



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

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Judgment No. 2024-UNAT-1481

**Asmaa Abdullah Nassir Al-Timimi**  
**(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Kanwaldeep Sandhu, Presiding Judge Gao Xiaoli Judge Katharine Mary Savage
Case No.:	2023-1859
Date of Decision:	25 October 2024
Date of Publication:	18 November 2024
Registrar:	Juliet E. Johnson

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Counsel for Appellant: Self-represented

Counsel for Respondent: Francisca Lagos Pola

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. Ms. Asmaa Abdullah Nassir Al-Timimi (Ms. Nassir), a former staff member with the United Nations Assistance Mission for Iraq (UNAMI), contested the decision of the Administration not to renew her fixed-term appointment (FTA) beyond its expiration date of 31 December 2021 (contested decision).
2. On 24 July 2023, by Judgment No. UNDT/2023/076 (impugned Judgment),<sup>1</sup> the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) concluded that the contested decision was lawful and dismissed her application.
3. Ms. Nassir appeals to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) arguing that the impugned Judgment was not fair and the “UNDT did not ask [her] to prove the damage”.
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure**

5. Ms. Nassir joined UNAMI on 1 January 2019 as an Information Analyst, Joint Analysis Unit, at the National Professional Officer Level in Basra, Iraq. She served under FTAs in that position for three years. Her last FTA was from 1 January 2021 until 31 December 2021.<sup>2</sup>
6. On 29 May 2020, the General Assembly approved the UNAMI’s 2021 budget submission, which proposed the redeployment of one position of Information Analyst from Basra to Erbil “to reinforce the operational oversight of resurgent [Islamic State of Iraq and the Levant (ISIL)] activities in Ninawa and Kirkuk”.<sup>3</sup> However, due to the impact of the COVID-19 pandemic and budgetary constraints that led to a recruitment freeze for regular budget vacancies, UNAMI did not immediately implement the General Assembly’s redeployment decision.<sup>4</sup>

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<sup>1</sup> *Nassir v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/076.

<sup>2</sup> Letter of appointment of Ms. Nassir.

<sup>3</sup> Impugned Judgment, para. 46. See also General Assembly – Proposed programme budget for 2021 dated 29 May 2020, A/75/6 (Sec. 3)/Add. 6.

<sup>4</sup> Interoffice memorandum dated 15 November 2020 from the Chief Mission Support to the Mission Support Service Chiefs.

7. On 31 October 2021, the Head of the Joint Analysis Unit informed Ms. Nassir of the redeployment of the post financing her position from the Basra to the Erbil duty station.<sup>5</sup>

8. On 22 November 2021, the Chief of Mission Support informed Ms. Nassir by letter that:<sup>6</sup>

(...) [Y]our [FTA] will not be renewed beyond 31 December 2021 as the post of Information Analyst (...), which you are encumbering, was approved for redeployment from Basra to Erbil in the budget for the year 2021.

The non-renewal of your [FTA] is in line with Staff Rule[s] 4.4(b) and 9.4. As your appointment is expiring on 31 December 2021, the separation entitlements will be subject to applicable rules for local staff. The separation process will be initiated, and you will be kept informed throughout the course.

9. On 1 January 2022, Ms. Nassir was separated from service from UNAMI.

10. On 19 January 2022, Ms. Nassir requested management evaluation of the contested decision.

11. On 27 February 2022, Ms. Nassir began working for Mercy Corps.<sup>7</sup>

12. On 17 May 2022, during settlement negotiations, the Chief Human Resources Officer (CHRO) contacted Ms. Nassir and offered her to be reinstated and reassigned to the Erbil duty station. During the conversation, Ms. Nassir stated that she did not want to move to Erbil due to unfamiliarity with the language and culture in that region. On the same date, the CHRO confirmed their conversation in an e-mail stating:<sup>8</sup>

(...) I refer to our conversation today on the mission's offer to reinstate you in Erbil as the post is redeployed in line with the budget approval, and we understand your confirmation that you are not in a position to accept the offer to work in Erbil.

As per our discussion, you opted for financial compensation in lieu of your reinstatement.

We are preparing a confidential Settlement agreement to this effect (...)

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<sup>5</sup> Impugned Judgment, para. 9.

<sup>6</sup> Letter dated 22 November 2021 from the Chief of Mission Support to Ms. Nassir.

<sup>7</sup> Impugned Judgment, para. 15. See also UNDT Reply, Annex 2, E-mail dated 21 June 2022 from Mercy Corps to UNAMI.

<sup>8</sup> E-mail dated 17 May 2022 from the CHRO to Ms. Nassir.

In the meantime, it would be much appreciated if you can confirm your concurrence of the above in order to move forward with the final settlement your case.

13. On 18 May 2022, the UNAMI HR Section wrote to Ms. Nassir by e-mail, requesting a response to their informal settlement offer by 20 May 2022.<sup>9</sup> On 20 May 2022, Ms. Nassir declined the offer by e-mail.<sup>10</sup>

14. On 2 June 2022, Ms. Nassir filed an application with the Dispute Tribunal challenging the contested decision.

15. On 27 June 2022, the Management Evaluation Unit (MEU) informed Ms. Nassir by letter that it “considered that UNAMI’s decision to reinstate [her] in the position effectively reversed the decision to separate [her] from service, thereby rendering [her] request for management evaluation moot”.<sup>11</sup>

#### *Impugned Judgment*

16. In the impugned Judgment dismissing Ms. Nassir’s application, the Dispute Tribunal found that the application challenging the contested decision not to renew her FTA was receivable. It found that the settlement offer to reinstate her at a different duty station (i.e., Erbil instead of Basra) did not render her application moot, as it was “an offer of settlement of the dispute, more than an administrative decision”.<sup>12</sup> If the offer was accepted, it would have led to a new and different contract, and a different administrative decision.<sup>13</sup> This finding is not under appeal.

17. Turning to whether the contested decision was lawful, the Dispute Tribunal recalled that an FTA carries no expectation of renewal and that the staff member bears the burden to “show a legitimate expectation of renewal or that the non-renewal of [their] appointment was arbitrary or motivated by bias, prejudice or improper motive”. In the present case, it concluded that Ms. Nassir had failed to meet this burden of proof.<sup>14</sup>

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<sup>9</sup> E-mail dated 18 May 2022 from the UNAMI HR Section to Ms. Nassir.

<sup>10</sup> E-mail dated 20 May 2022 from Ms. Nassir to the UNAMI HR Section.

<sup>11</sup> Management evaluation response dated 27 June 2022.

<sup>12</sup> Impugned Judgment, para. 40.

<sup>13</sup> *Ibid.*, paras. 17, 40 and 59.

<sup>14</sup> *Ibid.*, paras. 43-44.

18. The Dispute Tribunal found that UNAMI’s reason for not renewing Ms. Nassir’s FTA – namely that there was no longer a post to finance her position in Basra – was legitimate and supported by the facts.<sup>15</sup>

19. Last, the Dispute Tribunal found that Ms. Nassir failed to demonstrate that UNAMI did not act fairly, justly and transparently in dealing with her matter or that the contested decision was tainted by extraneous considerations. On the contrary, it found that she had been informed well in advance (i.e., on 31 October 2021) of the contested decision and that her performance had been positively evaluated by her supervisors.<sup>16</sup>

### **Submissions**

#### **Ms. Nassir’s Appeal**

20. Ms. Nassir asserts that she suffered both moral and material damages because of the contested decision. She further contends that the UNDT erred by not requiring her to prove these damages. Specifically, in support of her claim for material damages, she argues that the Appeals Tribunal “can verify the material damages through a comparison between UNAMI and Mercy Corps payrolls”.<sup>17</sup> She also notes that the non-renewal of her FTA represents a significant loss, particularly in Iraq, where employment opportunities for women are limited. Regarding her claim of moral damages, she submits that these damages “already existed due to the loss of the job, which coincided with the psychological effects of the COVID-19 and the loss of loved ones, which made the matter more complicated”.

21. Ms. Nassir questions whether the UNDT correctly qualified the negotiations that occurred after the termination of her FTA as “negotiations to settle an administrative dispute” rather than as “compensation on mistake”. In this regard, she also suggests that the UNDT erroneously based its decision on the fact that she declined the offer of redeployment to Erbil because of the Kurdish language spoken in that region.

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<sup>15</sup> The UNDT relied, *inter alia*, on the General Assembly – Proposed programme budget for 2021 dated 29 May 2020, A/75/6 (Sec. 3)/Add. 6.

<sup>16</sup> Impugned Judgment, paras. 61-62.

<sup>17</sup> Ms. Nassir’s pay slip from Mercy Corps dated 28 April 2022; Ms. Nassir’s pay slip from the United Nations dated 22 December 2021.

**The Secretary-General's Answer**

22. The Secretary-General requests the Appeals Tribunal to dismiss the appeal in its entirety and affirm the impugned Judgment.

23. The Secretary-General submits that the UNDT correctly concluded that the contested decision was lawful and appropriately dismissed Ms. Nassir's application. The Secretary-General recalls that an FTA carries no expectation of renewal. Furthermore, relying on Appeals Tribunal jurisprudence, the Secretary-General observes that "[a]n international organization necessarily has 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".<sup>18</sup> In the present case, the Secretary-General contends that the UNDT appropriately considered the fact that the redeployment of the post encumbered by Ms. Nassir was genuine, as it had been approved by the General Assembly, and was based on the necessity to reinforce the operational oversight of resurgent activities in Ninawa and Kirkuk. The Secretary-General also argues that the UNDT appropriately considered the fact that UNAMI had offered to reinstate Ms. Nassir in her position, but she declined that offer.

24. The Secretary-General contends that Ms. Nassir has not demonstrated that the UNDT made any errors warranting a reversal of the impugned Judgment.

25. The Secretary-General submits that the UNDT did not have an obligation to require Ms. Nassir to prove that she suffered damages resulting from the contested decision.

26. Similarly, the Secretary-General notes that Ms. Nassir also attempts to submit additional evidence to support her request for compensation for harm. The Secretary-General contends that this additional evidence should not be admitted, as it does not fulfil the requirements set forth in Article 2(5) of the Appeals Tribunal Statute (Statute) and Article 10(1) of the Appeals Tribunal Rules of Procedure (Rules).

27. Nevertheless, even if the Appeals Tribunal were to consider Ms. Nassir's additional pleadings and evidence admissible, the Secretary-General contends that they do not serve the interest of justice and do not prove that she has been harmed by the contested decision. In this regard, the Secretary-General highlights that no illegality was committed in this case, as Ms. Nassir was legally separated from service at the expiration of her FTA.

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<sup>18</sup> *Gehr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-236, para. 2.

28. Last, the Secretary-General submits that Ms. Nassir's argument that the UNDT dismissed her application solely because she did not accept the Administration's offer of reinstatement is irrelevant and, in any event, does not warrant the reversal of the impugned Judgment.

### Considerations

29. In her appeal, Ms. Nassir references Article 2(1)(b) and (e) of the Statute as grounds for appeal. These sections outline grounds alleging that the Dispute Tribunal failed to exercise jurisdiction vested in it or made an error of fact resulting in a manifestly unreasonable decision. However, she does not identify those factual and jurisdictional errors in the impugned Judgment but simply argues that the impugned Judgment is not "fair". For reasons that follow, we find that she has not met the burden of showing that the impugned Judgment is defective in the manner required.<sup>19</sup>

30. Generally, in reviewing non-renewal decisions, the issue is whether the decision is lawful. The starting point in the review is the well-established principle that FTAs carry no expectation of renewal or conversion and that separation as a result of expiration of the appointment takes place automatically without prior notice on the expiration date specified in the letter of appointment.<sup>20</sup>

31. However, the administrative decision not to renew an FTA can be unlawful if the Administration has not acted fairly, justly, or transparently with the staff member or was motivated by bias, prejudice or improper motive. The staff member has the burden of proving that such factors played a role in the administrative decision.<sup>21</sup>

32. The Appeals Tribunal has consistently held that:<sup>22</sup>

... 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 Tribunal can consider whether relevant matters have been ignored and irrelevant

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<sup>19</sup> *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

<sup>20</sup> See Staff Rules 4.13(a) and 9.4. See also *Agha v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-916, para. 16.

<sup>21</sup> *Agha* Judgment, *op. cit.*, para. 17; *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960, para. 22; *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32.

<sup>22</sup> *Sanwidi v. Secretary-General of the United Nations*, Judgement No. 2010-UNAT-084, para. 40.

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 Tribunal to substitute its own decision for that of the Secretary-General.

33. We find that the Dispute Tribunal did not err in its review of the contested decision and correctly held that Ms. Nassir had not met the burden in showing that the contested decision was unlawful.

34. Ms. Nassir says that the contested decision was not fair and caused her material damages.

35. The decision not to renew Ms. Nassir's FTA resulted from the General Assembly's approval of the 2021 budget submission which included the redeployment of her post from Basra to Erbil "to reinforce the operational oversight of resurgent (...) activities" in the area. In the 75<sup>th</sup> session, item 141 of the preliminary list, A/75/6 (Sec. 3)/Add. 6, the General Assembly adopted the Proposed programme plan for 2021 and the Programme performance for 2019. Part of the initiative included to continue to support enhanced dialogue between the government of Iraq and the Kurdistan Regional Government and between Baghdad and Erbil. This required reprioritizing existing resources through reassignment, redeployment, and reclassification of staff including the redeployment of Ms. Nassir's position of Information Analyst, at the National Professional Officer Level in the Joint Analysis Unit, from Basra to Erbil.<sup>23</sup>

36. It is also well settled that international organizations necessarily have the power to restructure some or all of their departments or units, including the abolition of posts, the creation of new posts, and the redeployment of staff. 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 its staff members.<sup>24</sup>

37. In not renewing Ms. Nassir's FTA, we agree with the Dispute Tribunal that UNAMI met that duty and acted lawfully and fairly under the circumstances. The Dispute Tribunal also

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<sup>23</sup> Impugned Judgment, paras. 46-53.

<sup>24</sup> *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.



correctly noted that UMAMI had initially decided not to reassign Ms. Nassir to the Erbil duty station because she was a National Professional Officer. According to paragraph 47 of ICSC/82/R.4 (Comprehensive review of the common system compensation package: overview of staff categories in the United Nations common system), National Professional Officers “are not expected to be mobile, rather it is anticipated that they will leave the organization upon the completion of their term within the common system”.<sup>25</sup> As there remained no post to finance Ms. Nassir’s position in Basra, UNAMI properly notified her that her FTA would not be renewed.

38. Regarding UNAMI’s offer in May 2022 to reassign Ms. Nassir to a different duty station (i.e., Erbil instead of Basra), this offer did not alter the terms of her FTA, which had already expired on 31 December 2021, particularly as she did not accept the offer.<sup>26</sup> This fact is ultimately immaterial to the issue of whether the non-renewal of her FTA was unlawful. It does not change the fact that Ms. Nassir’s FTA carried no expectation of renewal, nor does it provide evidence that the reason for not renewing her FTA was arbitrary or motivated by bias, prejudice, improper motive or extraneous considerations.

39. As for the question of transparency, her First Reporting Officer advised Ms. Nassir on 31 October 2021 (i.e., two months in advance of the expiry of her FTA) of the redeployment of the post financing her position from Basra to Erbil.<sup>27</sup> Given the advance notice and reasons provided for the non-renewal, UNAMI acted transparently and fairly in the matter.

40. In conclusion, Ms. Nassir has not persuaded us that the non-renewal of her FTA was not part of a genuine restructuring by UNAMI and the General Assembly of the mission, or that it was undertaken in violation of her due process rights or in a way that overcame the principle that FTAs carry no expectation of renewal.

41. Ms. Nassir also argues that the Dispute Tribunal failed to request or review evidence on damages. However, this would only be the case if the Dispute Tribunal had held that the contested decision was unlawful, which it did not.

42. In her appeal, Ms. Nassir provided the Appeals Tribunal with additional and new evidence to support her claim for compensation. However, our finding that the UNDT did not

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<sup>25</sup> Impugned Judgment, para. 54.

<sup>26</sup> *Ibid.*, para. 59.

<sup>27</sup> *Ibid.*, para. 61.

err in dismissing her challenge of the contested decision precludes the Appeals Tribunal from awarding compensation. Since no illegality was found, there is no justification for an award of any compensation.<sup>28</sup> Therefore, the additional and new evidence provided by Ms. Nassir in the appeal is irrelevant and immaterial, regardless of whether it is admissible due to exceptional circumstances as required by Article 2(5) of the Statute.

43. In the absence of any established error by the Dispute Tribunal, the appeal must be dismissed.

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<sup>28</sup> *Yolla Kamel Kanbar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1082, para. 45.

**Judgment**

44. Ms. Nassir's appeal is dismissed, and Judgment No. UNDT/2023/076 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 25<sup>th</sup> day of October 2024 in New York, United States.

*(Signed)*

Judge Sandhu, Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Savage

Judgment published and entered into the Register on this 18<sup>th</sup> day of November 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar