



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

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Judgment No. 2021-UNAT-1142

**Edward E. Hammond  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Sabine Knierim, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2020-1433
Date:	25 June 2021
Registrar:	Weicheng Lin

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

**JUDGE SABINE KNIERIM, PRESIDING.**

1. This case arose from Mr. Hammond’s application regarding his 2016-2017 performance appraisal, and his application regarding the decision to reclassify his post. The United Nations Dispute Tribunal (“UNDT”) dismissed Mr. Hammond’s applications in Judgment No. UNDT/2020/096. For the reasons set out below, Mr. Hammond’s appeal is dismissed and the UNDT Judgment is affirmed.

**Facts and Procedure**

2. Mr. Hammond served as an Administrative Management Officer at the P-4 level in the African Union-United Nations Hybrid Operation in Darfur (“UNAMID”), Communications and Public Information Section (“CPIS”), on a fixed-term appointment.

*Facts relevant to Mr. Hammond’s 2016-2017 performance appraisal*

3. On 15 June 2017, the Appellant’s first reporting officer (“FRO”), the Chief of CPIS, concluded the Appellant’s electronic performance appraisal system report (“ePAS”) for the 2016-2017 performance cycle, and gave Mr. Hammond an overall end-of-cycle rating of “partially meets expectations”.

4. On 29 June 2017, the Appellant rebutted his 2016-2017 performance appraisal. On 10 July 2017, UNAMID’s Officer-in-Charge of Mission Support Division (“OiC/MSD”) convened a rebuttal panel (“Panel”), which recommended, on 4 October 2017, that the FRO’s rating be changed from “partially meets expectations” to “successfully meets expectations”.

5. On 8 October 2017, the OiC/MSD sent a copy of the Panel’s report to the Appellant and informed him that it would be placed in his official status file as an attachment to his 2016-2017 performance appraisal.

6. On 7 December 2017, the Appellant requested management evaluation of the decision to attach the Panel’s report to his ePAS, claiming that the performance appraisal’s rating and narrative should be adjusted to the new grade of “successfully meets expectations”.

7. The Management Evaluation Unit (“MEU”) rejected the Appellant’s request on 12 February 2018, and on 4 April 2018, the Appellant filed his application to the UNDT (Case No. UNDT/NY/2018/063), in which he challenged the 15 June 2017 ePAS-2016/2017 cycle rating.

*Facts relevant to the decision to reclassify the Appellant’s P-4 Post to an FS-6 post*

8. On 18 May 2017, the Chairperson of the African Union and the Secretary-General submitted a special report on the strategic review of UNAMID to the United Nations Security Council and the UNAMID Peace and Security Council (S/2017/437). The special report recommended a comprehensive civilian staffing review (“CSR”) to ensure the UNAMID staffing levels were adjusted to implement the revised mission mandate. The draft CSR reports dated 18 August 2017 and 25 September 2017 stated that it was proposed to convert in CPIS one Administrative Officer post at the P-4 level (“the Post”) to a Field Service post at the FS-6 level. The final CSR report dated 19 October 2017 reiterated the proposal to convert the Post to the FS-6 level.

9. On 22 September 2017, the Appellant requested management evaluation of the proposal to convert the Post to the FS-6 level.

10. On 28 September 2017, UNAMID requested that the Organizational Design and Classification Unit (“ODCU”) of the Field Personnel Division in the Department of Field Support reclassify the Post from the Professional category at the P-4 level to the Field Service category at the FS-6 level.

11. On 4 October 2017, the MEU determined that the Appellant’s 22 September 2017 request was not receivable because the proposal to convert the Post was not a final administrative decision.

12. The Secretary-General’s revised UNAMID 2017/2018 budget of 31 October 2017 proposed the reclassification of the Post, effective 31 December 2017 (A/72/563).

13. By e-mail dated 24 November 2017, UNAMID informed the Appellant that the Under-Secretary-General for Management (“USG/DM”) had identified his post for abolishment by 31 December 2017 and gave him advance notice of the termination of his fixed-term appointment. In a letter dated 4 December 2017, UNAMID informed the

Appellant that the USG/DM had decided to terminate his fixed-term appointment, subject to the approval of UNAMID's 2017/2018 revised budget submission.

14. On 8 December 2017, the Advisory Committee on Administrative and Budgetary Questions ("ACABQ") approved the proposed staffing changes and recommended to the General Assembly further reductions in UNAMID's budget (A/72/636). In the Revised Budget, the Post was reclassified from P-4 to FS-6.

15. On 15 December 2017, the Appellant requested management evaluation and suspension of the implementation of the termination decision. On 19 December 2017, the MEU informed him that the termination decision was suspended pending the outcome of his request for management evaluation. Until then, the Appellant was placed against a Human Rights post.

16. On 24 December 2017, the General Assembly approved the revised budget for UNAMID.

17. On 8 January 2018, UNAMID informed the Appellant that because the General Assembly had approved the reclassification of the Post to the FS-6 level, he was placed against another P-4 level post for administrative purposes. The Post was no longer available to finance the Appellant's appointment once the new budget became effective on 31 December 2017.

18. On 13 March 2018, the MEU informed the Appellant that his 15 December 2017 request for management evaluation was considered moot because his fixed-term appointment was renewed until 30 June 2018.

19. On 27 April 2018, Mr. Hammond filed a second application to the UNDT (Case No. UNDT/NY/2018/064). As in his 4 April 2018 application, the contested administrative decision was the 15 June 2017 ePAS-2016/2017 cycle rating, and Mr. Hammond also referred to the 12 February 2018 response from the MEU. In his "Grounds for contesting the administrative decision", he further challenged the MEU's 13 March 2018 decision. He disputed the lawfulness of the "abolishment" of the P-4 Post and its "reclassification" to an FS-6 post and requested to have the reclassification of his post rescinded.

20. On 29 April 2018, the Appellant went on certified sick leave.

21. Starting from July 2018, the Appellant's appointment was extended on a monthly basis. On 11 November, he was informed that his appointment was "put in abeyance for the period of authorized sick leave" and that there was no expectation of renewal beyond this period. The Appellant's last certified sick leave day was 9 March 2019, and he was separated on 10 March 2019. On 23 April 2019, the Appellant was notified that the effective date of his separation was 9 March 2019. On 22 June 2019, he requested management evaluation, which was rejected as non-receivable by the MEU on 25 October 2019. The Appellant filed an application to the UNDT on 1 November 2019 contesting the non-renewal of his fixed-term appointment (Case No. UNDT/2020/098). With judgment dated 29 June 2020, the UNDT dismissed the application as not receivable. The Appellant filed a separate appeal on 28 August 2020 (Case No. UNAT-2020-1439).

*The UNDT Judgment*

22. The Appellant originally filed his applications with the Nairobi Registry. On 17 April 2020, the cases were transferred to the New York Registry.

23. On 23 June 2020, the UNDT issued the impugned judgment ("Judgment"), combining two of the Appellant's applications discussed above (UNDT/NY/2018/063 and UNDT/NY/2018/064) into its Judgment No. UNDT/2020/096.

24. The UNDT dismissed Mr. Hammond's application in its entirety.

25. With regard to Mr. Hammond's request for revision of his 2016-2017 performance appraisal, the UNDT found that the application was not receivable. Relying on the Appeals Tribunal's jurisprudence,<sup>1</sup> it held that the failure to revise the rating and narrative of Mr. Hammond's 2016-2017 ePAS had no direct and negative impact on his terms of employment. However, the UNDT recommended that UNAMID provide the Appellant with a corrected 2016-2017 ePAS reflecting the Panel's findings and rating of "successfully meets expectations". While the UNDT determined that the UNAMID decision to attach the Panel's report to the Appellant's 2016-2017 performance appraisal rather than change the appraisal

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<sup>1</sup> Impugned Judgment, paras. 31 & 35, citing *Ngokeng v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-460; *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546; *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420.

satisfied the relevant requirements of Administrative Instruction ST/AI/2010/5 (“Performance Management and Development System”), the UNDT recommended the ePAS itself be corrected for the purpose of future employment and to fully correct the existing record.

26. With regard to the “conversion” of Mr. Hammond’s P-4 post into an FS-6 post, the UNDT also found the application was not receivable. When Mr. Hammond filed his request for management evaluation on 22 September 2017, no decision on the conversion of the post had been taken. The UNDT reasoned that even if it considered the Appellant’s 22 September 2017 request for a management decision of the proposal to convert the Post as also requesting evaluation of the General Assembly’s decision, his application with the UNDT was time-barred as Mr. Hammond failed to file an application within 90 days of receiving the 4 October 2017 management evaluation outcome.

27. Finally, the UNDT noted that the Appellant appeared to challenge the 13 March 2018<sup>2</sup> outcome of his 15 December 2017 request for management evaluation relating to the decision to terminate his fixed-term appointment, effective 31 December 2017. In its 13 March 2018 letter, the MEU informed the Appellant that his request for management evaluation was considered moot because his fixed-term appointment had been renewed until 30 June 2018. The UNDT determined that it did not have jurisdiction to review this management evaluation outcome because it did not constitute a reviewable administrative decision under Article 2(1)(a) of the UNDT’s Statute.

*Procedure before the Appeals Tribunal*

28. On 22 August 2020, the Appellant filed an appeal of the 23 June 2020 UNDT Judgment, No. UNDT/2020/096. On 26 October 2020, the Secretary-General filed his Answer.<sup>3</sup>

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<sup>2</sup> The Impugned Judgment mistakenly used the date “13 March 2017” in para. 43. The correct date of the MEU outcome of the Appellant’s 15 December 2017 request for management evaluation is 13 March 2018.

<sup>3</sup> The Appellant has additionally appealed Judgment No. UNDT/2020/098 rendered by the Dispute Tribunal in respect of the decision not to renew his fixed-term appointment. That case (No. 2020-1439) was also considered at the Appeals Tribunal’s 2021 Summer Session. See Judgment No. 2021-UNAT-1143.

## Submissions

### Mr. Hammond's Appeal

29. With regard to the 2016-2017 ePAS, Mr. Hammond submits that the procedure adopted by the UNDT was flawed and arbitrary as the UNDT concentrated on the matter of his performance evaluation which gave rise to the reclassification or so-called "conversion" of the Post. He says that, while the UNDT Judgment acknowledged the unfairness and recommended to revise the ePAS, the evaluation had yet to be revised. He claims that there is no clarity as to whether the unfair ePAS is to be destroyed and that there seems to be no redress for the unfairness.

30. With regard to the "conversion" of the Post, Mr. Hammond submits that UNAMID breached Administrative Instruction ST/AI/1998/9 ("System for the classification of posts") by conveying to the Appellant that his post had been "converted" or "abolished", when it had actually been "reclassified". The Appellant argues that the UNDT did not fully address these claims, and that it improperly referred to the Post as having been "converted". The Appellant emphasizes that a "conversion" and a "reclassification" are materially distinct, and argues that the UNDT Judgment "cannot stand while it rests on wrongly interpreted facts". The Appellant contends that the UNDT erred in finding that his challenge regarding the reclassification/conversion of the Post was time-barred. The UNDT found that the Appellant should have submitted the application within 90 days of the 4 October 2017 MEU response. The Appellant argues that the fact that the MEU received the Appellant's 15 December 2017 complaint and granted the suspension of action shows that the Appellant's application with the UNDT was not time-barred.

31. With regard to the 13 March 2018 management evaluation outcome, Mr. Hammond argues that the MEU's 13 March 2018 response, in which it found his 15 December 2017 request for management evaluation to be moot, did not adequately address UNAMID's breaches of ST/AI/1998/9. The Appellant contends that the UNDT erred in finding that it did not have jurisdiction to review this outcome. The Appellant argues that the UNDT seemed to have misunderstood his challenge, and did not properly address the facts or arguments embodied in his 15 December 2017 management evaluation request or the MEU's subsequent response.

32. As relief, Mr. Hammond seeks clarity on the confusion between “conversion” and “reclassification”. The Appellant requests compensation for damages for breach of contract, and other damages including the payment of a “termination indemnity”. He also wishes to have the original, overruled e-PAS performance evaluation for 2016-2017 expunged and replaced with the new performance evaluation.

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

33. With regard to the ePAS, the Respondent argues that the UNDT correctly held that the Appellant’s claims regarding UNAMID’s decision to attach the Panel’s report to his ePAS were not receivable, because the decision did not directly and negatively impact his terms of employment. The Respondent argues that the decision was not an “administrative decision” on which the UNDT is competent to pass judgment under the UNDT Statute, Article 2.1(a). The Respondent argues that the UNDT properly found that UNAMID had complied with the relevant requirements when completing the Appellant’s performance appraisal. The Respondent supports this claim by arguing that the Appellant has not shown any irregularity in the process, and he remained in his position during the rebuttal process. The Respondent also contends that the UNDT properly found that any purported harm resulting from the original ePAS would be mitigated by the attached Report.

34. With regard to the “conversion” of the Post, the Respondent argues that the UNDT properly found that the Appellant’s claims regarding the decision to convert the Post were time-barred, and thus not receivable. The Respondent argues that in the Appellant’s 22 September 2017 request, he only requested management evaluation of the *proposal* to convert his post. The Respondent contends that this request was premature, and thus the Appellant’s claims were not receivable by the UNDT. The Respondent also argues that Appellant’s application with the UNDT was time-barred because he failed to file it within 90 days of the MEU’s 4 October 2017 response. Additionally, the Respondent argues that the Appellant never requested management evaluation of the General Assembly decision to convert/reclassify the Post. The Respondent further contends that, even if the Appellant had requested such a management evaluation, the UNDT would not have been competent to review decisions issued by the General Assembly for lack of jurisdiction.



35. The Respondent further argues that the Appellant failed to demonstrate that the UNDT committed any error of law or fact warranting the reversal of its Judgment. The Respondent argues that the Appellant is not actually attacking the contested decisions (attaching the Panel’s report to the ePAS and the decision to convert the Post), but instead is attacking the decision to separate him from service. The Respondent notes that claims regarding his separation from service are beyond the scope of this case, and they are the subject of a separate UNAT case. The Respondent asserts that the UNAMID Staffing Review 2017 – Report and Final Recommendation (referred to above as CSR) proposed the *conversion* of the Post from the P-4 level to the FS-6 level, and therefore the UNDT correctly interpreted the facts pertaining to this case.

36. The Respondent requests that the Appeals Tribunal uphold the UNDT Judgment and dismiss the appeal in its entirety.

### **Considerations**

#### *Oral hearing*

37. Mr. Hammond requests an oral hearing. He claims the UNDT missed and ignored facts and submissions and apparently did not understand the application, and therefore it is “necessary to present directly, or examine Respondent”.

38. Oral hearings are governed by Article 8(3) of the Appeals Tribunal’s Statute (Statute) and Article 18(1) of the Appeals Tribunal’s Rules of Procedure (Rules). We do not find that an oral hearing would “assist in the expeditious and fair disposal of the case”, as required by Article 18(1) of the Rules. Thus, the request for an oral hearing is denied.

#### *Mr. Hammond’s 2016/2017 performance appraisal*

39. In his 4 April 2018 application, Mr. Hammond contests his 2016-2017 performance appraisal (UNDT/2018/63).

40. The UNDT found that the application was not receivable because there was no administrative decision. It reviewed Section 15.4 of ST/AI/2010/05 and found that it was mandatory that a copy of the Rebuttal Panel Report be placed with the original performance appraisal in a staff member’s official status file so that the two documents might be read in

conjunction with each other. It stated that it was a settled law of the Appeals Tribunal that a comment made in a satisfactory appraisal was not a final administrative decision if it did not detract from the overall satisfactory performance appraisal and had no direct legal consequences for the staff member. As Mr. Hammond had not shown that the rating and narrative of his 2016-2017 ePAS had direct and negative impact on his terms of appointment, and the requirements of Section 15.4 of ST/AI/2010/05 were met, the failure to revise his performance evaluation for the period 1 April 2016–30 March 2017 did not constitute an administrative decision. However, the UNDT recommended that a corrected 2016-2017 ePAS be provided to Mr. Hammond reflecting the Rebuttal Panel’s findings and rating of “successfully meets expectations” for the purpose of future employment and, for the sake of transparency, to fully correct the existing record.

41. Mr. Hammond’s appeal is defective. Article 2(1) of the UNAT Statute provides:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgment rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

42. When the Appeals Tribunal hears an appeal, it does not simply re-try the case. The function of the Appeals Tribunal is to determine if the Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. The appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective. It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal.

43. Mr. Hammond, in his appeal, does not at all address the issue of receivability, and does not state why, contrary to the UNDT's findings, the rating and narrative in the ePAS would have such direct and negative impact on his terms of appointment and thus constitute an administrative decision. He submits that the procedure adopted by the UNDT seems flawed and arbitrary and that, while the UNDT Judgment acknowledged the unfairness and recommended to revise the ePAS, the evaluation had yet to be revised. He claims that there is no clarity as to whether the unfair ePAS is to be destroyed and that there seems to be no redress for the unfairness.

44. Thus, Mr. Hammond's appeal deals only with the UNDT's (non-binding) recommendation that UNAMID provide a corrected ePAS reflecting the Rebuttal Panel's findings and rating of "successfully meets expectations", but not with its finding that his UNDT application was irreceivable.

45. Further, we can find no fault in the UNDT's reasoning, which is in full accord with the jurisprudence of the Appeals Tribunal.<sup>4</sup>

*Reclassification of Mr. Hammond's P-4 post to an FS-6 post*

46. Mr. Hammond filed another application dated 27 April 2018 in which he requested the reclassification of his post to be rescinded (UNDT/2018/64). We agree with Mr. Hammond that the UNDT should better have used the legal term of "reclassification" instead of "conversion". However, this is of no legal consequence because Mr. Hammond's application is not receivable, as held by the UNDT.

47. We agree with the UNDT that Mr. Hammond's 22 September 2017 request for management evaluation was premature because, at that time, there was no decision, but only a proposal, about the reclassification or conversion of his P-4 post.

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<sup>4</sup> See *Ngokeng v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-460; *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546; *Oummih v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-420.

48. A final decision about the post was taken on 24 December 2017 when the proposal in the report of the ACABQ was approved by the General Assembly. According to A/72/563 and A/72/636, one P-4 post was abolished, and another (Mr. Hammond's) P-4 post was reclassified to the FS-6 level.<sup>5</sup>

49. Mr. Hammond cannot challenge the General Assembly's 24 December 2017 decision to reclassify his post. According to Article 2(1)(a) of the UNDT Statute, the Dispute Tribunal is competent to hear and pass judgment on an application filed by a staff member against the Secretary-General to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. Under Article 10(5)(a) of the UNDT Statute, the UNDT has authority to rescind the contested administrative decision. Only decisions of the Secretary-General are administrative decisions under Articles 2(1)(a) and 10(5)(a) of the UNDT Statute, but not decisions of the General Assembly, which is the "lawmaker" of the United Nations and whose decisions are of a legal or regulatory character. The General Assembly has repeatedly pointed out that the Tribunals have no authority to review, let alone rescind, decisions of the General Assembly related to administrative and budgetary matters.<sup>6</sup> In such situations, under our jurisprudence, the staff member has to challenge the administrative decision which follows from the implementation of, or is based on, the (legal or regulatory) decision of the General Assembly;<sup>7</sup> in the present case, this is the decision of the Administration to not renew Mr. Hammond's appointment and separate him from service, which was dealt with in UNDT Judgment No. 2020/098, which is now under appeal in the present session.<sup>8</sup>

50. It is not entirely clear whether in situations like the present, where the General Assembly itself reclassified a P-4 post into an FS-6 post for financial and budgetary reasons, ST/AI/1998/9 provides a mechanism and remedies to a staff member to challenge this reclassification decision. Despite its broad wording, we deem it possible that a staff member can only appeal (administrative) decisions taken by the Secretary-General, i.e. when a staff member's request for an upgrade of the post is rejected, or when it is the

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<sup>5</sup> United Nations General Assembly, Revised Budget for the African Union-United Nations Hybrid Operation in Darfur for the period from 1 July 2017 to 30 June 2018, A/72/636, 8 December 2017, page 17. According to the UNDT, "[O]n 24 December 2017, the General Assembly approved the proposal to convert the Post to the FS-6 level". (Impugned Judgment, para. 23)

<sup>6</sup> A/RES/73/276 (22 December 2018), para. 44; A/RES/71/266 (23 December 2016), para. 29; A/RES/67/241 (24 December 2012), para. 6.

<sup>7</sup> *Pedicelli v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-555, paras. 27-32.

<sup>8</sup> See *supra* note 3.

Secretary-General who decides to downgrade a staff member's post. To find otherwise would mean that the Secretary-General, under ST/AI/1998/9, has authority to modify or rescind an earlier reclassification decision of the General Assembly.

51. Even assuming, in Mr. Hammond's favor, that he may appeal a reclassification decision under ST/AI/1998/9 even when it is taken by the General Assembly, the application is not receivable because Mr. Hammond has not followed Sections 5 and 6 of ST/AI/1998/9, which provide:

**Section 5**

**Appeal of classification decisions**

The decision on the classification level of a post may be appealed by the head of the organizational unit in which the post is located, and/or the incumbent of the post at the time of its classification, on the ground that the classification standards were incorrectly applied, resulting in the classification of the post at the wrong level.

**Section 6**

**Appeal procedure**

6.1 Appeals shall be submitted in writing to:

- (a) The Assistant Secretary-General for Human Resources Management, in the case of appeals regarding:
  - (i) Posts in the Professional category and at the D-1 and D-2 levels or reclassification of a General Service post to the Professional category;

...

6.2 Appeals must be accompanied by the job description on the basis of which the post was classified.

6.3 Appeals must be submitted within 60 days from the date on which the classification decision is received.

...

6.5 If the review results in an upgrading of the classification to the level sought by the appellant, the appellant shall be notified in writing of the decision.

6.6 If it is decided to maintain the original classification or to classify the post at a lower level than that claimed by the appellant, the appeal, together with the report of the reviewing service or section, shall be referred to the appropriate Classification Appeals Committee established in accordance with the provisions of section 7 below.

...

6.14 The Assistant Secretary-General for Human Resources Management or the head of office, as appropriate, shall take the final decision on the appeal. A copy of the final decision shall be communicated promptly to the appellant, together with a copy of the report of the Appeals Committee. Any further recourse against the decision shall be submitted to the United Nations Administrative Tribunal.

52. It becomes clear from Section 6.14 that the final decision on the reclassification issue (even if originally dealt with by the General Assembly) is taken by the Assistant Secretary-General for Human Resources Management, and it thus constitutes an administrative decision, which is open to review under Article 2(1)(a) of the UNDT Statute. The mechanism under Sections 5 and 6 of ST/AI/1998/9 implements or transforms the original General Assembly decision into an administrative decision, and the Tribunals then has authority to review it.

53. In the present case, Mr. Hammond did not follow the provisions of Sections 5 and 6 of ST/AI/1998/9. He was notified of the General Assembly's 24 December 2017 decision on 8 January 2018, when UNAMID informed him, by e-mail, that the General Assembly had approved the reclassification of his post to the FS-6 level. According to Mr. Hammond's 27 April 2018 application, the e-mail stated, *inter alia*:

Dear Edward, Thank you for your email. As you are aware the P-4 post you encumber has been reclassified and approved by the legislative bodies.

54. However, Mr. Hammond did not submit an appeal under Section 6 of ST/AI/1998/9 within 60 days from that date. Consequently, there was no final (administrative) decision on the matter but only the 24 December 2017 General Assembly decision which, as explained above, is not open to judicial review. We note that the 8 January 2018 e-mail correctly informed Mr. Hammond that his post had been "reclassified". Any prior information that the post would be "converted" or "abolished" was legally irrelevant, because it is undisputed that Mr. Hammond's post was reclassified by the General Assembly on 24 December 2017, and Mr. Hammond was so notified on 8 January 2018. Further, it is not erroneous to call the reclassification of Mr. Hammond's P-4 post to an FS-6 post a "conversion" or an "abolishment" because, in effect, this reclassification resulted in Mr. Hammond's P-4 being abolished and replaced by, or converted into, an FS-6 post.

*Mr. Hammond's application against the 13 March 2018 MEU response*

55. In his 27 April 2018 UNDT application, Mr. Hammond also challenged the “MOOT [sic] Decision received from the MEU in its response on 13 March 2018”.

56. We agree with the UNDT's finding that Mr. Hammond's application against the 13 March 2018 response from MEU was not receivable because the MEU response did not constitute a reviewable administrative decision under Article 2(1)(a) of the UNDT Statute. Under the Appeals Tribunal's consistent jurisprudence, the response from MEU is not an appealable administrative decision, but the staff member must challenge the original and underlying administrative decision.<sup>9</sup> In the present case, this was the decision to terminate his fixed-term appointment with effect from 31 December 2017 which was communicated to Mr. Hammond on 24 November 2017 and again on 4 December 2017. However, as the MEU correctly pointed out, this decision had been rendered moot because Mr. Hammond's appointment eventually was not terminated but was renewed until 30 June 2018 and beyond; and he was separated from service not on 31 December 2017, but much later on 9 March 2019. Further, in his application to the UNDT, while he disputed “the MOOT Decision received from the MEU in its response on 13 March 2018”, Mr. Hammond linked this MEU response to the issue of the lawfulness of the reclassification of his post. He complained that it was not clear from the 13 March 2018 MEU response “what the Administration's position [was] on the matter of the P4 post which was reclassified but somehow described as an abolishment of post”. His main interest was clearly the alleged unlawfulness of the decision to reclassify his post. However, as explained above, in this respect, his application was not receivable as the reclassification decision was taken by the General Assembly.

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<sup>9</sup> *Auda v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-740, para. 22; *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-697, para. 22, quoting *Kalashnik v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-661, paras. 25-30.

**Judgment**

57. Mr. Hammond's appeal is dismissed and Judgment No. UNDT/2020/096 is affirmed.

Original and Authoritative Version: English

Dated this 25<sup>th</sup> day of June 2021.

*(Signed)*

Judge Knierim, Presiding  
Hamburg, Germany

*(Signed)*

Judge Murphy  
Cape Town, South Africa

*(Signed)*

Judge Raikos  
Athens, Greece

Entered in the Register on this 24<sup>th</sup> day of August 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar