



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

Judgment No. 2022-UNAT-1230

Ratnanjali Venkata Koduru

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

Judgment

Before:	Judge Dimitrios Raikos, Presiding Judge John Raymond Murphy Judge Martha Halfeld
Case No.:	2021-1555
Date:	18 March 2022
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Amanda Stoltz

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Ms. Ratnanjali Venkata Koduru, a former staff member of the United Nations Mission for Justice Support in Haiti (MINUJUSTH), filed an application contesting her separation from service upon the expiry of her fixed-term contract. By Judgment No. UNDT/2021/022, the UNDT dismissed the application finding that the non-renewal decision was lawful, and that Ms. Koduru had failed to show that it was unduly motivated.
2. Ms. Koduru has appealed against the UNDT Judgment to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
3. For the reasons set out below, we dismiss the appeal and affirm the UNDT Judgment.

Facts and Procedure

4. Ms. Koduru joined MINUJUSTH on a fixed-term appointment on 7 October 2017.
5. On 12 April 2019, by Security Council resolution 2466 (2019), the Security Council ordered the closure of MINUJUSTH on 15 October 2019 and requested the Secretary-General to begin the gradual withdrawal of the mission.
6. On 12 September 2019, the MINUJUSTH Chief Human Resources Officer notified Ms. Koduru that following Security Council resolution 2466, she would be placed on Special Leave with Full Pay from 22 September 2019 to 15 October 2019, at which time she would be separated from the Organization.
7. From 11 October 2019, Ms. Koduru went on sick leave. In order to allow her to utilize her sick leave entitlements, her contract was extended until 7 October 2020 after which she was separated on a disability retirement.
8. MINUJUSTH closed on 15 October 2019 with its liquidation team completing all closure activities on 31 December 2019.

9. On 12 November 2019, Ms. Koduru requested management evaluation of the non-renewal decision. The decision was upheld by the Administration on 30 December 2019. On 24 March 2020, Ms. Koduru filed an application with the UNDT. The Secretary-General filed a reply on 23 April 2020 arguing that the application was not receivable.

10. On 9 March 2021, the UNDT issued Judgment No. UNDT/2021/022. The UNDT held that the application was receivable but that it failed on its merits, finding that the non-renewal decision was lawful, and that Ms. Koduru had failed to show that it was unduly motivated.

11. On 14 May 2021, UNAT issued Order No. 410 (2021) partially granting Ms. Koduru's request for extension of time and allowing her 60 additional days to file her appeal.

12. By Order No. 418 (2021) dated 22 July 2021, UNAT partially granted Ms. Koduru's second request for extension of time, ordering that she file her appeal no later than 23 August 2021. In addition, UNAT noted that Ms. Koduru may not introduce claims which were not presented to the UNDT and that any piece of evidence which she could possibly refer to must ordinarily have already been received by the UNDT.

13. On 23 August 2021, Ms. Koduru filed an appeal of the UNDT Judgment with UNAT. The Secretary-General filed his answer on 25 October 2021.

Submissions

Ms. Koduru's Appeal

14. The UNDT erred in rejecting Ms. Koduru's application. The UNDT erred when it failed to recognize the ulterior motives of the Organization. In compliance with Order No. 418 (2021), Ms. Koduru is not seeking to proffer further evidence although she regrets having failed to submit it to the UNDT due to her "poor and delicate mental health".

15. Ms. Koduru alleges that she was subjected to "harassment, abuse of authority and seclusion". She asks that UNAT reconsider her application and the facts presented. She submits that she was unable to secure representation. While she understands that portions of the appeal are "not done as expected", she is satisfied that she managed to "at least voice 50% of what happened to me despite of my worsening mental health".

16. In her appeal, Ms. Koduru makes a number of substantive claims. She for example claims that on 1 July 2015, she was unduly separated after she had been elected as Vice President of the Central Field Staff Union; that she was “abruptly separated from the mission” in September 2019 as a result of her refusal to approve “non-compliant sales cases under the pressure of the [Chief of Staff]”; that the rejection of a request to attend a training resulted in her “constructive dismissal”; that there had been delays in receiving salary payments; and that her post was “reprofiled” and her functions reduced to 10 per cent of the original job description.

17. Ms. Koduru asks that the Appeals Tribunal vacate the UNDT Judgment in its entirety.

The Secretary-General’s Answer

18. The UNDT considered the applicable law and the evidence and correctly concluded that the non-renewal decision was lawful. As identified by the UNDT, Staff Regulation 4.5(c) and Staff Rule 4.13(c) both provide that a fixed-term appointment does not carry any expectancy of renewal. A fixed-term appointment shall also expire automatically and without prior notice on the expiration date specified in the letter of appointment.

19. The UNDT considered Ms. Koduru’s allegations of a pattern of harassment in the workplace and concluded that Ms. Koduru had not proven that improper motives played a role in the non-renewal decision. Assuming *arguendo* that her allegations were supported by evidence, Ms. Koduru also failed to draw any connection between these assertions and the non-renewal of her fixed-term appointment or the fact that her actual separation from service was ultimately due to health reasons for which she is now receiving a disability benefit from the United Nations Joint Staff Pension Fund.

20. In the absence of any link between the allegations and the non-renewal decision or the facts regarding the reasons for Ms. Koduru’s separation, the UNDT correctly found that Ms. Koduru had failed to show any ulterior motive. Rather, the UNDT correctly found that the reason for the non-renewal decision provided by the Administration was supported by the facts in evidence and that the record established that the non-renewal decision resulted from the closure of MINUJUSTH. This finding is fully supported by the applicable law and by the facts and evidence presented before the UNDT. The UNDT therefore correctly held that the non-renewal decision was lawful.

21. Ms. Koduru has failed to identify any errors in the UNDT Judgment. Ms. Koduru merely disagrees with the outcome of the UNDT Judgment and does not demonstrate any reversible error on the part of the UNDT. An appeal from a UNDT judgment does not represent an opportunity to relitigate one's case. It is incumbent upon the appellant to identify the alleged defects in the Judgment and to state the grounds relied upon in asserting that the Judgment is defective. Ms. Koduru has not discharged this burden.

22. In her appeal, Ms. Koduru also introduces a number of additional claims that were not presented before the UNDT. However, issues that were not raised before the UNDT cannot be introduced for the first time on appeal. Specifically, Ms. Koduru argues that she was "abruptly separated from the mission" in September 2019 as a result of her refusal to approve "non-compliant sales cases under the pressure of the [Chief of Staff]". Ms. Koduru also alleges that the rejection of a request to attend a training resulted in her "constructive dismissal". Neither of these allegations can properly form any part of an appeal of the Judgment.

23. Moreover, even if these issues were properly before the UNAT, which they are not, they would nevertheless still fail to establish that the non-renewal decision was motivated by improper motives or that the UNDT erred in its conclusion that the non-renewal decision was lawful. These allegations are unsubstantiated and not supported by any evidence. Allegations of improper motive are serious allegations and ought to be substantiated with evidence; evidence which on Ms. Koduru's own admission could have been, and should have been, presented before the UNDT. The UNAT has consistently held that it will not admit evidence, which was known to the party and could have, with due diligence, been presented to the UNDT.

24. Ms. Koduru also raises a number of additional claims that are irrelevant to the matter on appeal, which she does not even attempt to couch as demonstrating error on the part of the UNDT. None of these allegations relate to the UNDT's determination that the non-renewal decision was lawful.

25. The Secretary-General requests that the UNAT uphold the Judgment and dismiss the appeal in its entirety.

Considerations

26. It is well settled jurisprudence that an international organization necessarily has the power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts, and the redeployment of staff.¹ The Appeals Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, even in a restructuring exercise, like any other administrative decision, the Administration has the duty to act fairly, justly, and transparently in dealing with staff members.²

27. We further recall our jurisprudence that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to any other type of appointment.³

28. Even the renewal of the appointment of a staff member on successive appointments does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended, or there is a firm commitment to renewal revealed by the circumstances of the case.⁴ The jurisprudence requires this promise at least be in writing.⁵

29. As provided in Staff Regulation 4.5(c) and Staff Rule 4.13(c), respectively, “[a] fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service”, and “[a] fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14(b)”.

¹ *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 34; *Loeber v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-844, para. 18, citing *De Aguirre v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-705.

² *Nouinou, op. cit.*, para. 34, citing *Loeber op. cit.*, para. 18.

³ *Nouinou, op. cit.*, para. 44; *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 40; *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 25; *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 25.

⁴ *Kalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-580, para. 67; *Munir v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-522, para. 24.

⁵ *Nouinou, op. cit.*, para. 45; *He, op. cit.*, para. 41, citing *Muwambi, op. cit.*, para. 25.

30. Nevertheless, an administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive.⁶ The staff member has the burden of proving such factors played a role in the administrative decision.⁷

31. The Appeals Tribunal has consistently held that:⁸

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, as in the case of a non-renewal decision, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.

32. We have reviewed the UNDT's Judgment and find that the Appellant's case was fully and fairly considered; we can find no error of law or fact in its decision. The UNDT properly reviewed the contested decision in accordance with the applicable law.

33. Specifically, the Appeals Tribunal finds no error in the UNDT's finding that the Appellant failed to meet the burden of proof that the decision was based on ulterior motives and a protracted pattern of harassment, which the Appellant put forward before it and described in her appeal statement, as well as to establish a causal link between the alleged incidents and the challenged administrative decision not to renew her fixed-term appointment. Rather, such a decision, as correctly determined by the UNDT, was a reasonable and proper exercise of the Administration's discretion based on the operational realities faced by the Administration, which rendered the Appellant's services unnecessary.

34. Indeed, the evidence shows indisputably that the non-renewal decision was related to Security Council resolution 2466 (2019) ordering the closure of MINUJUSTH on 15 October 2019, following which the Appellant was placed on Special Leave with Full Pay

⁶ *He, op. cit.*, para. 43, citing *Muwambi, op. cit.*, para. 27.

⁷ *Nouinou, op. cit.*, para. 47; *He, op. cit.*, para. 43, citing *Muwambi, op. cit.*, para. 27, in turn citing *Kacan v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-426, para. 20; *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 33.

⁸ *Nouinou, op. cit.*, para. 48; *He, op. cit.*, para. 44; *Muwambi, op. cit.*, para. 28; *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 40 and cites therein.

from 22 September 2019 and subsequently was separated from service on 7 October 2020 after the exhaustion of her sick leave entitlements. In these circumstances, the non-extension of the Appellant's fixed-term appointment was a legitimate exercise of the Administration's discretion. Therefore, we reject the Appellant's assertions to the contrary as without merit.

35. Finally, in her appeal, the Appellant makes a multitude of assertions, i.e., that she was abruptly separated from the mission in September 2019 as a result of her refusal to approve "non-compliant sales cases under the pressure of the [Chief of Staff]", that the rejection of a request to attend a training resulted in her "constructive dismissal", that there had been delays in her salary payments etc. However, these issues, in addition to being irrelevant to the matter on appeal, were not raised before the UNDT, and thus cannot be introduced for the first time on appeal for consideration by the Appeals Tribunal.⁹ It is quite unreasonable for the Appellant to assert that the UNDT erred on questions of fact and law with respect to allegations which were not raised before the UNDT for its consideration and hence were not part of her case before the lower court. Therefore, we find that the appeal is not receivable in this regard.

36. Accordingly, the appeal fails.

⁹ *Abu Salah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-974, para. 47; *Ho v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-791, para. 37.

Judgment

37. The appeal is dismissed and Judgment No. UNDT/2021/022 is hereby affirmed.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Murphy
Cape Town, South Africa

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

Entered in the Register on this 18th day of May 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar