou appealed the UNDT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal) on 7 July 2020. The Secretary-General filed an answer to the appeal on 8 September 2020.

Submissions

Mr. Houenou's appeal

15. Mr. Houenou requests that the Appeals Tribunal vacate the UNDT Judgment. He also requests that the Appeals Tribunal rescind the contested decision or alternatively compensate him according to the contractual terms to 30 June 2018.

16. Mr. Houenou maintains that the UNDT erred in law by identifying the contested decision as that of non-renewal beyond 30 September 2017, rather than one to curtail his one-year appointment. This led it to requiring evidence of an express promise for the extension beyond 30 September 2017, when, in reality, the MINUSCA Administration never informed Mr. Houenou that he had a contract that would end on 30 September 2017.

17. Mr. Houenou contends that the failure by the MINUSCA Administration to inform him of the change of a fundamental term of his contract, the failure to issue him a letter of appointment, and the Organization's failure to act transparently and in good faith in amending his contract meant that the correction of the error was unlawful, no contract with the ending date of 30 September 2017 could be deemed to have existed, and the Administration may not rely on such an asserted contract.

18. Mr. Houenou also maintains that the UNDT erred in finding that the irregularity of the OiC/DMS in approving his contract renewal for one year and the provisions of ST/AI/2010/4/Rev.1 precluded the possibility of a binding contract ending 30 June 2018. It also erred in law by concluding that an error in the original grant of the appointment automatically meant that the Administration was not bound by that grant.

The Secretary-General's Answer

19. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Houenou's appeal, as he has failed to demonstrate any errors warranting the reversal of the UNDT Judgment.

20. The Secretary-General submits that the decision not to renew Mr. Houenou's contract beyond 30 September 2017 was taken in accordance with the relevant provisions of the regulatory framework and the Appeals Tribunal's jurisprudence. It was motivated by the reduction of MINUSCA's funding.

21. The MINUSCA Administration did not make a firm commitment to renew Mr. Houenou's temporary appointment for one year.

22. The record shows that Mr. Houenou was not aware of the raising of a personnel action or the extension of the expiry date of his security badge. He therefore cannot rely on those factors to support his claim of a legitimate expectation of one-year renewal. Neither could the loaning of a post raise a legitimate expectation because it was "subject to review". Likewise, no firm commitment or express promise could be said to arise from the initial approval by the OiC of one-year extension because this error was quickly corrected for lack of delegated authority, no letter of appointment was issued, such an extension would have been in conflict with ST/AI/2010/4/Rev.1, absent exceptional circumstances, and it could not be justified by MINUSCA's financial constraints.

23. The Secretary-General also submits that the UNDT did not err in identifying the non-renewal of appointment as the contested decision.

Considerations

24. The UNDT did not err in its decision. This Tribunal is in agreement with its findings and conclusions as set out below.

25. A temporary appointment has a contractual status that carries no expectancy of renewal¹ unless there is a legitimate expectation of a renewal or improper motives existed in the decision not to renew the appointment, which taint the decision with illegality.² The onus is on the staff member to show a legitimate expectation of renewal or that the non-renewal of his appointment was arbitrary or motivated by bias, prejudice or improper motive.³

26. Although in this case a recommendation was made by the programme manager to extend Mr. Houenou's temporary appointment to 30 June 2018, the recommendation was not approved by the DMS. It was common cause before the UNDT that the authority to extend appointments delegated to the DMS had not been sub-delegated. Mr. Houenou has

¹ Staff Regulation 4.5(b), Staff Rule 4.12(c) and Staff Rule 9.4; and *Toure v. Secretary-General of the United Nations*, Judgment No.2016-UNAT-660; *Abdalla v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-138.

² *Igbinedion v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-411 and *Kellie v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-875.

³ *Hepworth v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-503, para. 44.

not contested the “undisputed fact” of the OiC’s lack of authority on appeal. Therefore, while the OIC could perform certain functions in the absence of the DMS, the limited and undisputed facts on record compel a finding that approval of recommendations for the renewal of a temporary appointment was not one of them. As the OiC did not have the delegated authority to approve a renewal, his approval was *ultra vires*, made in error and did not bind the Organization. Once the DMS discovered the error, he had a duty to correct it,⁴ which he promptly did five days later on 17 July 2017. If a favourable decision is void, it may be revoked or varied, especially where the granting of the benefit has to be properly authorised or where changed circumstances (had they been known and taken into account at the time) would have affected the outcome of the decision differently. It follows that the recommendation to extend Mr. Houenou’s appointment to 30 June 2018 was not approved.

27. Moreover, even if the decision of the OiC was *intra vires*, the approval of a recommendation for the extension of a contract cannot be construed as an “express promise” or a clear offer of a 12-month extension giving rise to contractual obligations to that effect. The decision has not been communicated to the staff member who was unaware of the personnel action, and thus there was no acceptance of a communicated offer.⁵

28. In the circumstances, particularly in the absence of a letter of appointment, a personnel notification which was erroneously raised by MINUSCA HR and the extension of a security pass did not constitute an express promise of extension or give rise to a legitimate expectation of renewal.

29. In any event, the renewal of the appointment to 30 June 2018 was prohibited and illegal. According to Staff Rule 4.12(a) and Section 2.1 of ST/AI/2010/4/Rev.1, a temporary appointment may be granted for a single or cumulative period of less than one year. Any extension of Mr. Houenou’s contract beyond 26 February 2018 could only have been made exceptionally and under restrictive conditions in terms of section 14 of ST/AI/2010/4/Rev.1, which provides:

A temporary appointment may exceptionally be extended beyond 364 days, up to a maximum of 729 days, under the following circumstances:

⁴ *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849; *Cranfield v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-367.

⁵ *Kellie, supra*.

- (a) Where a temporary emergency or a surge requirement related to field operations unexpectedly continues for more than one year;
- (b) Where a special project in the field or at a headquarters duty station unexpectedly continues for more than one year;
- (c) Where operational needs related to field operations, including special political missions, unexpectedly continue for more than the initial period of 364 days.

30. The UNDT correctly held that the wording of the provision makes it clear that an exceptional extension under Section 14 may only be granted on the basis of unexpected operational needs and the UNDT normally should defer to the Secretary-General in this respect. There was no temporary emergency or surge requirement related to field operations unexpectedly continuing for more than one year; the Hard Wall Project was an existing project without a surge requirement; and there were no operational needs requiring Mr. Houenou's services beyond one year since those functions were to be outsourced and performed by an existing contractor. There were accordingly no exceptional circumstances in this case. Consequently, Mr. Houenou cannot rely on any representation by the OiC about the possibility of renewal as this would have involved the DMS acting illegally beyond his statutory powers.

31. Likewise, no legitimate expectation for renewal arose on the basis of the agreement for the loan of a post from the Service Delivery Section to the Engineering Section for the period from 1 July 2017 to 30 June 2018 which might have been used to fund the position through to 30 June 2018. A loan of a post from one department to another does not, of itself, constitute an express promise to a staff member to renew an appointment. Moreover, the DMS signed the loan agreement prior to the Fifth Committee's reduction in MINUSCA's 2017-2018 budget and the USG/DFS's instruction to reduce MINUSCA's expenditure. The circumstances changed and the DMS was entitled in the light of those changed circumstances not to pursue the original decision, which had vested no rights in the staff member.

32. MINUSCA's difficult budgetary situation was the primary reason for not extending the appointment beyond 30 September 2017. There is no evidence of any ulterior motive or arbitrary action. The shortfall in the budget for staffing costs with respect to temporary appointments and the instructions to formulate a plan for reduced expenditure were legitimate reasons not to renew the appointment. The decision to outsource the Hard Wall Project in the interests of greater efficiency was a reasonable exercise of the

Secretary-General's discretion in operational and budgetary matters and there is no credible evidence that it was unlawfully taken or tainted by improper motives. On the contrary, there is evidence that the project had not delivered as expected and that outsourcing could significantly reduce costs. These were legitimate considerations appropriately taken into account. The decision was thus a proper exercise of discretion in light of the MINUSCA's budgetary situation.

33. In any event, the UNDT correctly held that Mr. Houenou's challenge to the legality of MINUSCA's decision to outsource the functions within the Hard Wall Project was not receivable *ratione materiae*. He did not seek management evaluation of that decision in accordance with Staff Rule 11.2(a).

34. In the premises, the UNDT did not err in dismissing the application and the appeal must accordingly also be dismissed.

Judgment

35. The appeal is dismissed and Judgment No. UNDT/2020/070 is affirmed.

Original and Authoritative Version: English

Dated this 19th day of March 2021.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 21st day of April 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar