UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1486

Abbas Abbas Koura
(Appellant/Respondent/Applicant)

v.

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

JUDGMENT

Before:	Judge Katharine Mary Savage, Presiding Judge Leslie F. Forbang Judge Abdelmohsen Sheha
Case Nos.:	2024-1895 & 2024-1897
Date of Decision:	25 October 2024
Date of Publication:	20 November 2024
Registrar:	Juliet E. Johnson

Counsel for Mr. Koura:	Self-Represented
Counsel for Secretary-General:	Amanda Stoltz

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. Mr. Abbas Abbas Koura, a former staff member with the African Union - United Nations Hybrid Operation in Darfur (UNAMID), contested a decision not to renew his fixed-term appointment (FTA) (contested decision).

2. By Judgment No. UNDT/2023/136 (impugned Judgment),[1] the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) rescinded the contested decision, awarded compensation in lieu of rescission in the amount of four months' net base salary and dismissed all other claims.

3. Each party lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).

4. For the reasons set out below, the Appeals Tribunal dismisses Mr. Koura's appeal, grants the Secretary-General's appeal, and reverses the impugned Judgment.

Facts and Procedure[2]

5. Mr. Koura served as Conduct and Discipline Officer, P-3, at UNAMID.[3]

6. On 22 December 2020, the United Nations Security Council adopted Resolution 2559 (2020) in which it decided to terminate the mandate of UNAMID effective 30 December 2020.[4] The Security Council requested the Secretary-General to commence the drawdown of UNAMID personnel on 1 January 2021 and to complete the withdrawal of all uniformed and civilian UNAMID personnel, other than those required for its liquidation, by 30 June 2021.

7. On 1 January 2021, UNAMID Operation Drawdown Directive No. 1 was issued.[5] The purpose of the Directive was to provide the necessary guidance to implement the drawdown of uniformed and civilian personnel of UNAMID during the period 1 January-30 June 2021 in line with the Security Council Resolution.

[1] *Koura v. Secretary-General of the United Nations*, Judgment dated 14 December 2023.
[2] Summarized from the impugned Judgment as relevant to the appeal.
[3] Impugned Judgment, para. 1.
[4] *Ibid.*, para. 7.
[5] *Ibid.*, para. 8.

8. On 13 January 2021, the Under-Secretary-General for Operational Support (USG/DOS) sent a memorandum to Heads of Departments, Offices, Regional Commissions, Offices Away from Headquarters, and Field Missions, seeking their support for consideration of staff members who were affected by downsizing and closure of entities across the Secretariat, especially those with permanent and continuing appointments.[6]

9. On 14 January 2021, Mr. Koura was given notice of the non-renewal of his FTA, which was expiring on 30 April 2021.[7] The letter also advised him to apply to suitable job openings in Inspira and to ensure that his profile was uploaded in the Horizon platform.

10. UNAMID subsequently decided to retain Mr. Koura as part of the Liquidation Team and renewed his appointment monthly until October 2021.[8]

11. Following a request from the United Nations Field Staff Union (UNFSU) to laterally reassign nationals whose contracts were expiring with UNAMID and who, for their safety and security, could not be repatriated, the Under-Secretary-General for Political and Peacebuilding Affairs (USG/DPPA) and the Under-Secretary-General for Peace Operations (USG/PO) requested approval for the placement of a staff member (AM) affected by the downsizing in a memorandum dated 7 September 2021 addressed to the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC):[9]

> 1. [AM], fixed term appointment, is among those affected by the downsizing in UNAMID, effective COB 30 September 2021.
>
> 2. After having carefully reviewed the staff member's profile, [AM] was found suitable for placement against post (...) P-3 Conduct and Discipline Officer position in the DPPA-DPO [Department of Political and Peacekeeping Missions, Department of Peace Operations] Executive Office, New York.
>
> 3. Given that [AM's] placement to DPPA-DPO falls outside the scope of the Staff Selection System (i.e., placement against a suitable vacant post without advertisement of a job opening), and in line with your delegated placement authority as set out in the Delegation Instrument, your approval to place [AM] to DPPA-DPO effective 1 October 2021 or sooner is hereby kindly requested.

[6] *Ibid.*, para. 9.
[7] *Ibid.*, para. 10.
[8] *Ibid.*, para. 11.
[9] *Ibid.*, paras. 59-61; letter of 7 September 2021.

12. Consequently, AM was placed in the post of Conduct and Discipline Officer at the DPPA/DPO and remained in service.[10]

13. On 31 October 2021, the Director of the Liquidation Team gave Mr. Koura a final notice that his FTA would end on 30 November 2021.[11] It read as follows:

> Following the letter from the Director Liquidation Team dated 5 September 2021 regarding Notice of non-renewal of your Fixed term appointment with UNAMID, kindly be advised that this letter serves as the final notice that your fixed term appointment will end on 30 November 2021. Human Resources Management Unit will liaise with you regarding your check out formalities at least two weeks before separation date.
>
> You are encouraged to continue applying to suitable job openings in INSPIRA. Your profile has already been uploaded in the HORIZON platform.

14. Mr. Koura's separation from the Organization became effective on 30 November 2021.[12]

15. On 25 November 2021, he received from Umoja an automatically generated e-mail containing the following information: "Personnel Action [PA] Name: Renewal/Extension of Appt"; "Personnel Action Reason: Renewal of Appointment"; "Effective Date: 01.12.2021"; and "Processing Date: 24.11.2021" (the automatically generated e-mail).[13]

16. On 21 December 2021, Mr. Koura requested management evaluation.[14]

17. On 3 June 2022, Mr. Koura filed the application challenging the contested decision.[15]

The impugned Judgment

18. By Judgment No. UNDT/2023/136 dated 14 December 2023, the UNDT granted the application, rescinded the contested decision, awarded compensation in lieu of rescission in the amount of four months' net base salary in effect at the time of Mr. Koura's separation from service, ordered that compensation should bear interest at the United States Prime Rate with effect from the date the Judgment becomes executable until payment and that an additional five per cent

[10] Impugned Judgment, para. 59.
[11] *Ibid.*, para. 12.
[12] *Ibid.*, para. 13.
[13] *Ibid.*, para. 33.
[14] *Ibid.*, para. 14.
[15] *Ibid.*, para. 1.

should be applied to the United States Prime Rate 60 days from the date this Judgment becomes executable, and dismissed all other claims.

19. As the UNDT noted, Mr. Koura had cited two grounds for contending that the Administration had not acted regularly.[16] The first was that he had a legitimate expectation that his FTA would be renewed to December 2021 because in November 2021 he had received a PA to that effect. The second was that since UNAMID was liquidated, the Administration was under a moral obligation to find him a suitable position for lateral placement because the non-renewal of his FTA had resulted from abnormal circumstances. During the proceedings, Mr. Koura alleged that the Administration had laterally moved a similarly-placed staff member to United Nations Headquarters (UNHQ) who, like Mr. Koura, held an FTA, the term of which expired during the liquidation period and that the Secretary-General's authority used to laterally reassign that staff member ought to have applied to Mr. Koura. The Secretary-General submitted that the reassignment of that staff member took place on humanitarian grounds in that repatriation was avoided considering the security situation of the staff member's country, whereas Mr. Koura was not similarly situated.

20. With regard to a legitimate expectation of renewal, the UNDT agreed with the Secretary-General that the PA, notification of which was dated 25 November 2021, had been raised in error.[17] The PA was neither preceded nor superseded by a Letter of Appointment and Mr. Koura did not submit any document that formed the basis of the PA. He did not offer any evidence contradicting the contention that the PA had been generated in error, nor that he had already received a final notice of non-extension or that his separation process had commenced. The facts fall short of the requisite firm promise or commitment in writing by the Administration to renew his FTA.[18]

21. The UNDT found that the Administration had not been under a "moral obligation" to retain Mr. Koura by means of finding him an alternative suitable post within the Organization.[19] Since his contract was not prematurely "terminated" due to the closure of the Mission, he could not benefit from lateral reassignment under Staff Rule 9.6(e).

[16] *Ibid.*, paras. 18(b)-(c).
[17] *Ibid.*, paras. 27-45.
[18] The UNDT noted that a report on the end of UNAMID had highlighted that there was no need for Mr. Koura's services up to the end of the liquidation period as there was enough capacity in the Conduct and Discipline Team (CDT) to complete the process (*ibid.*, para. 44).
[19] Impugned Judgment, paras. 46-50.

22. However, the UNDT held that Mr. Koura had proved by clear and convincing evidence that the non-renewal of his FTA had been unlawful because the rules had been applied in a discriminatory manner.[20] The Secretary-General decided to exceptionally use a Delegation Instrument to reassign a staff member placed similarly to Mr. Koura. In so doing, the Secretary-General did not follow the laid down procedures for staff selection. The process was carried out without transparency and the result was perceived as prejudicial to Mr. Koura. The reason given for his unequal treatment was improper as it was not justifiable by the Staff Regulations
and Rules.[21]

23. Turning to the relief, the UNDT explained that the four months, of which net base salary should be paid in lieu of reinstatement, represented the remaining period up to the closing of UNAMID from December 2021 to March 2022.[22] No evidence independent of that of Mr. Koura was presented to corroborate his assertions of moral harm. Nor did he adduce any evidence of reputational or professional harm. On the contrary, he subsequently secured alternative employment through a competitive process within the Organization, clear proof that his reputational and professional standing were not harmed.

Procedure before the Appeals Tribunal

24. On 11 February 2024, Mr. Koura filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Secretary-General filed an answer on 26 April 2024 (Case No. 2024-1895). On 12 February 2024, the Secretary-General also filed an appeal, to which Mr. Koura filed an answer on 22 April 2024 (Case No. 2024-1897). In Order No. 574 (2024), the Appeals Tribunal consolidated the appeals.

Submissions

Mr. Koura's Appeal

25. Mr. Koura requests the Appeals Tribunal to increase the amount of in-lieu compensation to 11 months' net base salary, award compensation for damage to his professional reputation and

[20] *Ibid.*, paras. 51-67.
[21] The UNDT noted that the memorandum dated 7 September 2021 did not cite humanitarian grounds as the reason for reassigning AM (*ibid.*, para. 61).
[22] Impugned Judgment, paras. 70-71.

career, and order that the compensation be "pensionable" and the rescission of the contested decision be effected as continuing service on an FTA.

26. Mr. Koura argues that the UNDT erred on a question of fact, resulting in a manifestly unreasonable decision. The amount of compensation did not take into account the full scope of damage he incurred. Upon separation from UNAMID, he lost his income and it was devastating for him and his family.

27. First, Mr. Koura submits that the UNDT used inappropriately soft language for the grave unlawfulness of the contested decision. By referring to "humanitarian grounds" for justifying the placement of AM at the United Nations Headquarters, the Secretary-General misrepresented its reasons. The act of misrepresentation should be included in determining the amount of compensation.

28. Second, Mr. Koura contends that he established that he would not have had any interruption in service, had he been given the opportunity to compete fairly for the position at Headquarters. This is supported by the fact that he was a qualified and suitable candidate and was subsequently selected for a post with the same functions with the United Nations Integrated Transition Assistance Mission in Sudan (UNITAMS). Instead, he faced a set-back in his career, embarrassment and emotional distress. The amount of compensation should include and ensure continuity of his service, take into account the loss of his ability to apply for a continuing appointment and include the damage of the interruption in his service. For 11 months, he was unemployed.

29. Third, Mr. Koura submits that the amount of compensation must take into account the fact that by denying him the same treatment afforded to AM, the Administration breached Staff Rule 12.3(b) and made an exception that was prejudicial to him. Moreover, there was another position, Training Officer at P-3, available at the time that he could have been placed in by a lateral reassignment.

The Secretary-General's Answer

30. The Secretary-General requests the Appeals Tribunal to dismiss the appeal, arguing that Mr. Koura has failed for purposes of his appeal to demonstrate that the UNDT erred in its award of remedies.

31. The Secretary-General submits that, contrary to Mr. Koura's assumption, the nature and gravity of the purported illegality is not relevant to determining the amount of in-lieu

compensation. His reference to the position of Training Officer, P-3, is misplaced—he did not challenge his non-selection to that post. Finally, he has presented no evidence of harm. The UNDT did not err insofar as it did not take into account the alleged damage to reputation and career when it determined the amount of in-lieu compensation.

32. The Secretary-General denies misrepresenting the facts. Humanitarian consideration applied to AM that did not apply to Mr. Koura. He had no right to compete for the position AM was reassigned to. Reassignment decisions are not selection decisions. The decision to reassign AM had no impact on Mr. Koura's terms and conditions of appointment and he had no right to challenge it.

The Secretary-General's Appeal

33. The Secretary-General requests the Appeals Tribunal to vacate the impugned Judgment, arguing that the UNDT erred in fact and in law by failing to find the contested decision lawful. He submits that the contested decision was not tainted by any discriminatory or improper grounds and the UNDT found that the relevant Staff Regulations and Rules governing FTAs were properly applied in this case. By embarking on a consideration of the lateral reassignment of AM, the UNDT erred in applying the staff selection procedures and in its role when conducting a judicial review of a non-renewal decision.

34. The Secretary-General submits that the UNDT erred in law and in fact and exceeded its jurisdiction when it concluded that the Administration had applied "the rules" in a discriminatory manner. The UNDT's reasons fail to provide a sufficient basis for its conclusion. Contrary to the UNDT's assumption, the staff selection procedures were inapplicable. The lateral reassignment of AM was not an "exception" to the Staff Rules. Mr. Koura had no right to be reassigned.

35. The Secretary-General contends that the UNDT erred in fact when it stated that Mr. Koura and AM were similarly placed and that the reassignment of AM was perceived as prejudicial to Mr. Koura. AM was an Afghani national who could not be repatriated back to Afghanistan due to security. In any event, the UNDT's reliance on a "perception" of prejudice undermines the UNAT jurisprudence on the burden of proof of improper motive.

36. The Secretary-General submits that the UNDT erred in law and exceeded its jurisdiction when it found that Mr. Koura had successfully rebutted the presumption of

regularity. The finding resulted from the UNDT's misapplication of the staff selection procedures. Moreover, the UNDT failed to establish a nexus between the reassignment of AM and the non-renewal of Mr. Koura's appointment.

Mr. Koura's Answer

37. Mr. Koura requests the Appeals Tribunal to dismiss the Secretary-General's arguments.

38. Mr. Koura contends that the Administration is attempting to evade accountability for its actions, including the use of the Delegation Instrument to improperly favour one staff member. The Secretary-General avoids addressing this core issue. It is apparent that the basis for retaining AM was not humanitarian. Furthermore, another UNAMID staff member (GM) was repatriated to Gaza without any consideration for GM's safety. It calls into question how sure the Administration was that AM would face harm if repatriated to Afghanistan.

39. Mr. Koura submits that apart from the Administration's use of the Delegation Instrument, he and AM were in a similar situation. Contrary to Staff Rule 12.3(b), the exception afforded to AM was prejudicial to Mr. Koura. The Administration had at its disposal tools to place him in an available post in the Organization.

Considerations

Oral hearing

40. Under Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure, this Tribunal may grant an oral hearing if it would "assist in the expeditious and fair disposal of the case".

41. Oral hearings have been refused by this Tribunal where the factual and legal issues arising from the appeal have already been clearly defined by the parties and an oral hearing would not assist in the expeditious and fair disposal of the case.[23] An appeal is not a rehearing of the matter but an opportunity for the parties to address narrow issues, including errors of law, fact and jurisdiction. While Mr. Koura sought an oral hearing of this appeal, we are satisfied that the factual and legal issues in this appeal have been clearly defined by the parties

[23] *Ibrahim Bah v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1437, para. 53 (internal citations omitted).

and are not persuaded that an oral hearing would assist in the expeditious and fair disposal of the case. For these reasons the motion seeking an oral hearing is denied.

Merits of the appeal

42. Turning to the merits on appeal, it is the settled jurisprudence of this Tribunal that the Administration has broad discretion to reorganize its operations and departments to adapt to its economic vagaries and challenges. In taking a decision the Administration is under a duty to act fairly, justly and transparently, and is not to be motivated by bias, prejudice or improper motive.[24] There exists a presumption of regularity in respect of administrative acts, with it falling to the employee to rebut that presumption.[25]

43. There was no dispute that the automatically generated e-mail message received by Mr. Koura was sent in error. The UNDT therefore correctly concluded that this message did not serve to extend his FTA, nor did it amount to an offer to do so, or create a legitimate expectation on the part of Mr. Koura that his FTA would be extended.

44. Staff Rule 9.4 makes it clear that an FTA expires automatically and without prior notice on the date of expiry specified in the letter of appointment.[26] In addition, Staff Regulation 4.5(c) and Staff Rule 4.13(c) both provide that an FTA does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service.[27] It follows that on expiry of his FTA there was no obligation on the Administration to find Mr. Koura an alternative post,[28] nor was the Administration under a moral obligation to retain Mr. Koura by means of finding him an alternative suitable post within the Organization. In finding as much the UNDT cannot be faulted.

45. However, the UNDT found that Mr. Koura had proved by clear and convincing evidence that the applicable rules had been applied in a manner discriminatory to Mr. Koura since the Secretary-General had used, on an exceptional basis, a Delegation Instrument to reassign AM, a staff member placed similarly to Mr. Koura, and had failed to follow the procedures for staff

[24] *Afeworki v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-903, para. 20 (internal citations omitted).
[25] *Rolland v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-122, para 26.
[26] Staff Regulations and Rules of the United Nations (ST/SGB/2018/1/Rev.1).
[27] *Ibid.*
[28] *Marius Mihail Russo-Got v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1090, para. 36.

selection in relation to that staff member. Since the process was not transparent, the result was found by the UNDT to be prejudicial to Mr. Koura, with his unequal treatment found to be improper and not justified in terms of the Staff Regulations and Rules.

46. There is no dispute that it was after the UNFSU requested the lateral reassignment of nationals whose contracts were expiring with UNAMID and who, for reasons of their safety and security, could not be repatriated, that AM was reassigned to UNHQ. The request for reassignment was made on 7 September 2021 by the USG/DPPA and the USG/PO when AM's FTA was to expire on 30 September 2021. The basis for AM's reassignment was directly related to the undisputed fact that he could not be repatriated to Afghanistan for safety and security reasons. The reassignment of AM fell outside the scope of the staff selection system in that it did not involve the advertisement of a job opening and accorded with the delegated placement authority of the USG/DMSPC as set out in the Delegation Instrument. It followed that the reassignment of AM did not therefore amount to an exception to the Staff Rules as provided for in Staff Rule 12.3(b).[29]

47. The UNDT found that in its decision to reassign AM and not Mr. Koura the Administration had applied the rules in a discriminatory manner in that Mr. Koura and AM were similarly placed and the reassignment of AM was prejudicial to Mr. Koura.

48. In deciding whether a staff member has suffered discrimination or been treated in a discriminatory manner, it falls to the UNDT to consider whether, considered objectively, that person has been treated differently to another in a way that is unfair and unwarranted, has the potential to impair their dignity as a person or affect them adversely in a comparably serious manner. For conduct to have been prejudicial to a staff member it must be shown to have been harmful to them in circumstances in which this was unfair and unwarranted.

49. From the facts before the UNDT it was clear that Mr. Koura held no right to appointment or reassignment following the expiry of his FTA. Given the presumption that decisions of the Administration have been regularly taken, and without the lawfulness of AM's reassignment having been placed before this Tribunal for determination, we are unable, without more, to find that such reassignment decision was either irregular or unlawful.

[29] Staff Rule 12.3(b) (ST/SGB/2018/1/Rev.1) permits exceptions to the Staff Rules, provided this is not inconsistent with any Staff Regulation or other decision of the General Assembly and provided further that it is agreed to by the staff member directly affected and is, in the opinion of the Secretary-General, not prejudicial to the interests of any other staff member or group of staff members.

Mr. Koura's personal circumstances were materially different from those of AM, the latter who could not be repatriated to Afghanistan for security reasons. The evidence did not show that Mr. Koura was treated differently to AM in a manner which was unfair to him or had the potential to impair his dignity or affect him adversely in circumstances which were patently unfair.

50. In finding differently, the UNDT erred in fact and in law and exceeded its jurisdiction. Mr. Koura had failed to rebut the presumption of regularity which applied to the decision taken. No nexus was shown between the reassignment of AM and the non-renewal of Mr. Koura's appointment. Considered objectively, a neutral, reasonable and informed bystander would, having regard to the facts, not hold a reasonable apprehension that the Secretary-General had been biased in choosing to favour AM over Mr. Koura for improper reasons.

51. It follows that the decision taken was not unlawful, unfair, unjust or motivated by bias, prejudice or improper motive and the UNDT erred in finding differently. The appeal of the Secretary-General stands therefore to be granted and the decision of the UNDT reversed. Given as much, Mr. Koura's appeal against the amount of compensation awarded therefore falls to be dismissed.

Judgment

52. Mr. Koura's appeal is dismissed. The Secretary-General's appeal is granted, and Judgment No. UNDT/2023/136 is hereby reversed.

Original and Authoritative Version: English

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

(Signed)	*(Signed)*	*(Signed)*
Judge Savage, Presiding	Judge Forbang	Judge Sheha

Judgment published and entered into the Register on this 20th day of November 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar