



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

Judgment No. 2021-UNAT-1159

**Asr Ahmed Toson
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Martha Halfeld Judge Sabine Knierim
Case No.:	2020-1483
Date:	29 October 2021
Registrar:	Weicheng Lin

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

JUDGE GRAEME COLGAN, PRESIDING.

1. This is an appeal against a Judgment of the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) which concluded that the appellant's case was not receivable including because it was by then effectively moot: he had by then gotten, by other means although not in the way he wished, that which he sought and was initially refused.¹ We have concluded that, in the appellant's current circumstances, his appeal is moot. It is dismissed, and the Judgment of the UNDT is affirmed.

Facts and Procedure

2. Asr Ahmed Toson (Appellant) is a staff member of the United Nations Population Fund (UNFPA). He served as a Country Representative at the UNFPA Oman Country Office on a fixed term appointment (FTA) at the P-5 level.

3. This appeal concerns events that developed from his last FTA. On 31 October 2018, the Appellant's FTA was renewed by Personnel Action (PA) for three months, with effect from 20 March 2019 until 19 June 2019 (First PA Decision).

4. Subsequently, by PA dated 20 February 2019, UNFPA renewed again the Appellant's FTA for an additional nine months, that is from 20 June 2019 until 19 March 2020 (Second PA Decision).

5. On 16 April 2019, the Appellant requested management evaluation of the Second PA Decision. The decision was upheld by the Administration on 28 May 2019.

6. On 4 June 2019, the Appellant filed an application to the UNDT challenging the Second PA Decision, i.e., the decision to renew his FTA for only nine months instead of his desired two years (Contested Decision).

7. While his application to the UNDT was still pending, the Administration issued a third PA on 2 July 2019, granting the Appellant a further renewal of his FTA until 31 March 2021 (Third PA Decision). The Administration contended, and still maintains, that the Third PA Decision amounted, in effect, to the granting the Appellant's initial demand, which

¹ *Toson v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/183 dated 22 October 2020 (Impugned Judgment).

was to extend his FTA for two years, since the cumulative period covered by the three separate PAs resulted in an extension beginning 20 March 2019 and ending on 31 March 2021.

8. We had no information as to what happened to the Appellant after the expiry of his last FTA in March 2021. The UNDT Judgment from which this appeal arises was issued in October 2020, and this issue was not covered in the parties' submissions on the appeal. We therefore asked the UNAT Registry to make appropriate enquiries as to whether his service with UNFPA ceased then or whether he had any further renewal(s) of his last FTA.

9. The advice we got is that the Appellant has received renewed FTAs extending his tenure with UNFPA to 24 December 2023. This was by way of two further PAs, the first on 11 January 2021 advising of a renewed FTA from 31 March to 24 December 2021, and the second on 16 September 2021 for a renewed FTA from 25 December 2021 to 24 December 2023. Therefore, from 20 June 2019, which marked the beginning of the FTA that is now the subject of this appeal, the Appellant will actually be covered by an employment contract extending for approximately 4.5 years – more than twice the two-year contiguous renewal he had originally sought.

The UNDT Judgment

10. On 22 October 2020, the UNDT issued two judgments numbered UNDT/2020/182 and UNDT/2020/183 (Impugned Judgment).² The first dealt with the Appellant's challenge to the First PA Decision. The UNDT found against him and his appeal against that Judgment has been heard by a differently constituted panel of the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).³ We will say no more about that appeal.

11. This Judgment addresses the Appellant's challenges to the second and third PAs which renewed his FTA by nine months and one year respectively. The UNDT Judgment under appeal in the present case was numbered 183 and was issued on the same day as its Judgment number 182, 22 October 2020. In the Impugned Judgment, the UNDT concluded that his claims were not receivable because the Third PA Decision had superseded the previous decisions and satisfied his original wishes. The tribunal explained:⁴

² *Toson v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/182.

³ See *Asr Ahmed Toson v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1161.

⁴ Impugned Judgment, para. 25

[The Appellant’s] assertions that the [Third PA Decision] dated 2 July 2019 did not supersede or rescind the contested [Second PA Decision] dated 20 February 2019 as nothing in its content explicitly or implicitly states so and that the two PAs provide renewals for two different renewal periods are without merit. The two decisions concern the same issue (contract renewal). The 2 July 2019 renewal decision [or Third PA Decision] came up in the context of [the Appellant’s] complaint over the short renewal period and by that decision his contractual period was extended for one year.

12. The Dispute Tribunal also highlighted the jurisprudence that a staff member can have no legitimate expectation of renewal of an FTA absent an express promise to do so. In that regard, the tribunal stated:⁵ “The decision to extend the contract for a shorter period than [the Appellant] expected cannot be said to be in noncompliance with his terms of appointment or the contract of employment which are that he had no expectancy, legal or otherwise, of renewal or conversion, irrespective of length of service. The Tribunal is not competent to hear and pass judgement on this application.”

13. The Dispute Tribunal thus concluded that since the Third PA Decision superseded the previous decisions and because the Appellant was unable to demonstrate how his rights continued to be adversely affected by the Contested Decision, the application was unreceivable.⁶ He has appealed against that Judgment.

Submissions

The Appellant’s Appeal

14. First, the Appellant submits the Dispute Tribunal erred in law and on a question of fact, resulting in a manifestly unreasonable decision, when it considered that the extension of his FTA for a period less than two years was not a decision that was non-compliant with the terms of his appointment.

15. The Appellant also argues because the Contested Decision and the Third PA Decision cover different time periods, i.e., 20 June 2019 to 19 March 2020 and 20 March 2020 to 31 March 2021 respectively, the latter decision did not supersede the Contested Decision. He submits there is nothing in the Third PA Decision that explicitly or implicitly states that it is rescinding or superseding the Contested Decision.

⁵ *Ibid.* para. 18.

⁶ *Ibid.* para. 27.

16. It is thus the Appellant's contention that the Contested Decision was a distinct one that produced consequences for the terms of his appointment and that affected his health and professional reputation.

17. Third, the Appellant argues he had a legitimate expectation of renewal of his appointment for two years, as evidenced by exchanges and firm commitments he received from the UNFPA Deputy Director of Human Resources and the UNFPA Office of Ombudsman.

18. The Appellant also submits that the Contested Decision had been tainted by bias, retaliation, harassment and abuse of authority by his supervisor, the Regional Director for Arab States. The Appellant claims the Contested Decision was in retaliation for his reporting of wrongdoing by his supervisor.

19. Finally, he also alleges that the UNDT Judge had a conflict of interest and was biased against him because the Judge had previously rejected his application regarding the same contract renewal and disregarded some of his motions in the present case.

The Secretary-General's Answer

20. The Secretary-General submits the UNDT was correct to dismiss the application because the Third PA Decision superseded the Contested Decision, granting the Appellant the full two-year renewal that he initially sought. As such, there was no longer an actual controversy between the parties. The Secretary-General highlights that it is clear that both decisions concern the same contract renewal.

21. Second, the Secretary-General argues that the Appellant has not submitted any meaningful evidence of a written promise that his FTA would be extended beyond the two years that he initially sought, that is a renewal for the period after 31 March 2021.

22. Third, the Respondent argues that the Appellant has failed to demonstrate how the Contested Decision continued to have negative impacts on the terms of his appointment and on his professional reputation.

23. Regarding the Appellant's claim that the Contested Decision had been retaliatory, the Secretary-General submits that such claims are outside the scope of the present case. The Respondent explained that the Appellant's claims are (or at least were then) currently being

investigated by the UNFPA Office of Audit and Investigation Services (OAIS) and that no final administrative decision had (at least then when these submissions were filed) been reached about whether there was a case of retaliation.

24. The Secretary-General also submits that the Appellant's allegations that the UNDT Judge had a conflict of interest and was biased against him are meritless. The Respondent noted that the UNDT Judge President concluded that he failed to demonstrate any such conflict and that a ruling against an applicant in a previous case does not automatically render a Judge incompetent to adjudicate any future case of the same applicant.⁷

25. Finally, the Secretary-General argues the remainder of the Appellant's arguments are merely repetitions of arguments made before the UNDT and therefore fail to satisfy the requirements of Article 2(1) of the Appeals Tribunal Statute (Statute).

Considerations

26. We deal first with the Appellant's motion for an oral hearing. We declined that application on 7 October 2021 saying that we would give our reasons for so doing in this Judgment. The Appellant's grounds for seeking an oral hearing were as follows:

UNDT violated due process by entirely [disregarding] all of (3) set of motions including those related to oral hearing, witnesses examination, preservation and discovery of [database] (time-sensitive), recess until investigation report is issued, access to other investigation report [and] others as articulated in my appeal brief. All are critical discovery of evidences and examination of witnesses to prove my case and all were totally disregarded by UNDT.

27. The statutory grounds on which the Tribunal may allow a hearing in person as opposed to deciding the appeal on documents filed are contained in Article 8(2) of the Statute, which states: "The Appeals Tribunal shall decide whether the personal appearance of the appellant or any other person is required at oral proceedings and the appropriate means to achieve that purpose."

⁷ See *Toson v. Secretary-General of the United Nations*, Order No. 216 (NBI/2020).

28. The default position in cases such as this is that there will not be an oral hearing. An applicant for an oral hearing must establish that it is “required”. The broad interests of justice in the particular case will need to be considered in so deciding.

29. The Appellant’s grounds set out above all addressed the merits of his appeal and the correctness of the UNDT’s process, rather than focusing on the need for an oral hearing. It is questionable whether these grounds relate to the current appeal, one of two brought by him concerning related matters. In any event, we were not persuaded that an oral hearing, including his personal appearance before us, was necessary in the interests of justice and for this reason, we rejected his application.

30. Although this appeal is dismissed ultimately for mootness, there are some important points which, out of deference to the parties and their submissions, we will comment on briefly.

31. When considering and deciding on renewals of FTAs, UNFPA is required to consider all relevant provisions of its Policy and Procedures Manual (Human Resources) issued September 2009 and revised on 20 July 2016 (Policy or Manual). Those which were applicable to the circumstances of this case are titled: “Fixed Term and Continuing Appointments: Other Conditions and Procedures”. Below the heading “Renewals of fixed term appointments”, paragraph 15 of the Manual sets out the caveat that such appointments do not “...carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of length of service”. However, subsequent paragraphs record that if there is to be a renewal of such an appointment, it may be for a duration of up to five years but nevertheless it is normally for a period of two years “at a time”.

32. The words “at a time” qualifying the two-year renewals are important. They may mean that on each occasion when there is a renewal, it is normally for a period of two years, but subject to paragraphs 18 and 19 of the Policy. These words tend to indicate that while in one sense they supersede a previous FTA, subsequent ones do not subsume those predecessor renewals but are rather separate from and in addition to earlier FTAs.

33. Importantly however and relevant to the discussion herein, paragraph 18 states: “... UNFPA reserves the right to renew fixed term appointments for periods of less than two years”.

34. As to the Appellant's argument that the UNDT erred in law by not addressing several motions he filed with it, this has been dealt with, and dismissed, in another Judgment between these parties issued contemporaneously with the present one.⁸ We would simply add for the purposes of this case that these motions were made by the Appellant in his two other cases before the UNDT. Although the UNDT did not repeat in this case its orders it made on another of those case files, it is clear that it intended its orders to apply to all three files in the Appellant's name affecting the same issues of his non-renewal of his FTA(s). It could not reasonably have appeared otherwise to anyone as closely connected to his case as the Appellant. While counsel of perfection might indicate that the UNDT should have made identical orders on each of the three files before it affecting the Appellant, its failure to do so would not, in the circumstances, have given him independent grounds of appeal in this case.

35. Penultimately, we would not have accepted the Appellant's contention that the UNDT Judge had a conflict of interest which should have required judicial recusal. Such an application was indeed made to the President of the Dispute Tribunal who determined that there were not sustainable grounds for recusal. We agree. It is not a judicial conflict of interest or, without more, judicial bias against a litigant that the Judge may have decided some preliminary issues against the litigant. If, as the Appellant alleges, those decisions were erroneous or the Judge failed to determine them, the remedy for such wrongs is appeal, as he has now exercised. It is not the place of recusal from subsequent proceedings to cure juridical error in earlier ones. This ground of appeal must and does fail.

36. The UNDT's Judgment dismissing the Appellant's claims for mootness has not been shown to be wrong in light of information now received about the Appellant's continued tenure of a role at the UNFPA. He has achieved not only what he sought originally, but new and up-to-date information about his continued employment with the Agency means that this complies in effect with what we would have interpreted the Respondent's obligations to be. The Appellant would not have been entitled to any remedies in any event. The appeal is thus moot and must, accordingly, be dismissed.

⁸ See *Asr Ahmed Toson v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1160.

Judgment

37. The appeal is dismissed, and the UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Colgan, Presiding
Auckland, New Zealand

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Knierim
Hamburg, Germany

Entered in the Register on this 28th day of December 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar