



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

Judgment No. 2021-UNAT-1166

**Boubacar Dieng
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Kanwaldeep Sandhu Judge Dimitrios Raikos
Case No.:	2020-1484
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Evelyn W. Kamau, OSLA
Counsel for Respondent:	Maryam Kamali

JUDGE MARTHA HALFELD, PRESIDING.

1. Boubacar Dieng (Mr. Dieng) is a former staff member who served at the P-5 level in the Child Protection Unit (CPU) of the United Nations-African Union Mission in Darfur (UNAMID or Mission). He filed an application before the United Nations Dispute Tribunal (Dispute Tribunal or UNDT), challenging the abolition of his post and the decision not to renew his appointment. On 4 September 2020, the UNDT issued Judgment No. UNDT/2020/163,¹ dismissing Mr. Dieng's application and finding *inter alia* the decision not to renew his appointment lawful. For the reasons set out below, we dismiss the appeal and affirm the UNDT Judgment.

Facts and Procedure

2. Mr. Dieng joined the service of the Organization on 14 July 2000 as a Human Rights Officer at the P-2 level. On 23 February 2009, he was appointed as a Senior Child Protection Officer at the P-5 level in the CPU at UNAMID.

3. Between February and March 2017, complaints were made by UNICEF Sudan staff members to the Joint Special Representative (JSR), UNAMID, about Mr. Dieng's communication style. In June 2017, the JSR convened a fact-finding panel to review the allegations made against Mr. Dieng.

4. Subsequently, on 13 November 2017, the JSR informed Mr. Dieng that he had nominated another staff member for an assignment at the Mission because a UNICEF Representative and the United Nations Resident Coordinator/Humanitarian Coordinator (RC/HC) told him they did not want to work with him.

5. On 13 March 2018, however, the JSR decided to disband the fact-finding panel following the death of one of the complainants who had made the allegations of impropriety against Mr. Dieng.

¹ *Dieng v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/163 dated 4 September 2020 (Impugned Judgment).

6. On 4 April 2018, the JSR informed Mr. Dieng that he would be reassigned from CPU, where he performed the functions of a Child Protection Officer, to the Office of the Joint Special Representative (OJSR) to serve as a Senior Political Affairs Officer. In his new role effective 8 April 2018, Mr. Dieng would work on mediation issues.²

7. Via notice dated 21 October 2018, Mr. Dieng was informed that his Fixed Term Appointment (FTA) would not be renewed after expiration on 31 December 2018 because the post he encumbered in CPU would be abolished, effective 1 January 2019.³

8. On 31 November 2018, Mr. Dieng sought management evaluation of the decision to abolish his post and not to renew his appointment beyond 31 December 2018 (Contested Decision). While the Management Evaluation Unit (MEU) reviewed Mr. Dieng's case, the decision not to renew his appointment was suspended, and he was placed against a Political Affairs Officer position in the Office of the Deputy JSR (DJSR) beginning 1 January 2019.

9. On 10 January 2019, the MEU upheld the Contested Decision, and Mr. Dieng was separated from UNAMID on the next day, i.e., on 11 January 2019.

10. On 28 February 2019, Mr. Dieng filed an application with the Dispute Tribunal challenging the Contested Decision.⁴

The UNDT Judgment

11. On 4 September 2020, the Dispute Tribunal issued the Impugned Judgment. Regarding the first prong of Mr. Dieng's application, i.e., the abolition of the post of Senior Child Protection Officer in CPU, the tribunal found that the decision was not subject to judicial review.

² Mr. Dieng contested his reassignment as a Senior Political Affairs Officer to the OJSR in a separate application. See *Boubacar Dieng v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1118, in which the Appeals Tribunal upheld the UNDT's finding that the reassignment was unlawful and awarded Mr. Dieng compensation for moral damages in the amount of two months' net base salary, for stress and anxiety as well as for the harm caused to his professional reputation.

³ Impugned Judgment, para. 10.

⁴ Mr. Dieng filed an amended application on 13 July 2020 to comply with the requirement to submit an application in appropriate form and within the page limit, per UNDT Practice Direction No. 4.

12. Citing *Lloret-Alcaniz et al.*,⁵ the UNDT reasoned: “Where the General Assembly takes regulatory decisions, which leave no scope for the Secretary-General to exercise discretion, the Secretary-General’s decision to execute such regulatory decisions, depending on the circumstances, may not constitute administrative decisions subject to judicial review.”⁶

13. Regarding the second prong of Mr. Dieng’s application, i.e., the decision of the Administration not to renew Mr. Dieng’s FTA beyond 31 December 2018, the tribunal found the administrative decision lawful. The UNDT explained: “The Administration did not have discretion to decide whether or not to renew [Mr. Dieng’s] contract because the requirements of the Organization for [Mr. Dieng] to carry out work of the kind that he performed as Senior Child Protection Advisor at the P-5 level in the Child Protection Unit (“CPU”) in Darfur *ceased to exist*.”⁷

14. Additionally, the Dispute Tribunal also held that Mr. Dieng failed to prove that the non-renewal of his contract was based on improper motives. In conclusion, the UNDT stated:⁸

[T]he Administration did not act unlawfully by not renewing [Mr. Dieng’s] contract because the contract itself was clear that it was expiring on 31 December 2018. Fixed-term contracts carry no expectation of renewal. The exception to this rule is where the [a]pplicant can show that the nonrenewal is unreasonable in that it was motivated by improper motive; that the Respondent failed to act fairly, justly, and transparently in dealing with him, or that the [a]pplicant had a legitimate expectation of renewal. [Mr. Dieng] has shown none to the satisfaction of the Tribunal.

Procedure before the Appeals Tribunal

15. On 2 November 2020, Mr. Dieng filed an appeal against Judgment No. UNDT/2020/163, and the appeal was registered with the Appeals Tribunal as Case No. 2020-1484. On 6 January 2021, the Secretary-General filed a timely answer.

⁵ *Lloret Alcañiz et al. v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-840, para. 59.

⁶ Impugned Judgment, para. 21.

⁷ *Ibid.* para. 40 (emphasis added).

⁸ *Ibid.* para. 47 (internal footnotes omitted).

Submissions

Mr. Dieng's Appeal

16. Mr. Dieng first submits that the UNDT erred on a question of fact, resulting in a manifestly unreasonable decision. He argues the tribunal erroneously concluded that he was still serving as a Senior Child Protection Officer in CPU at the time of his separation, instead of considering his reassigned role as a Senior Political Affairs Officer in the OJSR. He claims although he was reassigned to OJSR via his original CPU post, his functions had changed significantly. As a result of this error regarding which post he actually occupied, Mr. Dieng argues the tribunal further erred when it concluded that he was not subject to a Comparative Review Process (CRP).

17. Second, Mr. Dieng argues that the Dispute Tribunal erred on a question of law and fact when it failed to properly apply and interpret the Terms of Reference (TOR) for the CRP. The appellant submits Section V of the UNAMID Terms of Reference for the Comparative Review Process (CRP TOR) states:⁹ “Comparative review will not be necessary where a unique post or function is being abolished within comparative post or function, category and grade level within the same Section/Unit. Such posts shall be abolished as ‘dry cuts’.”

18. However, Mr. Dieng posits the UNDT erred because it failed to properly determine, as a preliminary issue, his actual functions and where his position was located at the time of separation, i.e., whether it was in CPU or OJSR. The appellant thus asserts that contrary to the UNDT's conclusion, he was not serving in CPU but rather in OJSR. He claims his position at OJSR was not unique because there were other senior political affairs officers at the P-5 level throughout the Mission. As such, based on his new position at OJSR, he should have undergone the review under the CRP and not be slated for a “dry cut”.

19. Further, Mr. Dieng also argues that upon being reassigned to OJSR, he was *de facto* loaned to that office, and the CRP TOR requires that for “[s]taff members encumbering loaned/borrowed posts [, they] will be subject to the CRP (if applicable) in the Section where the post is on loan, based on the actual functions performed”.¹⁰ As such, Mr. Dieng's role

⁹ United Nations-African Union Mission in Darfur, “Corrigendum: Terms of reference for the upcoming Comparative Review Process”, UNAMID BROADCAST, 17 September 2018, para. V.

¹⁰ *Ibid.*

should have been regarded as being located in OJSR and thus should have been subject to the CRP in that section.

20. Mr. Dieng also explains that contrary to the Secretary-General's argument that the General Assembly did not abolish any P-5 political affairs officer posts, Table 4 (Staffing changes: support to the mediation process) in the UNAMID Revised Budget of 1 July 2018 to 30 June 2019 (the Budget) actually shows the abolishment of two P-5 posts from the Doha Document for Peace in Darfur (DDPD) Implementation Support Unit, formerly the Political Affairs Section.¹¹ The appellant highlights that this information was part of the record and the UNDT failed to give it due consideration and simply accepted the Respondent's argument that no P-5 political affairs officer posts were abolished by the General Assembly.

21. Finally, Mr. Dieng submits that he was unfairly treated and that his reassignment to OJSR, while his post remained in CPU, demonstrates that the JSR abused his authority. The appellant thus contends he should have been treated as the other political affairs officers at the Mission, and as such, he should have either been retained or been subjected to the CRP.

22. Regarding the issue of the abolition of post, the appellant submits the Dispute Tribunal erred by finding that the decision of the Administration was not subject to judicial review and, as a result, did not accord due consideration to the procedural irregularities he had highlighted in his application. Such irregularities, Mr. Dieng submits, showed an abuse of discretion on the part of the Administration.

The Secretary-General's Answer

23. The Secretary-General argues the UNDT correctly found the decision to abolish Mr. Dieng's post not receivable *ratione materiae* because the tribunal lacks subject-matter jurisdiction to review resolutions of the General Assembly, including resolution 73/278, which approved the abolition of Mr. Dieng's post. As such, the Secretary-General submits the UNDT was correct to review only the decision not to renew Mr. Dieng's FTA beyond 31 December 2018.

¹¹ Report of the Secretary-General A/73/488 (Revised budget for the African Union-United Nations Hybrid Operation in Darfur for the period from 1 July 2018 to 30 June 2019), p. 26.

24. In response to Mr. Dieng's assertion that his new role in OJSR should have been considered when deciding on the renewal of his FTA, the Secretary-General explains that the post Mr. Dieng encumbered at the time of his separation from service was the post he had from the CPU. Mr. Dieng maintained that same post that was budgeted for CPU until his separation, even though he had been temporarily reassigned in April 2018 to OJSR. On 31 December 2018, the post that Mr. Dieng encumbered, i.e., the CPU post, was abolished and ceased to exist.

25. Regarding the allegation of improper motives leading to the non-renewal of Mr. Dieng's FTA, the Secretary-General explains that the appellant has failed to rebut the presumption of regularity with respect to actions taken by the Administration pursuant to the General Assembly resolution which *inter alia* approved the abolition of Mr. Dieng's CPU post. The Respondent highlighted that the Administration did not have discretion whether to renew the appellant's appointment because the function of Senior Child Protection Officer in CPU ceased to exist.

26. The Secretary-General also maintains that Mr. Dieng did not have a right to be comparatively reviewed. The General Assembly had approved a budget that identified Mr. Dieng's CPU post for abolition. As Mr. Dieng continued to encumber the CPU post when he was reassigned to OJSR, it is that same CPU post that the Administration looked at when deciding the renewal of Mr. Dieng's FTA. The CPU post was not subject to the CRP because it was a unique post and therefore was abolished by a "dry cut". Thus, the Secretary-General submits the Administration did not have the discretion, as a matter of law, to retain the appellant on the post he had encumbered, i.e., the CPU post, after the General Assembly had abolished it.

27. Finally, the Respondent also argues that the remainder of appellant's claims are mere repetitions of arguments that were unsuccessful before the UNDT and therefore fail to satisfy the requirements of Article 2(1) of the Appeals Tribunal Statute (Statute).

Considerations

28. The UNDT dismissed both prongs of Mr. Dieng's application, finding that: (i) the abolition of his post was based on a General Assembly resolution and therefore not subject to judicial review, and (ii) the decision not to renew his FTA was lawful.

29. In his appeal, Mr. Dieng has challenged both holdings of the UNDT Judgment.

Abolition of post based on a General Assembly resolution

30. Regarding the abolition of the post of Senior Child Protection Officer, the UNDT found that the decision was not subject to judicial review. Citing the Appeals Tribunal's jurisprudence in *Kagizi et al.* and *Lloret Alcaniz et al.*,¹² the UNDT adduced that the abolition of the post was based on a General Assembly resolution and that it had no jurisdiction to interfere with those powers and was not permitted to review General Assembly resolutions because they are not administrative decisions.¹³

31. In his appeal, Mr. Dieng appears to fashion an argument that the UNDT failed to exercise jurisdiction as it did not examine the alleged procedural irregularities conducted by the Administration in abolishing the post.

32. In this regard, the UNDT held that, insofar as the abolition of the post had been decided by the General Assembly, the implementation of such a decision was not reviewable. It was thus not necessary to consider the procedural irregularities in abolishing the post.¹⁴

33. Mr. Dieng's contentions that those procedural irregularities were proof of the abuse of discretion by the Administration and of the harm he suffered do not overcome the finding that the decision to abolish his post is not reviewable. Those contentions may be more applicable in reviewing the decision not to renew his FTA beyond 31 December 2018.

34. Moreover, Mr. Dieng has not pointed out in his appeal what procedural irregularities he was referring to and how those alleged procedural irregularities could have had an impact on the legality of the mechanical exercise undertaken by the Administration in implementing a General Assembly resolution, which in this case was to abolish a post.

35. It follows that Mr. Dieng has failed to establish any error in the UNDT Judgment regarding the non-receivability of his application which challenged the decision to abolish his post.

¹² *Kagizi et al. v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-750, para. 21.; *Lloret Alcañiz et al.* Judgment, *op. cit.*

¹³ Impugned Judgment, para. 21-23.

¹⁴ *Ibid.*, para. 22.

Non-renewal of Mr. Dieng's FTA beyond 31 December 2018

36. The UNDT found that, in keeping with the presumption that official functions have been regularly performed, there is no evidence that the non-renewal was based on improper motives nor is there evidence of any legitimate expectation of renewal on Mr. Dieng's part.¹⁵

37. Mr. Dieng's appeal appears to be mainly based on the argument that he was or ought to have been entitled to a CRP before being slated for a "dry cut".

38. While the CRP TOR acknowledge the strategic priority of maintaining peacekeeping operations in Darfur, they also call for the preparation of a decrease in the Mission's geographical footprint, with a commensurate reduction in uniformed personnel and civilian staff by June 2019.¹⁶ Comparative review panels were hence established to undertake a review of staff members encumbering posts that were considered for abolishment, as guided by the general criteria set out in Staff Rules 9.6 (e) and 13.1 (d) as well as Article 101 of the United Nations Charter.¹⁷

39. The CRP TOR specifically provided for the situation at hand. It stated the following under Section V. Scope of Review:¹⁸

International staff members will be comparatively reviewed by section, functions and grade across duty stations as this gives the Mission the opportunity to retain the most qualified staff members from a larger pool. National staff will be comparatively reviewed by section/unit within the same duty station only as they are recruited locally at the duty station and are not subject to reassignment across duty stations.

Within a section (and duty station for national staff), staff members must be reviewed against other staff members performing the same or similar functions at the same level and category. The determination of which staff members should be compared together within each section is primarily guided by the functional title as per the staff member's letter of appointment. In cases where the functional title does not reflect the actual functions performed (e.g. a driver may be performing clerical duties, or an administrative assistant may be performing program assistant functions), the CHRO must determine which individual falls into which occupational group within the same grade, while clearly documenting the basis upon which the determination was made

¹⁵ *Ibid.*, para. 38 and 47.

¹⁶ United Nations-African Union Mission in Darfur, "Corrigendum: Terms of reference for the upcoming Comparative Review Process", UNAMID BROADCAST, 17 September 2018, paras. I (1) and (3).

¹⁷ *Ibid.*, para. I.

¹⁸ *Ibid.*, para. V.

(e.g. workplan as documented in the e-Performance, consultation with the relevant Section Chief, emails regarding work allocation etc.).

Staff members encumbering loaned/borrowed posts will be subject to the CRP (if applicable) in the Section where the post is on loan, based on the actual functions performed[.]

Furthermore, staff members on assignment to the mission from other offices or missions and staff members on loan or secondment from the Agency, Fund or Programmes (AFPs) or a national government will not participate in the CRP and instead return to their parent offices.

Comparative review will not be necessary where a unique post or function is being abolished within comparative post or function, category and grade level within the same Section/Unit. Such posts shall be abolished as “dry cuts”.

40. Mr. Dieng claims that the UNDT erred when it held that he was still serving as a Senior Child Protection Officer in CPU at the time of his separation, when instead he was actually working as a Senior Political Affairs Officer in OJSR. He thus contends that he should have been subject to a CRP, which would have considered his functions as a Senior Political Affairs Officer in OJSR instead of a Senior Child Protection Officer in CPU.

41. For Mr. Dieng, since there were other senior political affairs officers at the P-5 level at OJSR, this should have entitled him to a comparative review. Such review would have then rightfully considered the substantive functions he undertook at the time and would not have been restricted to the post he was encumbering, i.e., the CPU post. Additionally, to further his argument, Mr. Dieng also claims he was *de facto* loaned to or borrowed by OJSR, which should have obligatorily entitled him to a CRP.

42. As a preliminary matter, it appears Mr. Dieng is wrongly using the term “loan”. “Loan” is usually used whenever there is a “transfer” from one agency to another. The definition in the relevant instrument provides that a “loan” is “the movement of a staff member from one organization to another for a limited period, normally not exceeding one year, during which the staff member will be subject to the administrative supervision of the receiving organization but will continue to be subject to the staff regulations and rules of the releasing organization”.¹⁹

¹⁹ Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances, 19 July 2019, para. I (2)(e).

43. Additionally, Administrative Instruction ST/AI/2010/3 (Staff selection system) also provides:²⁰

... Lateral move: movement of a staff member to a different position at the same level for the duration of at least one year. The new position may be in the same or a different department or office, in the same or a different duty station and in the same or a different occupational group. Inter-agency loans or other movements to and from other organizations of the United Nations common system are recognized as “lateral moves”. Within the same department or office, a lateral move will normally involve a change in functions with or without a change of supervisor. When the supervisor remains the same, there will be a lateral move if the responsibilities are substantially different, for example, if there is a different area of responsibilities or a change in the departments/offices serviced by the staff member. A change in supervisor without a change in functions does not represent a lateral move. Temporary assignments of at least three months but less than one year, with or without special post allowance, shall also qualify as a lateral move when the cumulative duration of such assignments reaches one year.

44. Mr. Dieng’s argument about being “loaned” does not appear to have any bearing in this case as it is clear from the record that there was never a transfer from one agency to another. Instead, it appears that Mr. Dieng was laterally moved to a different position at the same level within the same department or office.

45. Next, by asserting that the UNDT did not consider his functions as a Senior Political Affairs Officer, Mr. Dieng is trying to reargue his case. This same argument was raised before the UNDT, which refuted it on the ground that Mr. Dieng’s willingness to put forward his functions as Senior Political Affairs Officer instead of his function as a Senior Child Protection Advisor ran counter to his own earlier statement that his expertise was in child protection and not in political affairs and mediation. Mr. Dieng had argued before that other personnel in OJSR and the Political Affairs Section were better suited for the political affairs role. The UNDT thus concluded that any renewal of appointment of Mr. Dieng’s to exercise a function in political affairs would obligatorily hinder the paramount consideration in the employment of staff, which is to secure the highest standards of efficiency, competence and integrity.²¹

²⁰ Administrative Instruction ST/AI/2010/3 (Staff selection system), Section 1 (q).

²¹ Impugned Judgment, para. 44.

46. But Mr. Dieng is challenging this UNDT conclusion on the premise that he was reassigned to political affairs, regardless of his experience or expertise. However, even if this was the case, Mr. Dieng has failed to show how the UNDT erred in reaching the above conclusion.

47. The fact that Mr. Dieng was unlawfully reassigned, as later acknowledged by the UNDT and confirmed by the UNAT in his previous application, helps to confirm that the relevant post to be considered is the CPU post.²² The arguments advanced by Mr. Dieng actually appear quite contradictory: on one hand, Mr. Dieng is arguing his expertise lies in child protection and on the other, he's asking that his position be comparatively reviewed with other more seasoned political affairs officers. Aside from this obvious contradiction, however, of paramount import in the discussion herein is the fact that Mr. Dieng's post was budgeted in CPU, and therefore, it is within this latter unit that his post ought to be considered, should a CRP be deemed necessary. But a CRP was never required in Mr. Dieng's case because the post he occupied in CPU was unique. Mr. Dieng's attempt to relitigate this point on appeal is to no avail. A party cannot merely repeat on appeal arguments that failed before the UNDT. More is required. As already noted in *Krioutchkov* and *Aliko*,²³ the Appeals Tribunal is not an instance for a party to reargue his case without identifying the defects and demonstrating on which grounds an impugned UNDT judgment is erroneous. The appellant must demonstrate that the UNDT has committed an error of fact or law warranting intervention by this Tribunal.²⁴

48. Moreover, Mr. Dieng misinterprets the UNDT Judgment when he contends that the UNDT concluded that he was still serving as a Senior Child Protection Officer in CPU at the time of his separation. When the UNDT stated that the kind of work he had performed as Senior Child Protection Advisor at the P-5 level in CPU ceased to exist, it was referring to the abolition of the post due to the fact that: (i) the entire child protection portfolio was being undertaken by many stakeholders, and (ii) no funds had been allocated to this post beyond 31 December 2018.²⁵ For the UNDT, the *post* Mr. Dieng was encumbering at the time took on

²² See *Boubacar Dieng v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1118.

²³ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, paras. 20-22; *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, paras. 28-30.

²⁴ *Abdel Rahman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-610, para. 20; *Aliko* Judgment, *op. cit.*, para. 28; *Crichlow v. Secretary General of the United Nations*, Judgment No. 2010-UNAT-035, para. 30.

²⁵ Impugned Judgment, para. 40.

more significance than his actual *functions*, which he performed following the reassignment to OJSR. This was rendered clear by the UNDT's finding that Mr. Dieng's new line of argument contradicted his earlier averments, as discussed above.²⁶ The Dispute Tribunal was thus quite cognizant of the fact that Mr. Dieng had indeed been reassigned to the post of Senior Political Affairs Officer in OJSR on 4 April 2018.

49. It is true that the decision of reassigning Mr. Dieng to OJSR as Senior Political Affairs Officer was later found to be unlawful.²⁷ The underlying reason for the unlawfulness in Mr. Dieng's prior reassignment was attributed to the fact that he was not granted an opportunity to submit his views regarding the allegations that actually motivated the reassignment decision. By doing so, the Administration had circumvented Mr. Dieng's due process rights and avoided a formal investigation. The reassignment in the end took the form of a veiled disciplinary measure. In the previous *Dieng* case, the UNDT in its Judgment, which was affirmed by this Tribunal, never ordered reinstatement of Mr. Dieng to his former position of Senior Child Protection Advisor. The UNDT reasoned this was because Mr. Dieng had already been separated from the Organization.²⁸ Therefore, in the absence of a reinstatement, it is clear, for the UNDT and for the rest of us, that Mr. Dieng was still performing the functions of a Political Affairs Officer at the time of separation.

50. However, regardless of which functions Mr. Dieng performed at the time of separation, the central factor in determining whether a comparative review was necessary depended on identifying which post Mr. Dieng actually encumbered. There are a few reasons to justify this reasoning, first among which is the fact that reassignments are often temporary, as was the case here. Second, the number and type of posts allocated to each unit and department are specified in the annual Programme Budget, which must be approved by the General Assembly.²⁹ Mr. Dieng encumbered the post of Child Protection Officer in CPU. It was this post that was approved in the preceding annual budget by the General Assembly. Although, he was reassigned to the *position* of Senior Political Affairs Officer in April 2018, he continued to encumber the same Child Protection Officer *post*. In other words, the funding for the Political Affairs Officer *position* came from the budgeted Child Protection Officer *post*. And the

²⁶ *Ibid.*, para. 44.

²⁷ See *Dieng* Judgment, *op. cit.*, paras. 20 and 56.

²⁸ *Ibid.*, para. 21.

²⁹ See generally *Gehr v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/178, para. 35. See also Administrative Instruction ST/AI/1998/9 (System for the classification of posts), Section 2.2 (c).

UNDT correctly pointed out that Mr. Dieng did not dispute the fact that no funds were allocated to his post beyond 31 December 2018.³⁰ Hence, in addition to the fact that Mr. Dieng was never “loaned” to OJSR, this line of argument that his post should have undergone a CRP carries little to no weight here because the paramount consideration remains that Mr. Dieng at all times occupied the post attached to CPU, which was ultimately abolished by the General Assembly.

51. Mr. Dieng’s contention that his position at OJSR should have been subject to a CRP is without merit on other fronts as well. The appellant claims to be entitled to a comparative review, pursuant to Section V of the CRP TOR. This claim is meritless. For Mr. Dieng, since there were other senior political affairs officers in OJSR, his post should not be considered unique and this should have entitled him to a CRP, according to the rules cited above. However, as discussed above, while it is true that he was performing in the *position* of a Political Affairs Officer at OJSR at the time of the decision to abolish the post (and also at the time of the separation), his *post* itself remained at CPU, which was the source of funding for the OJSR role.

52. It is uncontroverted that the post Mr. Dieng occupied at CPU was unique and therefore did not require a CRP pursuant to Section V of the CRP TOR, as correctly determined by the UNDT.³¹ Mr. Dieng’s claim that the UNDT erred when it failed to determine whether his post was unique and where it was located is thus completely unfounded.

53. Likewise, there is no merit to Mr. Dieng’s argument that there were other similar P-5 political affairs officer posts which were abolished, as indicated in the Budget.³² The existence of more than one post in the relevant section could have indeed entitled him to a CRP. However, as discussed above, the relevant section is not OJSR, but CPU. And even if the location was deemed to be OJSR, the two P-5 political affairs officer posts that were abolished were actually in the DDPD Implementation Support Unit, where Mr. Dieng never worked. He served at one point in OJSR and then from 1 January 2019 until his separation on 11 January 2019, he served in the Office of the Deputy JSR. He never worked in the DDPD Implementation Support Unit, and therefore he would not have been entitled to a CRP anyway.

³⁰ Impugned Judgment, para. 40.

³¹ *Ibid.*, paras. 40 and 43.

³² Report of the Secretary-General A/73/488 (Revised budget for the African Union-United Nations Hybrid Operation in Darfur for the period from 1 July 2018 to 30 June 2019), p. 26.

Furthermore, Table 2 of the Budget also confirms there was no abolishment of P-5 political affairs officer posts in either the OJSR or the DJSR.³³

54. In other words, a close review of the Budget shows that the other P-5 posts, which were abolished, were not in the section or unit where Mr. Dieng was working and the CRP TOR require that comparative reviews be restricted to posts within the same units or sections.

55. Furthermore, the Appeals Tribunal recalls that Mr. Dieng had successfully challenged the decision to reassign him from CPU to OJSR as a Senior Political Affairs Officer.³⁴ In that case, Mr. Dieng requested that the decision to reassign him to OJSR as Senior Political Affairs Officer be declared unlawful, as he wanted to remain in CPU. This request was granted, and the reassignment was declared unlawful. It therefore appears that Mr. Dieng's current plea to be considered part of OJSR (and thus be entitled to a CRP) is quite inconsistent with his previous stance on remaining at CPU.

56. In light of the above, from all points of view, we agree with the Dispute Tribunal that Mr. Dieng has not shown that his post was not unique and therefore not a "dry cut".

57. Mr. Dieng also claims that the UNDT erred when it failed to consider that he had been the subject of abuse of authority on the JSR's part, who constantly shifted positions and gave contradictory information on his reassignment. In this regard, the UNDT found that Mr. Dieng had not substantiated his allegations with clear evidence to show how he was disadvantaged by his supervisor's behavior or that the non-renewal was motivated by improper motive.³⁵ The Appeals Tribunal does not have any reason to diverge from this finding. Apart from reasserting his earlier arguments, without showing where the UNDT committed a mistake, Mr. Dieng does not succeed in persuading this Appeals Tribunal of any error in the UNDT's Judgment.

³³ *Ibid.*, pp. 21 - 22.

³⁴ Impugned Judgment, para. 42. See *Dieng Judgment, op. cit.*

³⁵ Impugned Judgment, paras. 41 and 47.

Judgment

58. Mr. Dieng's appeal is dismissed, and Judgment No. UNDT/2020/163 is upheld.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Halfeld, Presiding
Juiz de Fora, Brazil

(Signed)

Judge Sandhu
Vancouver, Canada

(Signed)

Judge Raikos
Athens, Greece

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

(Signed)

Weicheng Lin, Registrar