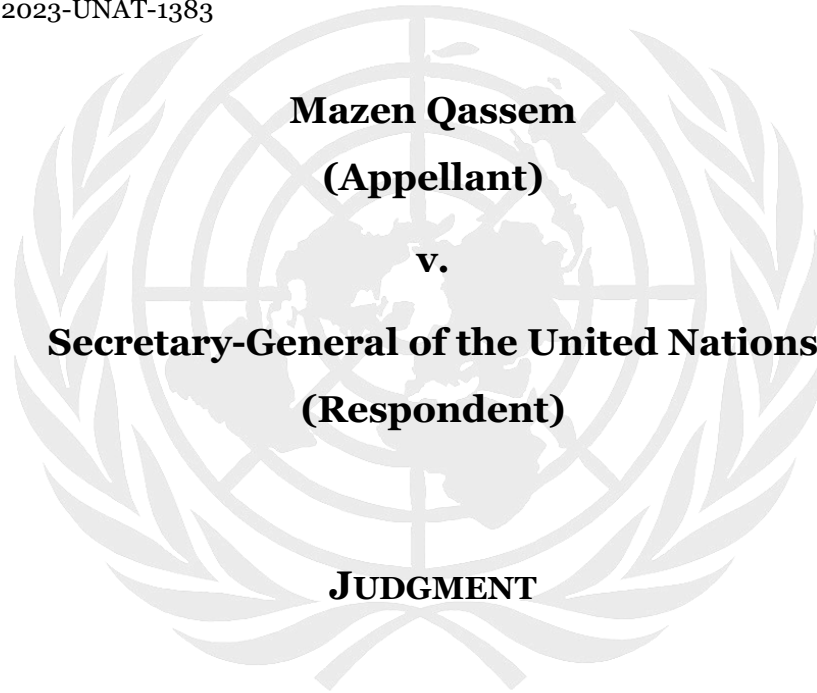




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1383



**Mazen Qassem
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Katharine Savage, Presiding Judge Gao Xiaoli Judge Graeme Colgan
Case No.:	2022-1759
Date of Decision:	27 October 2023
Date of Publication:	20 November 2023
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Francisca Lagos Pola

JUDGE KATHARINE SAVAGE, PRESIDING.

1. Mr. Mazen Qassem, a former staff member with the United Nations Development Programme (UNDP), contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the decision not to renew his fixed-term appointment (FTA) beyond 31 March 2020 (contested decision). By Judgment No. UNDT/2022/095 dated 29 September 2022, the UNDT dismissed his application as moot given that Mr. Qassem's appointment had subsequently been extended beyond 31 March 2020.
2. Mr. Qassem has filed an appeal.
3. The UNAT dismisses the appeal for the reasons that follow.

Facts and Procedure

4. On 14 November 2011, Mr. Qassem was appointed to the post of Administrative Clerk/Dispatcher with the UNDP Programme of Assistance to the Palestinian People (PAPP). He initially served at the G-3 level, on an FTA in East Jerusalem.
5. On 22 September 2015, Mr. Qassem wrote to the Special Representative of the UNDP Administrator for the PAPP (Special Representative) about a conflict he had with the Deputy Special Representative (DSR) and requested his assistance in resolving the dispute. Mr. Qassem complained that the DSR, who was the highest-ranking national staff member in the country office, was abusing his authority and engaging in, or tolerating, fraud, waste and abuse.
6. On 3 November 2015, the Special Representative sent a letter to Mr. Qassem informing him that he was to be transferred from East Jerusalem to Ramallah. The aim was to address the difficult working relationship Mr. Qassem had with the DSR. The decision allowed Mr. Qassem to continue to serve at the same level, have similar responsibilities and terms of reference, but avoided daily contact between Mr. Qassem and the DSR.
7. On that same day, 3 November 2015, Mr. Qassem submitted a complaint of harassment and retaliation against the DSR to the UNDP Ethics Office, the UNDP Legal Support Office, and the UNDP Office of Audit and Investigations (OAI). On 9 November 2015, Mr. Qassem was informed by the UNDP Ethics Office that his case did not raise concerns of retaliation.

8. On 12 November 2015, OAI informed Mr. Qassem that no further investigation of the complaint was warranted and closed the case.

9. In mid-2016, the Ombudsman conducted a mission to UNDP/PAPP in order to mediate the inter-personal aspects of Mr. Qassem's relationship with the DSR.

10. In 2018, UNDP/PAPP underwent a restructuring process based on a transformation plan. On 24 July 2018, Mr. Qassem e-mailed the UNDP Human Resources Office (HR) asking how the restructuring plan would affect his post. The next day, on 25 July 2018, HR responded that the restructuring would not affect his position and confirmed that while his duty station was Jerusalem, his place of work remained Ramallah. HR informed him further that there were no plans to change his situation. On the same day, Mr. Qassem also received an e-mail from the Special Representative stating that his functions would be unaffected by the restructuring process, reiterating that Mr. Qassem would continue to perform his functions in Ramallah.

11. On 18 September 2018, the Special Representative sent a letter to Mr. Qassem stating that based on the transformation plan, it had been confirmed that there would be no change in his functions and that his position was not affected by the ongoing change management process. As such, he was informed that he would retain his current position and that the terms of his appointment would remain unchanged.

12. On 2 October 2018, Mr. Qassem again requested that the Administration move him back to East Jerusalem. On 3 October 2018, the Administration responded that he was to remain in Ramallah.

13. On 18 April 2019, Mr. Qassem wrote to the Operations and Services Manager and asked again to be reassigned to East Jerusalem. Mr. Qassem complained that he was effectively precluded from exercising the functions of his post. On 8 May 2019, the Administration sent Mr. Qassem an e-mail informing him again that his functions had not changed.

14. On 10 May 2019, the Operations and Services Manager met Mr. Qassem, together with representatives of both HR and the Local Staff Association, to discuss and resolve the ongoing disagreement, without success.

15. On 19 June 2019, Mr. Qassem requested management evaluation of the decisions to strip him of the majority of his functions and duties and to move him from his duty station of East Jerusalem to Ramallah; and of the Administration's failure to implement the decision dated 18 September 2018 related to the outcome of the restructuring process. These decisions are subject to separate proceedings which have been concluded.¹

16. On 25 October 2019, the Operations and Services Manager wrote to the Regional Bureau for Arab States (RBAS), noting that PAPP was trying to further consolidate its overall office structure and reduce staff costs. He explained that, where possible, the reduction of staff costs would be achieved by shifting functions from staff positions to Service Contractor positions. On 11 December 2019, the UNDP Executive Group approved PAPP's proposed budget for 2020.

17. On 16 December 2019, the Appellant attended a general staff meeting with the Special Representative, at which the latter explained that due to the reduced budget for 2020, PAPP was obliged to abolish encumbered posts and advised that affected staff members would receive three-month extensions.

18. On 17 December 2019, Mr. Qassem's FTA was extended for three months, with an expiration date of 31 March 2020.

19. On 20 December 2019, the Special Representative wrote to RBAS, requesting clearance and guidance in initiating the separation of the six staff members whose posts had been identified for abolition based on the budget that had been approved on 11 December 2019.

20. That same day, the Operations and Services Manager contacted Mr. Qassem to inform him that his post had been identified for abolishment in 2020.

21. On 28 December 2019, Mr. Qassem was placed on certified sick leave.

22. On 22 January 2020, the Operations and Services Manager wrote to the Human Resources Advisor, requesting permission to exceptionally grant Mr. Qassem and one other staff member enhanced termination indemnity even though Mr. Qassem was on an FTA and his appointment

¹ Judgment No. UNDT/2020/099 dismissing Mr. Qassem's application. Judgment No. 2020-UNAT-1132, affirming Judgment No. UNDT/2020/099.

was not being terminated. The Human Resources Advisor responded later that day, indicating that it would be difficult to justify exceptionally enhanced separation packages for these staff members.

23. On 24 January 2020, Mr. Qassem was informed that his FTA, which was scheduled to expire on 31 March 2020, would not be renewed.

24. On 23 March 2020, Mr. Qassem requested management evaluation and suspension of action, pending management evaluation, of the decision not to renew his FTA beyond 31 March 2020. On 30 March 2020, the UNDT granted his suspension of action application by Order No. 064 (NBI/2020).

25. Mr. Qassem's FTA was extended beyond 31 March 2020 to allow him to exhaust his sick leave entitlements.

26. On 7 May 2020, the UNDP Administration wrote to Mr. Qassem advising that the non-renewal decision had been upheld. There is some disagreement on whether Mr. Qassem received the decision on 7 May 2020 or on 8 May 2020.

27. On 6 August 2020, Mr. Qassem filed an application with the UNDT challenging the decision not to renew his FTA beyond 31 March 2020.

28. By letter dated 19 November 2020, Mr. Qassem was informed that the United Nations Staff Pension Committee had determined that he was incapacitated for further service and entitled to a disability benefit under Article 33 of the Regulations of the United Nations Joint Staff Pension Fund.

29. Mr. Qassem was terminated for reasons of health on 12 May 2021, after having exhausted his sick leave entitlements.

30. On 14 May 2021, the UNDT issued Order No. 097 (NBI/2021) in terms of which Mr. Qassem was allowed to file an amended application and both parties were permitted to file further submissions on the issue of receivability.

31. On 29 July 2021, the UNDT issued Order No. 148 (NBI/2021) by which it found the application receivable and granted the Secretary-General leave to file a reply to Mr. Qassem's amended application.

32. By Judgment No. UNDT/2022/095, the UNDT found that the decision not to renew the FTA beyond 31 March 2020 was moot given that Mr. Qassem's appointment had been extended beyond 31 March 2020. The UNDT further found that his appointment was subsequently terminated based on reasons of health but noted that Mr. Qassem had not challenged that decision. The UNDT thus dismissed the application. The UNDT found, however, that the decisions made in relation to Mr. Qassem's service warranted referral to the Secretary-General pursuant to Article 10(8) of the UNDT Statute for special consideration on accountability since the overall impact of the decisions taken seemed to run contrary to the Charter of the United Nations in respect of its aim of finding dedicated staff and enhancing their ability to serve the Organization diligently.

33. On 27 November 2022, Mr. Qassem filed an appeal of Judgment No. UNDT/2022/095 with the UNAT. The Secretary-General filed his answer on 3 February 2023.

Submissions

Mr. Qassem's Appeal

34. Mr. Qassem submits that the UNDT failed to consider the reasons that caused his disability, which he claims are the actions by the UNDP Administration "including their abuse of authority exercised against [him]" and the "direct threat exercised by UNDP management which had severely affected [him] and caused [him] many psychological problems" until reaching his disability.

35. Mr. Qassem alleges that the UNDT failed to consider that UNDP acted in bad faith when it did not allow him to return to work in East Jerusalem, prevented him from carrying out his work, discriminated against him by not offering him a separation package as it did with regard to other colleagues, and gave his work to a Service Contractor.

36. Mr. Qassem claims that the UNDT also failed to consider that UNDP had "planned in advance" the abolition of his post, in retaliation of Mr. Qassem's report, under the false pretext of budgetary constraints.

37. Mr. Qassem requests compensation in the amount of 24 months' salary like those colleagues who received a termination indemnity following the abolition of their posts; 24 months' salary as compensation for the "health damages caused to [him]"; an indemnity

package in the amount of 12-15 months' salary as a result of the disability caused; 24 months' salary to compensate his family for the damages that happened to him; and ongoing payment of the difference between his original salary payment per month and the monthly disability payment he now receives, effective the date that he was placed on disability.

38. Mr. Qassem requests an oral hearing on grounds that his health situation does not allow him to argue his appeal fully in writing.

The Secretary-General's Answer

39. The Secretary-General submits that the UNDT did not err in finding Mr. Qassem's application moot. Since the decision not to renew his FTA beyond 31 March 2020 had been rescinded and his FTA extended beyond 31 March 2020, there was no reviewable administrative decision. The alleged unlawfulness had been eliminated by the rescission of the contested decision. Mr. Qassem did not suffer any pecuniary or other harm as a result of the contested decision as he continued to receive his full salary and benefits until his termination for health reasons in May 2021. The UNDT was also correct in not reviewing the subsequent decision to terminate Mr. Qassem's FTA for health reasons given that he did not request management evaluation of that decision or challenge it before the UNDT. In addition, Mr. Qassem filed his application 91 days after receiving the contested decision.

40. The Secretary-General contends that Mr. Qassem has not established any errors warranting a reversal of the UNDT Judgment. Mr. Qassem's suggestion that the UNDT had to consider the reasons that caused his disability is without merit. The UNDT was under no obligation to assess the reasons that caused his disability or any actions by the Administration that might have caused his "disability", since Mr. Qassem did not challenge his termination from service for health reasons. Mr. Qassem also provided no support to his allegations that UNDP's actions had caused his "disability" and that there had been a "direct threat" by UNDP management which caused his psychological problems.

41. The Secretary-General also submits that Mr. Qassem's suggestion that the UNDT had to consider "UNDP's insistence on abolishing [his] post under all circumstances as part of their retaliation against [him]," and that UNDP had "planned in advance" the abolition of his post is without merit. The UNDT had no obligation to consider the merits of the application. Nevertheless, had the UNDT considered the lawfulness of the contested decision it would have

found that the contested decision was lawfully based on the abolition of the post encumbered by Mr. Qassem, due to lack of funds. The evidence on record shows that the reason for the abolition of his post was that PAPP's budget had been drastically reduced, that PAPP had been instructed by RBAS to abolish posts to cover for the financial reduction, and that Mr. Qassem's post was not the only post abolished.

42. The Secretary-General further contends that there is no merit to Mr. Qassem's contention that the UNDT erred in failing to consider factors which were allegedly indicative of UNDP's bad faith. Mr. Qassem had been moved to Ramallah because of a conflict with his supervisor, and UNDP was under no obligation to move him back to Jerusalem. He was not taken off all his duties, but rather his duties in Ramallah changed because of the change of location. Furthermore, UNDP was permitted to assign Mr. Qassem's functions to a Service Contractor based on UNDP's Policy on Service Contractors and in accordance with the terms of PAPP's proposed budget for 2020. Moreover, the other staff members whose posts were abolished were offered different separation packages because they were on permanent appointments and were entitled to termination indemnities, whereas Mr. Qassem was on an FTA and was not entitled to such separation packages. Finally, the Operations and Services Manager did not discriminate against him but went out of his way to help him by trying to exceptionally secure a termination indemnity for him.

43. Additionally, the factors identified by Mr. Qassem as indicative of improper motives fall outside of the scope of these proceedings. Mr. Qassem's arguments against his reassignment to Ramallah are the subject of other proceedings which have been concluded. His complaints of bad faith or discrimination by UNDP and its officials have undergone examination by OAI and the UNDP Ethics Office and have been closed as they did not warrant further investigation or did not raise concerns of retaliation.

44. The Secretary-General concludes that Mr. Qassem's request for compensation should be rejected. There was no breach of contractual entitlements and Mr. Qassem has not demonstrated that he sustained direct and certain injury from any violation. Further, with respect to his request to receive the same compensation received by other staff who were separated from service, Mr. Qassem was not entitled to termination indemnity because he held an FTA whereas the other staff members whose posts were abolished received termination indemnity because they held permanent appointments.

45. The Secretary-General requests the UNAT to dismiss the appeal and affirm the UNDT Judgment.

Considerations

46. As a preliminary matter, we address Mr. Qassem's request for an oral hearing. Mr. Qassem requests an oral hearing, noting in his appeal form that this was for him to "explain [his] case in a clearer manner and provide all facts [he has]".

47. The Appeals Tribunal's determination of requests for oral hearings is guided by its Statute and Rules of Procedure (Rules). Article 8(3) of the UNAT Statute provides: "The judges assigned to a case will determine whether to hold oral proceedings." Article 18(1) of the Rules further provides: "The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case."

48. In the present case, we find that the factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. Moreover, we do not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules. Mr. Qassem's request for an oral hearing is therefore denied.

49. The issue referred to the UNDT for determination by Mr. Qassem concerned the decision not to renew his FTA beyond 31 March 2020.

50. There is no dispute that Mr. Qassem's appointment was extended beyond 31 March 2020 and that his appointment was subsequently terminated for health-related reasons.

51. Mr. Qassem did not request management evaluation of the decision to terminate his appointment for health reasons, nor did he challenge that termination decision before the UNDT.

52. In terms of Article 2(1)(a) of the UNDT Statute, the UNDT is competent to hear and pass judgment on an application filed by an individual to appeal an administrative decision that is alleged not to comply with their terms of appointment or the contract of employment. In *Kallon*²

² *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 44.

and *Masyllkanova*³, the UNAT has held that where no live issue remains, an application is moot and not receivable.

53. Reliance on the concept of mootness ensures that the Dispute Tribunal does not give advisory opinions on abstract propositions of law where an application no longer presents an existing or live controversy which requires determination. Where the alleged unlawfulness has been eliminated, as was stated in *Azar*, a matter may only be considered not to be moot where “the applicant can prove that he or she still sustains an injury for which the Tribunal can award relief”.⁴

54. Since Mr. Qassem’s FTA was extended beyond 31 March 2020, with no effect given to the initial administrative decision not to renew his employment beyond this date, the UNDT cannot be faulted for finding that the application was moot since the administrative decision not to renew his contract had been rescinded. Upon such rescission of the administrative decision, the unlawfulness alleged by Mr. Qassem no longer existed when his appointment was extended beyond 31 March 2020. Mr. Qassem also did not show that he suffered any harm as a result of the contested decision or its rescission. Having continued to receive his full salary and benefits until his termination for health reasons in May 2021, he was unable to prove that he had sustained any injury for which the Dispute Tribunal could award relief.

55. In terms of Article 2(1) of the UNAT Statute, this Tribunal is competent to hear and pass judgment on an appeal filed against a judgment of the UNDT in which it has exceeded its jurisdiction or competence, failed to exercise the jurisdiction vested in it, erred on a question of law, committed an error in procedure, such as to affect the decision of the case, or erred on a question of fact, resulting in a manifestly unreasonable decision. As made clear in judgments such as *Muhsen*,⁵ the appellant has the burden of satisfying the UNAT that the judgment rendered by the UNDT is defective.

56. The dispute referred by Mr. Qassem to the UNDT was concerned with the non-renewal of his fixed-term appointment and not with additional issues raised by him, including the alleged insistence that his post be abolished and the allegation of bad faith on the part of UNDP in taking the decision to transfer him to Ramallah.

³ *Masyllkanova v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-412, paras. 16 and 19.

⁴ *George Naoum Azar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1104, para. 30.

⁵ *Muhsen v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-793, para. 9.

57. Mr. Qassem has failed to satisfy the burden to show that the Judgment rendered by the UNDT was defective. His application was clearly moot, and it follows that his appeal cannot succeed.

Judgment

58. Mr. Qassem's appeal is dismissed, and Judgment No. UNDT/2022/095 is affirmed.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Gao

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 20th day of November 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar