



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

Judgment No. 2022-UNAT-1251

**Emanuelle Caucci
(Respondent/Applicant)**

v.

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Dimitrios Raikos Judge Martha Halfeld
Case No.:	2021-1579
Date of Decision:	1 July 2022
Date of Publication:	12 August 2022
Registrar:	Weicheng Lin

Counsel for Ms. Caucci:	Dorota Banaszewska, OSLA
Counsel for the Secretary-General:	Francisca Lagos Pola

JUDGE SABINE KNIERIM, PRESIDING.

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Ms. Emanuelle Caucci contested the decision to separate her from the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) following completion of an assignment to the United Nations Secretariat Department of Peace Operations (DPO). In Judgment No. UNDT/2021/055 (the Impugned Judgment), the UNDT allowed the application, rescinded the contested decision and awarded in lieu compensation of one year's net base salary. For the reasons below, we grant the Secretary-General's appeal and reverse the UNDT Judgment.

Facts and Procedure

2. On 1 March 2016, Ms. Caucci was appointed as a Human Rights Officer (P-3) on a fixed-term appointment in MINUSMA.

3. On 1 March 2017, Ms. Caucci joined DPO at the UN Secretariat on a temporary assignment, an arrangement which was extended until 30 April 2019, as was her lien against her post of Human Rights Officer (P-3) in MINUSMA.

4. On 30 April 2019, Ms. Caucci entered into a Memorandum of Understanding (MOU) with MINUSMA. Paragraph 4 of the MOU stipulates as follows:

4. The purpose of this MOU is to outline the agreement of the Parties to the following terms and conditions effective 1 May 2019 in order for [Ms. Caucci] to continue on assignment with DPPA-DPO:

a. [Ms. Caucci] will retain a fixed term contract while serving with DPO on temporary assignment through 29 February 2020. However, no specific lien will be maintained against a MINUSMA post.

b. If [Ms. Caucci's] temporary assignment is not extended by DPPA-DPO her fixed-term appointment with MINUSMA will also not be extended, and she will be separated from MINUSMA unless she is selected for a regular position through the staff selection system. This Memorandum of Understanding serves as notice of separation.

c. [Ms. Caucci] is required to apply for vacant positions prior to expiration of her temporary assignment with DPPA-DPO and expiration of her fixed term appointment with MINUSMA on 29 February 2020.

d. [Ms. Caucci] agrees that she will not take legal action against the Organization contesting the terms of the MOU, or any administrative decision related to its implementation.

To confirm the understanding and acceptance of the terms of [Ms. Caucci's] extension of temporary assignment and administrative lien through 29 February 2020, this MOU is signed by the Parties of their own free will and without any duress.

5. On 31 January 2020, DPO/Headquarters notified Ms. Caucci that it would not extend her temporary assignment beyond 29 February 2020. On 12 February 2020, she was informed that, based on the terms of the MOU, her appointment would not be renewed beyond 29 February 2020.

6. On 19 February 2020, Ms. Caucci requested sick leave. On 21 February 2020, the Division of Healthcare Management and Occupational Safety and Health (DHMOSH) approved the request for sick leave for the period 28 February 2020 through 30 April 2020.

7. On 24 February 2020, Ms. Caucci requested management evaluation of the decision not to renew her appointment beyond 29 February 2020.

8. On 5 March 2020, the Management Evaluation Unit (MEU) informed Ms. Caucci that based on the decision of MINUSMA to extend her fixed-term appointment for the duration of her approved certified sick leave pursuant to section 4.9 of ST/AI/2013/1 (Administration of fixed-term appointments), MEU found that her request for management evaluation was moot.

9. On 25 April 2021, Ms. Caucci was informed that MINUSMA had decided to support her with an extension of appointment up to 30 June 2020 on humanitarian grounds.

The UNDT Judgment

10. The UNDT found that the application was receivable *ratione materiae* as the separation notice of 30 April 2019 related only to Ms. Caucci's right to a special lien was not the relevant Administrative decision, "since it [did] not relate to her not being reabsorbed into MINUSCA as part of the Respondent's general obligation to her at the completion of a loan to DPO".¹ The UNDT considered that the separation documents of 12 February 2020 which communicated

¹ Impugned Judgment, para. 18.

the Respondent's decision that the Organisation did not intend to fulfil its obligations to effectuate Ms. Caucci's general right of return to MINUSMA was the relevant administrative decision.²

11. The UNDT found that since Ms. Caucci filed her management evaluation request on 24 February 2020 (only 12 days after receiving the decision of 12 February 2020), the application was receivable.³

12. The UNDT held that there was no significant difference between Ms. Caucci's situation with regard to retention of a lien of service, and the situation of a staff member who has been seconded to another agency. It was for this reason Ms. Caucci retained a lien on her P-3 Human Rights post in MINUSMA during the two-year assignment, and later, a provision relating to her relinquishing it was incorporated into the MOU.⁴ The UNDT relied on *Tran Nguyen*⁵ to find that Ms. Caucci retained a general service lien in MINUSMA.⁶

13. The UNDT found, on the basis of *Tran Nguyen* at paras. 42 and 47, that the Secretary-General had an obligation to reabsorb Ms. Caucci into MINUSMA or to locate a post for her.⁷ The Secretary-General had failed in its obligation to reabsorb or find a suitable alternative post for Ms. Caucci.⁸ As Ms. Caucci did not relinquish her general right to return to MINUSMA, the MINUSMA Administration was under an obligation to fulfil its duties of reabsorbing her or finding suitable alternative posts for her.⁹

14. The UNDT rescinded the decision not to renew Ms. Caucci's appointment, ordered MINUSMA to grant her an appointment at the P-3 level, and, as compensation in lieu of rescission, ordered the Secretary-General to pay one-year's net base salary to Ms. Caucci.¹⁰

² Impugned Judgment, para. 18.

³ Impugned Judgment, para. 19.

⁴ Impugned Judgment, para. 23.

⁵ *Tran Nguyen v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/002.

⁶ Impugned Judgment, para. 24.

⁷ Impugned Judgment, para. 26.

⁸ Impugned Judgment, para. 27.

⁹ Impugned Judgment, para. 29.

¹⁰ Impugned Judgment, para. 31.

Procedure before the Appeals Tribunal

15. On 16 July 2021, the Secretary-General filed an appeal of the Impugned Judgment with the UNAT and, on 16 September 2021, Ms. Caucci filed a reply.

Submissions

The Secretary-General's Appeal

16. The Secretary-General requests UNAT to vacate the Impugned Judgment in its entirety.

17. The Secretary-General submits that the UNDT erred on questions of law and fact in concluding that the Application was receivable. The Secretary-General submits that the timelines began to run from the Separation Notice of 30 April 2019, not the Separation Document of 12 February 2020. Accordingly, as the management evaluation request was filed on 24 February 2020, Ms. Caucci filed her request for management evaluation well beyond the deadline of sixty calendar days from the date upon which the staff member received notification of the contested decision (Staff Rule 11.2(c)). Relying on *Bernadel*¹¹ and others for the UNAT jurisprudence that the time limit for requesting management evaluation against an administrative decision starts once the staff member is notified of the decision in writing and in clear and unequivocal terms, the Secretary-General submits that the Separation Notice of 30 April 2019 met this requirement. In support, the Secretary-General recalls the UNAT jurisprudence that the reiteration of an original administrative decision does not reset the clock with respect to statutory timelines (*Kazazi, Mbok*)¹². The Secretary-General submits that Ms. Caucci's application is also barred by the MOU in which she waived the right to bring a claim.

18. The Secretary-General submits that the UNDT finding that the Application was receivable *ratione materiae* is incorrect and the Impugned Judgment should be vacated on that basis alone.

19. The Secretary-General submits that the UNDT erred in law and fact in equating temporary assignments to secondments and in finding that Ms. Caucci retained a general service lien or general right to employment in MINUSMA. The Secretary-General makes this submission on the basis that a general right to employment or right to return is not contemplated

¹¹ *Bernadel v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-180, para. 23.

¹² *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 31; *Mbok v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-824, para.42.

in the legal framework for temporary assignments (under ST/AI/2010/4/Rev.1 on Temporary Appointments), whereas secondments are governed by ST/AI/2010/3 on Staff Selection and the Inter-Organisation Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowance (Inter-Organization Agreement). While the Inter-Organization Agreement provides that a staff member on secondment will retain his or her rights of employment in the releasing organisation, ST/AI/2010/4/Rev.1 does not contemplate such a right, lien or right to return.

20. The Secretary-General submits that the MOU clearly and explicitly provided that Ms. Caucci was on a temporary assignment and did not recognise a general right to employment or right to return. The Secretary-General submits that it should be interpreted in a manner that is consistent with its plain reading, i.e. that Ms. Caucci relinquished any lien on any MINUSMA post and within the context of the applicable legal framework which does not provide a general right to return for staff members on temporary assignment.

21. The Secretary-General submits that a general right to employment or right to return goes against the nature of a fixed-term appointment which carries no expectation of renewal (Staff Regulation 4.5(b) and Staff Rule 4.12(c)) and ends upon its date of expiration.

22. The Secretary-General submits that a general right to employment or right to return is not recognised in the case law related to temporary assignments. The Secretary-General submits that the finding by UNDT that Ms. Caucci retained general service lien in MINUSMA because it was recognised by the limited jurisprudence on secondments was erroneous. Specifically, the Secretary-General submits that the jurisprudence recognising, in some circumstances, a general service lien or right to return upon completion of a secondment (*Skoda, Tran Nguyen*)¹³, is not applicable to cases of temporary assignments. The Secretary-General submits that the UNDT erred in law in holding that a general right of employment is supported by the jurisprudence.

23. The Secretary-General submits that a general right to employment or right to return for staff on temporary assignments would create an unfair advantage to staff on temporary assignments over other colleagues in cases of downsizing. The Secretary-General submits that

¹³ *Skoda v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-017; *Tran Nguyen v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/002.

the UNDT finding is not in line with the Staff Regulations and Rules and fundamentally changes the current system and practice.

24. The Secretary-General submits that the UNDT erred in law in finding that the Administration was under an obligation to reabsorb Ms. Caucci or find her a suitable alternative post on the basis of *Tran Nguyen*.¹⁴ Specifically, the Secretary-General distinguishes Ms. Caucci's situation (fixed-term appointment was not renewed and contractual relationship was extinguished) from right to reabsorption for the seconded permanent staff member in *Tran Nguyen*.

25. The Secretary-General submits that the UNDT erred in law in finding that Ms. Caucci could not contract herself out of a lien on a MINUSMA post. The Secretary-General submits that the UNDT's finding was based on a fictional premise (that there was a right to return to MINUSMA or a general right of employment with MINUSMA). Further, the Secretary-General submits that MOUs such as the one signed by Ms. Caucci are common and have been deemed lawful and binding by UNAT in numerous cases (*Faust* and others)¹⁵.

Ms. Caucci's Answer

26. Ms. Caucci requests the UNDT to dismiss the Secretary-General's appeal as the UNDT did not err in fact or law in the Impugned Judgment.

27. The UNDT correctly found that the Application before it was receivable, having correctly made a distinction between Ms. Caucci's specific lien to a MINUSMA post and her general right of employment and the two distinct administrative decisions relation to those rights.

28. Ms. Caucci submits that this is not a case of the reiteration of an original decision and that it was no earlier than 12 February 2020 when she was informed that they did not intend to fulfil their obligation resulting from her general right of return to MINUSMA.

¹⁴ *Tran Nguyen v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/002.

¹⁵ *Faust v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-777, para. 29; *Kortes v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-925; *Iskandar v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-248, paras. 2, 13, 26; *Hamdan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, paras. 3 and 28; *Jemai v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-137, paras. 2, 13 and 14.

29. Ms. Caucci submits that because she did not contract herself out of her general right of return, as correctly held by UNDT (Impugned Judgment, para. 17) and filed her request for Management Evaluation only 12 days after receiving the decision, the Application before UNDT was receivable *ratione materiae*.

30. Ms. Caucci submits that the UNDT correctly found that she had retained a general right of return (service lien) to MINUSMA, and that the Secretary-General had an obligation to reabsorb the Respondent or to locate a post for her. Ms. Caucci submits that the UNDT correctly held that there was no significant difference between her situation with regard to retention of a lien of service and the situation of a staff member who has been seconded to another agency.

31. Ms. Caucci submits that the UNDT correctly concluded that the well-established case law applicable to secondments applied also in the present case. The existence and retention of the general lien in the releasing Organisation does not depend on the contractual status of the released staff member.

32. Ms. Caucci submits that the service lien of a staff member on a temporary assignment to their releasing entity/agency is intrinsic to the employment relationship between the loaned staff member on temporary assignment and the releasing agency. Therefore, for the Secretary-General to contend that the general right of return shall not apply to temporary assignments is not accurate.

33. Ms. Caucci submits that the MOU is only relating to a specific lien against any MINUSMA post, and not to the general right of employment she retained with the releasing organisation.

34. On the MOU, Ms. Caucci submits that, in line with the UNDT Judgment, the MOU only related to Ms. Caucci's right to a specific lien against any MINUSMA post and no general right of employment with the releasing organization. Ms. Caucci submits that this does equal the MoU not recognising the general right of return. Ms. Caucci submits that the silence of the MoU on the general right to return confirms that the MOU did not preclude her from relying on her service lien. Further, Ms. Caucci submits that, given the Administration drafted the provisions of the MOU, the Administration is precluded (in light of the clean hands and estoppel principles) from relying on any "interpretative lacunas" of those provisions.

35. Ms. Caucci submits that the Secretary-General's contention that UNDT holding that a general right of employment is supported by the jurisprudence constitutes an error of law is inaccurate and that *Skoda*¹⁶ and *Tran Nguyen*¹⁷ apply *mutatis mutandis* at the very least.

36. Ms. Caucci submits that the Secretary-General's argument that a general right to employ or right to return for staff on temporary assignment would create an unfair advantage over other staff in downsizing missions is inaccurate and irrelevant, pointing out that seconded staff from downsizing missions retain their service liens when seconded.

37. Ms. Caucci submits that, applying the estoppel and clean hands doctrines as per *Kortes*,¹⁸ para. 38, to the present case it would be inequitable not to estop the Secretary-General from raising a whole set of new legal arguments not presented before UNDT. Ms. Caucci submits that this would breach the equality of arms principle and the spirit of Article 2 of the UNAT Statute. Ms. Caucci submits, as per the UNDT Judgment, the Secretary-General did not provide any legal authority for its contentions that the case law and rules applying to secondments do not apply to the temporary assignments.

38. Ms. Caucci submits that the UNDT correctly found that the Administration was under an obligation to reabsorb her or to find her a suitable alternative post.

39. Ms. Caucci submits that the UNDT correctly found that she could not and did not contract herself out of her service lien.

Considerations

40. The crucial issue of the present case is whether the UNDT correctly found that Ms. Caucci held a general service lien in MINUSMA which was not affected by the MOU and which obliged the Administration to reabsorb her into MINUSMA after her fixed-term appointment and temporary assignment at DPO had expired.

¹⁶ *Skoda v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-017.

¹⁷ *Tran Nguyen v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/002.

¹⁸ *Kortes v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-925.

41. The UNDT relied on its judgment in *Tran Nguyen*¹⁹ which deals with a UNICEF staff member who held a permanent appointment and was on secondment to WMO on the basis of the Inter-Organization Agreement.

42. The Inter-Organization Agreement provides, in relevant parts, as follows:

1. (a) The Organizations listed in Annex I have reached the following agreement concerning the rights of a staff member of one organization who is transferred, seconded or loaned to another organization, and the rights and liabilities of the two organizations concerned.

2. (d) “Secondment” is the movement of a staff member from one organization to another for a fixed period, normally not exceeding two years, during which the staff member will normally be paid by and, except as otherwise provided hereafter, be subject to the staff regulations and rules of the receiving organization, but will retain his or her rights of employment in the releasing organization. The period of secondment may be extended for a further fixed period by agreement among all the parties concerned.

9. (a) When a staff member is seconded to another organization, his or her contractual relationship with the releasing organization will, except as may be otherwise provided hereafter, be suspended until the expiry of the agreed period of secondment, or until such earlier date as the parties may agree.

43. In *Tran Nguyen*, the UNDT, based on the Appeals Tribunal’s judgment in *Skoda*, held:²⁰

36. However, a seconded employee remains a staff member of the releasing organization. The Appeals Tribunal confirmed in *Skoda* 2010-UNAT-017 that “in cases of secondment, staff members do not lose their service lien with their parent organization”. In fact, para. 9 of the Inter-Organization Agreement specifies that:

When a staff member is seconded to another organization his contractual relationship with the releasing organization will, except as may be otherwise provided hereafter, be suspended until the expiry of the agreed period of secondment, or until such earlier date as the parties may agree.

37. What is more, a seconded staff member “will retain his rights of employment in the releasing organization”, as the above-cited para. 2(d) of the Inter-Organization Agreement clearly stipulates.

...

¹⁹ *Tran Nguyen v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/002.

²⁰ *Tran Nguyen v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/002; *Skoda v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-017.

41. In any event, a certain priority or advantage in the selection procedure is not sufficient to meet the obligations incumbent on the releasing organization towards a seconded staff member at the end of a secondment.

42. It is the Tribunal's view that the plain meaning of the term "rights of employment" generally indicates that the seconded staff member will be reabsorbed, and it does not suggest that it entails further conditions like that of the staff member having to secure a vacant position at his/her releasing organization.

43. Also, para. 5.5.6. of the UNICEF Manual states that "[s]econdment implies a willingness to reabsorb the staff member and it is normally only available to staff members holding permanent appointments" (emphasis added). By this provision, the Applicant, who held a permanent appointment, had a high expectation to be "reabsorbed". Further, it is in line with the very protective regime of permanent appointments that such an appointment will be terminated only as a last resort and subject to constraining conditions (cf. staff rule 9.6 read in conjunction with staff rule 13.1).

...

47. At any rate, even if the term "rights of employment" were not to be interpreted as an entitlement to mandatory reabsorption, it entails, at the very least, not less than what is due to a staff member holding a permanent appointment in case his post is abolished (under staff regulation 9.3), that is, the Organization must make good faith efforts to identify a post for the staff member. It results from the facts of the case that UNICEF made no attempt to find a position for the Applicant, but in fact placed that burden entirely on him.

44. Ms. Caucci's situation differs in two aspects from the judgment in *Tran Nguyen*²¹: First, she was not on secondment for another organisation and further, she did not hold a permanent but only a fixed-term-appointment. We find that due to these different circumstances it was erroneous for the UNDT to apply its jurisprudence in *Tran Nguyen* and state that Ms. Caucci had a general service lien with MINUSMA during and after her service for DPO. Such a service lien cannot stem from the provisions of the Inter-Organization Agreement because they do not apply in Ms. Caucci's case. The service lien can also not derive from a permanent appointment as Ms. Caucci only held a fixed-term appointment.

45. Staff Regulation 4.5 provides:

²¹ *Tran Nguyen v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/002.

(b) A temporary appointment does not carry any expectancy, legal or otherwise, of renewal. A temporary appointment shall not be converted to any other type of appointment;

(c) A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service.

46. Staff Rule 4.12(c) and 4.13(c) contain identical provisions.

47. It follows from these provisions that fixed-term and temporary appointments, like that of Ms. Caucci, cannot create a service lien beyond the expiration dates of such appointments as they do not carry any expectancy of renewal.

48. The UNDT has not presented nor can we find any other legal or administrative provision which would convey on Ms. Caucci a position similarly strong like that of staff members on secondment under the Inter-Organization-Agreement.

49. ST/AI/2010/3 provides:

6.7 A staff member who is considered an internal applicant and who is on secondment to a separately administered United Nations fund or programme, specialized agency or organization of the United Nations common system shall be granted a lien against a specific post for up to two years. If the staff member, while on secondment, applies for positions in the Secretariat he/she will be considered an internal applicant and is eligible to apply for a position one level higher than the one he/she currently has in the receiving organization in which the staff member is on secondment. After two years should the staff member wish to remain on secondment, the lien on the specific position shall be surrendered but the staff member retains return rights to the Secretariat up to a maximum of five years. At the end of the five years, a transfer to the receiving organization shall be initiated unless the staff member indicates that he/she would like to return to the Secretariat. In order to return to the Secretariat, the staff member is eligible to apply for positions at the level he/she had at the receiving organization or one level above. If the staff member is unsuccessful in his/her applications, he/she will have the right to return to the Secretariat at his/her level at the time of his/her release on secondment.

50. ST/AI/2010/3 is not applicable because Ms. Caucci was not on secondment (from the Secretariat) to a separately administered United Nations fund or programme, specialised agency or organisation of the United Nations. Further, while the staff member “retains return rights to the Secretariat up to a maximum of five years”, in order to return to the Secretariat, he or she is not automatically “reabsorbed” but expected to apply for positions at the level he or she had at the receiving organization or one level above. Only if the staff

member is unsuccessful in his/her applications, will he/she have the right to return to the Secretariat at his/her level at the time of his/her release on secondment.

51. And, finally, ST/AI/2010/4/Rev.1 (Administration of temporary appointments):

2.2 A temporary appointment may be granted for specific short-term requirements that are expected to last for less than one year at the time of the staff member's appointment, such as:

- (a) To respond to an unexpected and/or temporary emergency or surge demand involving, for example, a natural disaster, conflict, violence or similar circumstances;
- (b) To meet a seasonal or peak work requirement of limited duration that cannot be carried out by existing staff members;
- (c) To temporarily fill a position whose incumbent is on special leave, sick leave, maternity or paternity leave or on assignment;
- (d) To temporarily fill a vacant position pending the finalization of the regular selection process;
- (e) To work on a special project with a finite mandate ...

3.7 The selected candidate shall be offered a temporary appointment unless he/she already holds another type of appointment, in which case the following rules apply:

- (a) Candidates holding a permanent or continuing appointment will retain their permanent or continuing appointment and will be assigned to the position to be temporarily encumbered;
- (b) Candidates holding a fixed-term appointment will retain their fixed-term appointment and will be assigned to the position to be temporarily encumbered for a period not exceeding the duration of their fixed-term appointment.

52. Section 3.7(a) and (b) ST/AI/2010/4/Rev.1 demonstrate the importance of the staff member's type of appointment for his or her legal position.

53. The Secretary-General is not estopped from pointing out on appeal that these provisions do not convey a right of return to MINUSMA on Ms. Caucci. Before the UNDT, he had challenged Ms. Caucci's submissions and alleged that the jurisprudence of *Tran Nguyen*²² relates to interagency loans and secondments between United Nations agencies or organisations but not to temporary assignments such as Ms. Caucci's. In this

²² *Tran Nguyen v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/002.

situation, rather than complaining that the Secretary-General “has provided no legal authority for this assertion” it would have been up to the UNDT to explain why it applied *Tran Nguyen* although Ms. Caucci’s situation differs considerably, namely because she was not at all on secondment under the Inter-Organization-Agreement (but on a temporary assignment) and only held a fixed-term appointment.

54. Consequently, all Ms. Caucci had was the specific lien to her former post of Human Rights Officer (P-3) in MINUSMA which was extended until 30 April 2019 together with her fixed-term appointment. However, in entering into the MOU on 30 April 2019, in order to be able to continue working for DPO, Ms. Caucci gave up the specific lien to this or any other MINUSMA post. The MOU makes clear that any renewal of her fixed-term appointment with MINUSMA depends on the continuation of the temporary assignment at DPO. Should the temporary assignment not be extended by DPO, the fixed-term appointment at MINUSMA will also not be renewed, and Ms. Caucci will be separated unless she is selected for a regular position through the staff selection system. In order to secure such a selection, the MOU stipulates that Ms. Caucci applies for vacant positions prior to expiration of her temporary assignment with DPO and expiration of her fixed term appointment with MINUSMA on 29 February 2020.

55. MOUs like the one signed by Ms. Caucci are common and have been deemed lawful and binding by the Appeals Tribunal. In *Faust*²³ where the staff member had signed a similar MOU we held:

29. The Appeals Tribunal has held that a memorandum of agreement signed by a staff member will normally be enforced.

56. As the content and meaning of the 30 April 2019 MOU is plain and clear, and without any allegation that Ms. Caucci could have signed it under duress, there is no reason why the MOU should not be enforced.

57. It follows from the MOU that Ms. Caucci is estopped from taking legal action against any administrative decision related to its implementation. As Ms. Caucci was not able to secure a regular position through the staff selection system, according to para. 4b MOU, she

²³ *Faust v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-777.

had to be separated from MINUSMA. The 12 February 2020 separation decision thus implemented the MOU.

Judgment

58. The Secretary-General's appeal is hereby granted, and Judgment No. UNDT/2021/055 is reversed. Ms. Caucci's application is dismissed.

Original and Authoritative Version: English

Decision dated this 1st day of July 2022.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Raikos
New York, USA

(Signed)

Judge Halfeld
New York, USA

Judgment published and entered into the Registry on this 12th day of August 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar