UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1537

Aiman Mackie

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Leslie F. Forbang, Presiding Judge Katharine Mary Savage Judge Abdelmohsen Sheha
Case No.:	2024-1912
Date of Decision:	21 March 2025
Date of Publication:	13 May 2025
Registrar:	Juliet E. Johnson

Counsel for Mr. Mackie:	Shubha Suresh Naik, OSLA
Counsel for Secretary-General:	Rupa Mitra

JUDGE LESLIE F. FORBANG, PRESIDING.

1. Mr. Aiman Mackie (Mr. Mackie), a former staff member of the Office of the Special Envoy of the Secretary-General for Yemen (OSESGY), has filed an appeal of Judgment No. UNDT/2024/004 (impugned Judgment)[1] issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 8 February 2024.

2. In the impugned Judgment, the UNDT had dismissed Mr. Mackie's application challenging the decision not to extend his fixed-term appointment (FTA) beyond 30 November 2022 due to redundancy of his post after a staffing review (contested decision).

3. For the reasons set out below, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal.

Facts and Procedure

4. At the time of the contested decision, Mr. Mackie served as a P-5 Senior Peacebuilding Officer with OSESGY.[2]

5. On 6 August 2021, a Special Envoy to OSESGY was appointed by the Secretary-General.[3]

6. From 25 to 26 October 2021, the Special Envoy organized a retreat with senior staff, including Mr. Mackie, to outline his strategic vision.[4]

7. In February 2022, the Special Envoy appointed an Organizational Design Consultant to undertake a comprehensive mission-wide staffing review. The Consultant interviewed Mr. Mackie on 17 February 2022.[5]

8. On 3 March 2022, the Consultant presented his thematic observations from the staffing review to the Senior Management Team.[6]

9. On 6 March 2022, Mr. Mackie was informed in a meeting with the Special Envoy, the Chief of Staff, and his supervisor that his post would be abolished. He was further informed that

[1] *Mackie v. Secretary-General of the United Nations*, Judgment No. UNDT/2024/004.
[2] *Ibid.*, para. 11.
[3] *Ibid.*, para. 12.
[4] *Ibid.*, para. 13.
[5] *Ibid.*, para. 14.
[6] *Ibid.*, para. 15.

he should hand the "economy file" over to someone else and that his position would be moved from the front office to the Political Affairs Section.[7]

10. By interoffice memorandum dated 14 March 2022, the Special Envoy to OSESGY advised the Chief of Mission Support (CMS) for OSESGY that he had decided to propose staffing realignments in the budget submission for 2023, including the establishment of the position of a P-5 Senior Gender Affairs Officer in the front office, reporting directly to the Special Envoy, and the abolishment of the post of P-5 Senior Peacebuilding Officer "due to peacebuilding not being included as one of OSESGY's priorities in 2022 and 2023". The memorandum further stated that the position of Senior Peacebuilding Officer was to be moved from the front office to the Political Affairs Section effective immediately.[8]

11. On 28 March 2022, Mr. Mackie received an interoffice memorandum informing him that OSESGY had undertaken a staffing review aimed at rationalizing existing resources; that the staffing review had determined the redundancy of the position he encumbered; that the position would not be included in the Mission's budget for 2023; and that his FTA would therefore not be renewed beyond its expiration date of 30 November 2022.[9] This was the contested decision.

12. On 21 May 2022, Mr. Mackie requested management evaluation of the contested decision. On 29 September 2022, the Management Evaluation Unit (MEU) recommended that the contested decision be upheld.[10]

13. On 26 September 2022, a Human Resources Officer, United Nations Mission to Support the Hudaydah Agreement (UNMHA), sent an e-mail to the Department of Management Strategy, Policy and Compliance (DMSPC) requesting *inter alia* that Mr. Mackie's post of Senior Peacebuilding Officer be reclassified to Senior Gender Affairs Officer. The request was approved via return e-mail that same day.[11]

14. On 27 December 2022, Mr. Mackie filed an application with the UNDT challenging the contested decision. At the time of the application, Mr. Mackie's FTA had been temporarily

[7] *Ibid*., para. 16.
[8] Interoffice Memorandum from Special Envoy, OSESGY to Chief of Mission Support, OSESGY-UMHA dated 14 March 2022.
[9] Interoffice Memorandum from Chief of Mission Support, OSESGY-UNMHA to Mr. Mackie dated 28 March 2022.
[10] Impugned Judgment, paras. 19 and 20.
[11] E-mail exchange dated 26 September 2022 between UNMHA HR Officer and DMSPC.

extended for one month until 31 January 2023.[12] His contract was subsequently extended until 30 September 2023.[13]

15. On 8 February 2024, the UNDT issued the impugned Judgment dismissing the application. The UNDT found that Mr. Mackie's FTA naturally expired on its last day and there was no expectation of its renewal.[14] As far as Mr. Mackie's position as an officer whose post was made redundant was concerned, Mr. Mackie was not affected because his FTA would come to an end regardless of whether the position was or was not made redundant.[15]

16. The UNDT also held that the reclassification exercise was not within the scope of the application.[16] Moreover, the Administration did have a basis for its decision to make Mr. Mackie's position redundant,[17] the process that was used was fair, just and transparent,[18] and there was no evidence of arbitrariness or discrimination.[19] The UNDT concluded that there was no basis for rescission of the contested decision or for compensation and dismissed the application in its entirety.[20]

17. On 5 April 2024, Mr. Mackie filed an appeal, and on 10 June 2024, the Secretary-General filed an answer.

Submissions

Mr. Mackie's Appeal

18. Mr. Mackie claims that the UNDT erred in fact and law when it stated that the reclassification was outside the scope of the application because firstly, Mr. Mackie had not sought management evaluation and secondly, the review of the reclassification exercise would be done at the departmental level where it was relevant and appropriate which in this case was not required.

19. Mr. Mackie submits that the UNDT failed to note that he had raised the issue of change in functional title before the MEU as well as before the UNDT. In fact, Mr. Mackie had argued that

[12] Impugned Judgment, para. 1.
[13] Secretary-General's reply to Mr. Mackie's application before the UNDT, para. 12.
[14] *Ibid.*, para. 26.
[15] *Ibid.*, paras. 27 and 28.
[16] *Ibid.*, para. 29.
[17] *Ibid.*, para. 31.
[18] *Ibid.*, para. 33.
[19] *Ibid.*, para. 36.
[20] *Ibid.*, para. 37.

the Administration should have resorted to reclassification instead of a mere change in functional title since the functions of the post were substantially changed.

20. Mr. Mackie submits that in the notice for non-renewal it was mentioned that the post had been rendered redundant and would not be included in the next budget. However, the budget reports indicated, and Mr. Mackie was advised in a meeting on 27 March 2022 by the CMS and the Chief Human Resources Officer (CHRO), that the post was not being abolished but that a change of the functional title from Senior Peacebuilding Officer to Senior Gender Affairs Officer was being requested in the budget approval. However, at the time of issuing the notice for non-renewal, the Administration had not moved for any reclassification of post. By the same token, at the MEU stage, it was said that there was only a change in functional title of the post and that approval from DMSPC had been obtained on 26 September 2022.

21. Mr. Mackie submits that it was only before the UNDT that the Administration stated, in its reply of 27 July 2023, that reclassification was being conducted and produced the relevant documents. At that point, Mr. Mackie became aware that a reclassification process had been initiated by the Administration on 26 September 2022 which was approved within a few hours by DMSPC. Even at the MEU stage, there was no mention of the word "reclassification". The MEU stated that while the Mission had initially considered abolishing the existing Senior Peacebuilding Officer position and creating a new Senior Gender Affairs Officer position, the Administration had subsequently, during the preparation of the budget, considered that the most effective and rational way to proceed was to change the functional title, given that the two positions were at the same level and in the same job family. The MEU also noted that the Office of Programme Planning, Finance and Budget had confirmed that this was the appropriate procedure and that the change was indeed approved by the Office of Human Resources at DMSPC on 26 September 2022.

22. The UNDT erred in fact and law in failing to find that the Administration's failure to inform Mr. Mackie of the reclassification was in violation of ST/AI/1998/9 (System for the classification of posts). Indeed, pursuant to Section 2.4 of ST/AI/1998/9, a copy of the notice of reclassification results including the final ratings/comments on the basis of which the decision was taken should have been provided to Mr. Mackie as the incumbent of the post. Further, Section 1.1 (a) to (d) of ST/AI/1998/9 lays down the conditions under which reclassification can be sought. None of these include the reasons based on which the Administration did the reclassification, i.e., the change of functional title.

23. The UNDT also failed to exercise the jurisdiction vested in it by failing to consider the arguments raised by Mr. Mackie on the Administration's action in pursuing this alleged "change in functional title". The Administration had admitted in its reply before the UNDT that there were changes in the Terms of References (TORs) for the two positions but stated that it made no difference for Mr. Mackie whether the Administration proceeded by post abolishment or reclassification since he was ineligible for the P-5 Senior Gender Affairs Officer position due to the difference in TORs and experience criteria. The TORs were changed so substantially that Mr. Mackie was no longer considered eligible for the post and as a result, the reclassification process provided under ST/AI/1998/9 should have been followed in letter and spirit.

24. Mr. Mackie claims that the UNDT also failed to exercise jurisdiction and erred in law when, after having concluded that Mr. Mackie's right to recourse had been limited due to the Administration's way of proceeding, it justified it by stating that this was necessary because a quick transition was required between Mr. Mackie's post and the one being created. Administrative convenience should not trump staff rights and violate established processes. The Administration cannot circumvent its own rules and procedures, as well as the principles enshrined in the United Nations Charter, relevant General Assembly resolutions, and Staff Regulations, in favour of administrative convenience. Allowing such actions by the Organization would be tantamount to allowing Staff Rules and corresponding rights and obligations to be overtaken by considerations of administrative convenience. The changes as stated above involved also substantial changes to the functions of the regular budgeted post and not merely the title of the post and therefore proper process should have been followed.

25. Mr. Mackie submits that the UNDT failed to exercise jurisdiction vested in it by not carrying out a proper judicial review in accordance with UNAT jurisprudence, i.e., assessing whether the Administration had acted fairly, justly and transparently with the staff member or was motivated by bias, prejudice or improper motive. In the present case, the UNDT stated that neither consultation as part of abolishment of post nor the review would have made a difference to Mr. Mackie because his contract expired and there was no expectation of renewal of an FTA. Therefore, Mr. Mackie submits that the UNDT failed to exercise jurisdiction vested in it by considering only the ground that Mr. Mackie's contract had ended. The UNDT only cursorily touched upon the process being fair and transparent in paragraphs 31 to 33 of the impugned Judgment.

26. The UNDT concluded at paragraph 32 of the impugned Judgment that the decision to proceed with changing the functional title of Mr. Mackie's position would be implemented only after Mr. Mackie's appointment had ended. No explanation was given as to why. Reclassification processes are often undertaken whilst staff encumber the post subject to reclassification and therefore the conclusion of the UNDT that such decision could be implemented only after Mr. Mackie's appointment expired was erroneous. The UNDT further concluded at paragraph 33 that the decisions made to fast track the transition from Senior Peacebuilding Officer to Senior Gender Affairs Officer were accounted for with decisions being made by the appropriate and relevant authorities. The UNDT however failed to examine whether the decision maker (DMSPC) had made proper application of their mind, especially since Mr. Mackie had argued that this was not merely a case of change of functional title but also substantial changes in the TORs.

27. Mr. Mackie claims that the UNDT erred in law in failing to consider Mr. Mackie's argument that the process was "surreptitious", given that the case for reclassification was only sent to DMSPC once Mr. Mackie had filed a request for management evaluation and in fact within a few hours DMSPC approved it thereby indicating that there was no proper application of mind in the decision-making process.

28. Mr. Mackie contends that since March 2022, he has faced an uncertain future due to the "abolishment" of his post. This precarity has had professional and personal consequences for him. He was placed on more than seven short-term contracts between the end of 2022 and 2023 as the Mission refused to provide a replacement parent post, despite Mr. Mackie's repeated requests to this end. Mr. Mackie was directly and indirectly advised by various senior managers to "move on" and leave the Mission, pointing to the length of his tenure at OSESGY. The short-term contracts have furthermore prevented his family from obtaining residency in Jordan, which has meant that Mr. Mackie and his family were prevented from having access to some key and basic services, amongst which include obtaining childcare assistance, renewing personal vehicle registration, opening a bank account, being eligible to apply for visa for his family, etc. These measures have, amongst other consequences, limited Mr. Mackie and his family's physical mobility, causing undue stress and burden on them, and creating an unfair and inhospitable environment within the Mission.

29. Considering the foregoing, Mr. Mackie requests that the Appeals Tribunal reverse the impugned Judgment and grant the reliefs sought in his UNDT application. He requests that the Appeals Tribunal order the rescission of the contested decision, or, in the alternative, find him a

suitable post in the new structure or elsewhere so that consequently his contract may be extended. In addition, Mr. Mackie asks that the Appeals Tribunal award compensation.

The Secretary-General's Answer

30. The Secretary-General contends that the UNDT correctly found that the Administration had established a valid basis for making Mr. Mackie's position redundant. The UNDT correctly held that there was a basis for changing the focus of the position in OSESGY; the Administration had engaged in a planning process that required data to be collected on the functioning of the position that Mr. Mackie held and the exercise that was pursued proceeded with consultation and collection of data before implementation. Mr. Mackie had been consulted in the course of that process and the consultation would prove important in the decision to make his position redundant and replace it with one of Senior Gender Affairs Officer. The UNDT reviewed the process leading to the contested decision and rightly found that it was fair, just and transparent. The Secretary-General concluded that the Administration had thus validly exercised its discretion to restructure the positions and there was no evidence of unlawfulness.

31. The Secretary-General contends that Mr. Mackie's claims regarding the "change in functional title" point to no error on the part of the UNDT. The 28 March 2022 letter containing the contested decision does not include any references to changes of functional title. It informs Mr. Mackie that OSESGY had undertaken a staffing review aimed at rationalizing existing resources and that, following the results of the review, it had been determined that Mr. Mackie's position would be made redundant. The letter further informed Mr. Mackie that as a result, his position would not be included in OSESGY's budget for the following year and that his FTA would not be renewed. Mr. Mackie has not challenged on appeal any aspect of the impugned Judgment relating to the information contained in the 28 March 2022 letter informing him of the contested decision.

32. The Secretary-General recalls that an international organization has the power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff. Mr. Mackie was factually mistaken in arguing that the UNDT concluded that the change in functional title could be implemented only after his contract ended. Rather, the UNDT was describing the chronological order of the events that took place, not pronouncing on when those events were required to take place. Mr. Mackie has thus also shown no error in the impugned Judgment in this regard.

33. The Secretary-General submits that while Mr. Mackie repeatedly claims on appeal that a reclassification process should have been followed, there is no dispute that such a process did indeed take place after the contested decision had been made. The Secretary-General recalls in this context, however, that the contested decision was the non-renewal of Mr. Mackie's FTA based on a restructuring of his unit. The relevant issues for judicial review are the reasons and processes underlying the contested decision. In that regard, the processes, including reclassification, that took place after the contested decision are not relevant. The procedures used in the exercise of discretion to restructure Mr. Mackie's unit in the first place and to not renew Mr. Mackie's FTA are different from those that were subsequently employed in creating the new position of Senior Gender Affairs Officer. In this regard, the UNDT rightly held that the contested decision, its underlying basis and the processes leading up to it were "accounted for with decisions being made by the appropriate and relevant authorities".

34. The Secretary-General submits that the UNDT also correctly found that the staffing review exercise that was pursued proceeded with consultation and collection of data before implementation and that none of Mr. Mackie's criticism of the steps taken shows any merit as being contrary to law or improper. Mr. Mackie's argument on appeal that the UNDT erred in failing to find that "administrative convenience" had trumped his rights and violated established processes is conclusory and lacks any legal basis.

35. The Secretary-General avers that Mr. Mackie's argument that the UNDT failed to exercise jurisdiction by not carrying out a proper judicial review is baseless. His claim that the UNDT erred because its analysis was "cursory" represents a mere disagreement with the UNDT's finding that the Administration's processes were "fair, just and transparent." Mr. Mackie has not demonstrated any error in the UNDT's finding that the contested decision was lawful and that the processes used in reaching it were fair, just and transparent.

36. The Secretary-General contends that the UNDT correctly held that the reclassification was outside the scope of judicial review. Mr. Mackie did not seek management evaluation of the reclassification exercise result. Moreover, the UNDT correctly held that Mr. Mackie's claims regarding the September 2022 reclassification exercise were not receivable. The reclassification process and the resulting decision had not yet taken place at the time of Mr. Mackie's request for management evaluation. Mr. Mackie's references to reclassification in his request for management evaluation, which was dated 21 May 2022, do not amount to a request for management evaluation of the reclassification decision itself, which was made on

26 September 2022. In any case, the UNDT correctly held that the review of the reclassification exercise would be done at the departmental level where it was relevant and appropriate, and in this case, the UNDT rightly ruled, this was not required.

37. The Secretary-General further contends that the timing and manner in which the reclassification was carried out do not in any way show that the redundancy decision and non-renewal decision were improper, nor that they affected in any way the contested decision. The UNDT correctly held that the processes underlying the contested decision were fair, just and transparent. The Administration appointed a Consultant to undertake a mission-wide staffing review, the Consultant interviewed Mr. Mackie (among many others) in this process, he presented his thematic observations from the staffing review to the Senior Management Team, no promises were made to Mr. Mackie of continued appointment, and he even received the notice of non-renewal well in advance of the expiration of his FTA. There was no evidence of bias, discrimination, or other impropriety.

38. The Secretary-General avers that the Appeals Tribunal should dismiss Mr. Mackie's claims regarding the UNDT's review and analysis of the case. Contrary to Mr. Mackie's claims, the UNDT did analyse the facts and the law, including that there was a valid basis for the contested decision and that the process used was lawful. The Appeals Tribunal has held that the Administration is not under a legal obligation to consult with individual staff members who may be affected by the abolition of a post prior to reorganization or restructuring of the units in which they serve. By the same token, the Administration is not required to discuss during the consultation, the reasons for the intended administrative decision in detail with the staff member or even to be open to negotiate and reconsider issuing the administrative decision. In any event, it is not disputed that Mr. Mackie was indeed consulted before the contested decision was made, and the Consultant in fact interviewed OSESGY staff members and stakeholders in the course of the comprehensive staffing review. Mr. Mackie has shown no error on this point in the impugned Judgment and again merely disagrees with the outcome.

39. The Secretary-General asks that the Appeals Tribunal affirm the impugned Judgment and dismiss the appeal in its entirety.

Considerations

40. The issues for our determination in this appeal are: (1) whether the UNDT erred in finding the contested decision lawful; (2) whether Mr. Mackie had a legitimate expectation of the renewal of his FTA; (3) whether his arguments on the reclassification exercise are receivable; (4) whether the Administration had an obligation to find Mr. Mackie an alternative and suitable position following the abolition or reclassification exercise; and (5) whether he is entitled to compensation. We will now examine each of these points in turn.

Whether the UNDT erred in finding the contested decision lawful

41. On appeal, our determination first is on whether the UNDT erred in law or fact when it concluded that the Administration's decision not to renew Mr. Mackie's FTA was lawful because the relevant decision was fair, just, and transparent. But before considering that question, it is imperative for us to examine the standard of judicial review in non-renewal cases.

42. Our jurisprudence requires that when judging the validity of the Secretary-General's exercise of discretion in administrative matters, as in the case of a non-renewal decision, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. However, it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.[21]

43. Nevertheless, an administrative decision not to renew a fixed term appointment can be challenged on the grounds that the Administration has not acted fairly, justly, or transparently with the staff member or that the decision was motivated by bias, prejudice or improper motive.[22] The staff member has the burden of proving such factors played a role in the administrative decision.[23]

[21] *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 40 (internal citation omitted).
[22] *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32.
[23] *Kacan v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-426, para. 20; *Asaad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-021, para. 10.

44. In this regard, the UNDT stated that:[24]

> ... The decisions made to fast track the transition from SPBO to Senior Gender Officer were accounted for with decisions being made by the appropriate and relevant authorities. None of the criticism of the steps taken shows any merit as being contrary to law or improper. The Tribunal therefore concludes that the relevant decisions were fair, just and transparent.

45. Mr. Mackie for his part contends that the UNDT failed to exercise its jurisdiction by not carrying out a proper judicial review in terms of established jurisprudence, but instead merely relied on the ground that his contract had ended due to the effluxion of time.

46. We find that the UNDT's conclusion is legally and factually correct for the reasons set out below.

47. Our case law on the subject requires the Secretary-General to provide a reasonable explanation when a staff member's FTA is not renewed to assure the Tribunals' ability to judicially review the validity of the Administration's decision.[25] In the present case, the Administration fulfilled this obligation through a letter addressed to Mr. Mackie by the CMS dated 28 March 2022.

48. The letter clearly explains that the office conducted a staffing review aimed at rationalizing existing resources, which resulted in the redundancy of Mr. Mackie's position. Consequently, he was informed his post would not be included in the Mission's budget for 2023, and his FTA would not be renewed beyond 30 November 2022. Considering that FTAs expire automatically and without prior notice on the expiration date specified in the letter of appointment in line with Staff Rule 9.4, we find the Administration's explanation contained in the letter reasonable and logical in the circumstances.

49. Further, the UNDT correctly observed that "the [staffing review] exercise that was pursued, proceeded with consultation and collection of data before implementation".[26] Mr. Mackie's factual recollection of facts on appeal confirms that he was indeed consulted by the

[24] Impugned Judgment, para. 33.
[25] *Agha v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-916, para. 20; *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugee in the Near East*, Judgment No. 2019-UNAT-960, para. 24; *Ncube v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-721, para. 17 (internal citation omitted).
[26] Impugned Judgment, para. 31.

Consultant on 17 February 2022, although he argues that no other follow-up was done with him or the Staff Union or Staff Representatives.[27]

50. We recall also that "consultation means the provision of information about the intended administrative decision and an opportunity for the staff member to comment thereon".[28] Nevertheless, it is not necessary that, during the consultation, the Administration discusses the reasons for the intended administrative decision in detail with the staff member or even has to be "open" to negotiate and reconsider issuing the administrative decision.[29] Besides, consultations are not negotiations, and it is not necessary for the Administration to secure consent or agreement of the consulted parties.[30] Therefore, Mr. Mackie's arguments in this respect are without merit.

51. We hold from the foregoing, that the UNDT did not err in finding the contested decision lawful.

Whether Mr. Mackie had a legitimate expectation of the renewal of his FTA

52. Our consistent jurisprudence has laid down the general principle that an FTA or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment.[31] Further, as provided in Staff Regulation 4.5(c) and Staff Rule 4.13(c): "A fixed-term appointment does not carry any expectation, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14(b)."

53. A legitimate expectation of renewal will exist or arise only where the Administration makes an express promise that gives the staff member concerned an expectation that his or her appointment will be extended. Our jurisprudence requires that the promise to renew an FTA at least be in writing.[32] We established in *Munir* that a legitimate expectation must be based on more than a verbal assertion, but instead on a firm commitment of renewal revealed by the circumstances of the case.[33] The commitment must be in writing and such written commitment constitutes a firm engagement from which the Administration cannot easily derogate.

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[27] Appeal form.
[28] *Cristina Silva v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1223, para. 77.
[29] *Ibid.*
[30] *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-568, para. 91.
[31] *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 25. *Ncube v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-721, para. 15; *Pirnea* Judgment, *op. cit.*, para. 32.
[32] *Igbinedion v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-411, para. 26.
[33] *Munir v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-522, para. 24.

54. In the same vein, we established in *Kalil*[34] and *Munir*[35] that the non-expectation of renewal could be challenged if evidence was produced leading to the conclusion that an express and concrete decision, promise, or commitment of renewal was communicated to a staff member, consequently raising such an expectation.[36]

55. In the instant case, Mr. Mackie was informed in his non-renewal letter that he would be placed on the downsizing list in the Horizon platform supporting the placement and retention of downsized staff and advised to apply to suitable job openings on Inspira. This evidently is not a promise to make him genuinely believe that his appointment will be renewed. In addition, there is no other evidence of a firm promise or commitment to renew Mr. Mackie's contract beyond the expiration date of 30 November 2022. In this light, the fact that Mr. Mackie was placed on multiple short-term contracts between 2022 and 2023 beyond the expiry of his FTA did not and could not have created any such expectation of renewal. This was our position in *Kacan,*[37] that past renewals of an appointment are not a basis for expectation of renewal.

56. We therefore agree with the UNDT that Mr. Mackie did not have a legitimate expectation of renewal of his FTA beyond its expiry.

Whether Mr. Mackie's arguments on the reclassification exercise are receivable

57. There is no doubt that Mr. Mackie takes issue with the procedure for the reclassification of his position. He argues that his non-renewal letter did not mention that his post would be reclassified and he was not informed of the process. He argues further that the Administration's failure to inform him about the reclassification, as the incumbent of the post, violated Section 2.4 of ST/AI/1998/9 and that the UNDT erred in failing to note the same. He also contends that a "change in functional title" is not a condition under which reclassification is sought under Section 1.1 (a) to (d) of ST/AI/1998/9.

58. The Secretary-General submits on his part that "none of Mr. Mackie's claims withstands scrutiny" because the reclassification process and the resulting decision had not yet taken place at the time Mr. Mackie requested management evaluation. In addition, the Secretary-General

[34] *Kalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-580, para. 67.
[35] *Munir* Judgment, *op. cit.*, para. 38.
[36] *Khalaf v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-678, para. 32.
[37] *Kacan* Judgment, *op. cit.*, para. 19 (internal citation omitted).

contends that none of Mr. Mackie's claims on the reclassification process would affect the basis for the non-renewal following a restructuring.

59. From the foregoing we agree with the UNDT that the reclassification exercise was outside the scope of Mr. Mackie's application. What is germane to note in the instant matter is that the contested decision is on the non-renewal of his FTA and not the reclassification of his position. Therefore, all arguments or claims on reclassification go to no issue and deserve no attention.

60. Now, even if we assume, in Mr. Mackie's favor, that his claims on the irregularity of reclassification process were admissible on appeal, such arguments are not receivable because he did not comply with the appeals procedure for reclassification decisions set out in Sections 5 and 6 of ST/AI/1998/9, which provide:

> **Section 5**
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> **Appeal of classification decisions**
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> The decision on the classification level of a post may be appealed by the head of the organizational unit in which the post is located, and/or the incumbent of the post at the time of its classification, on the ground that the classification standards were incorrectly applied, resulting in the classification of the post at the wrong level.
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> **Section 6**
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> **Appeal procedure**
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> 6.1 Appeals shall be submitted in writing to:
>
> a) The Assistant Secretary-General for Human Resources Management, in the case of appeals regarding:
>
> (i) Posts in the Professional category and at the D-1 and D-2 levels or reclassification of a General Service post to the Professional category; …
>
> 6.2 Appeals must be accompanied by the job description on the basis of which the post was classified.
>
> 6.3 Appeals must be submitted within 60 days from the date on which the classification decision is received.
>
> …

> 6.5 If the review results in an upgrading of the classification to the level sought by the appellant, the appellant shall be notified in writing of the decision.
>
> 6.6 If it is decided to maintain the original classification or to classify the post at a lower level than that claimed by the appellant, the appeal, together with the report of the reviewing service or section, shall be referred to the appropriate Classification Appeals Committee established in accordance with the provisions of section 7 below.
>
> ...
>
> 6.14 The Assistant Secretary-General for Human Resources Management or the head of office, as appropriate, shall take the final decision on the appeal. A copy of the final decision shall be communicated promptly to the appellant, together with a copy of the report of the Appeals Committee. Any further recourse against the decision shall be submitted to the United Nations Administrative Tribunal.

61. In addition, Section 1.3 of ST/AI/1998/9 provides:

> Incumbents who consider that the duties and responsibilities of their posts have been substantially affected by a restructuring within the office and/or a General Assembly resolution may request the Office of Human Resources Management or the local human resources office to review the matter for appropriate action under section 1.1(d).

62. It becomes clear from Sections 1.3 and 6.1(a) of ST/AI/1998/9 that, appeals against reclassification decisions are submitted, at first instance, to the Assistant Secretary-General for Human Resources Management or the local human resource office. After that, a final decision on the reclassification issue is taken by the Assistant Secretary-General for Human Resources Management pursuant to Section 6.14 of ST/AI/1998/9. It is this final decision from the Assistant Secretary-General for Human Resources Management that constitutes an administrative decision, which is open to judicial review under Article 2(1) of the UNDT Statute.

63. Therefore, Sections 1.3, 5 and 6 of ST/AI/1998/9 impose a duty on Mr. Mackie to exhaust the internal remedy of appealing for a review of the reclassification decision at the departmental level before any further action.[38]

64. In the present case, Mr. Mackie neither contested the reclassification decision nor followed the internal process for reviewing reclassification decisions under Sections 5 and 6 of ST/AI/1998/9. Consequently, the reclassification is not subject to judicial review in the instant

[38] *Edward E. Hammond v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1142, paras. 51- 54.

matter. We hold that the UNDT correctly held that review of the reclassification exercise should have been done at the departmental level where it was relevant and appropriate.[39]

65. From the foregoing, Mr. Mackie's arguments on the reclassification exercise are not receivable.

Whether the Administration had an obligation to find Mr. Mackie an alternative and suitable position following the abolition or reclassification exercise

66. Mr. Mackie requests the Appeals Tribunal to rescind the decision to identify his post for abolishment or in the alternative, find him a suitable post in the new structure or elsewhere. We therefore find it imperative to examine whether the Administration did in fact have an obligation in the first place to find him an alternative and suitable position following the abolition or reclassification of his post.

67. The jurisprudence of the Appeals Tribunal is that the Administration has the power to restructure and reorganize its units and its departments to lend to greater efficiency.[40] However, where a staff member holding, in order of preference, either a continuing appointment or a FTA, a which is subject to termination following the abolition of a post or reduction of staff, reasonable efforts need to be made by the Administration to find the staff member a suitable post, pursuant to Staff Rules 9.6(e), 9.6(g) and 13.1(d).

68. Staff Rule 9.6 on termination provides, in relevant part:[41]

> (e) Except as otherwise expressly provided in paragraph (f) below and staff rule 13.1, if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, staff members shall be retained in the following order of preference:
>
> (i) Staff members holding continuing appointments;
> (ii) Staff members recruited through competitive examinations for a career appointment serving on a two-year fixed-term appointment;

[39] Impugned Judgment, para. 29.
[40] *Simmons v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-624, para. 12 (internal citation omitted); *Gehr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-236, para. 25.
[41] Emphasis added.

> (iii) Staff members holding fixed-term appointments.
>
> When the suitable posts available are subject to the principle of geographical distribution, due regard shall also be given to nationality in the case of staff members with less than five years of service and in the case of staff members who have changed their nationality within the preceding five years.
>
> ...
>
> (g) Staff members specifically recruited for service with the United Nations Secretariat or with any programme, fund or subsidiary organ of the United Nations that enjoys a special status in matters of appointment under a resolution of the General Assembly or as a result of an agreement entered by the Secretary-General have no entitlement under this rule for consideration for posts outside the organ for which they were recruited.

69. Staff Rule 13.1 on permanent appointments provides, in relevant part:[42]

> (d) If the necessities of service require abolition of a post or reduction of the staff and subject to the availability of suitable posts for which their services can be effectively utilized, staff members with permanent appointments shall be retained in preference to those on all other types of appointments, provided that due regard shall be given in all cases to relative competence, integrity and length of service. Due regard shall also be given to nationality in the case of staff members with no more than five years of service and in the case of staff members who have changed their nationality within the preceding five years when the suitable posts available are subject to the principle of geographical distribution.

70. Under the above mentioned Staff Rules, the Administration is under an obligation to demonstrate that all reasonable good faith efforts had been made to consider the staff member concerned for available and suitable posts under Staff Rule 9.6(g), before taking the decision to terminate a staff member's permanent appointment.[43] In line with the above principles, we held in *El-Kholy* that: "It is for the Administration to prove that the staff member holding a permanent appointment was afforded due and fair consideration, as required by Staff Rules 9.6(e), 9.6(g) and 13.1(d)."[44]

71. Nonetheless, the obligation of the Administration under Staff Rules 9.6(e), 9.6(g) and 13.1(d) applies to staff members whose appointments or posts are terminated as a result of the

[42] Emphasis added.
[43] *El-Kholy v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-730, para. 25.
[44] *Ibid.,* para. 31.

abolition of a post or the reduction of staff. For a staff member to successfully claim that the Administration has failed to fulfill its obligation to find them alternative or suitable employment following the abolition of their position or a staff reduction, they must have a current appointment that is abruptly terminated by the abolition of post or staff reduction exercise.

72. In the case at hand, Mr. Mackie's FTA was not terminated by the abolition of his position. Rather, it was terminated by the effluxion of time – it expired naturally due to its non-renewal. We agree with the UNDT that his situation "was not one of a person who would have been affected because of the redundancy of the position which he held. His FTA would come to an end whether the position was or was not made redundant."[45]

73. It is therefore clear from the facts of this case that Staff Rules 9.6(e), 9.6(g) and 13.1(d) do not apply. The Administration was not under a duty, legal or otherwise, to find Mr. Mackie an alternative or suitable position following the abolition or reclassification exercise. Consequently, Mr. Mackie's request for the Appeals Tribunal to rescind the contested decision or in the alternative, to find him a suitable post in the new structure or elsewhere must fail together with his appeal.

74. In addition, Staff Rule 9.6(b) provides that: "Separation as a result of resignation, abandonment of appointment, expiration of appointment, retirement or death shall not be regarded as termination within the meaning of the Staff Rules." The contested decision is a separation decision hinged on expiration of an appointment, and not a termination decision based on abolition of post or reduction of staff. As such, Mr. Mackie did not fall within the category of staff with the right to be considered on a preferential basis for retention under Staff Rule 9.6(e).

75. Therefore, the Administration did not have an obligation to find him an alternative and suitable position following the abolition or reclassification exercise.

Whether Mr. Mackie is entitled to compensation

76. Mr. Mackie submits that he faced an uncertain future due to the abolishment of his post which has had professional and personal consequences on him. He contends he was placed on more than seven short-term contracts between the end of 2022 and 2023. He argues these

[45] Impugned Judgment, para. 28.

short-term contracts have prevented his family from obtaining residency in Jordan, which means they could not have access to key and basic services like childcare assistance, renewing personal vehicle registration, opening a bank account, applying for visas amongst others. For these hardships he requests compensation.

77. Our consistent jurisprudence on the subject is that the predicate for an award of compensation is a finding of illegality. When the Appeals Tribunal concludes that the UNDT correctly found the contested decision to be lawful, then there is no justification for an award of compensation.[46]

78. Mr. Mackie's request for compensation is thus denied.

79. For all of these reasons, his appeal is found to be without merit and must fail.

[46] *AAZ v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1502/Corr.1, para. 97.

Judgment

80. Mr. Mackie's appeal is dismissed, and Judgment No. UNDT/2024/004 is affirmed.

Original and Authoritative Version: English

Decision dated this 21st day of March 2025 in Nairobi, Kenya.

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

Judgment published and entered into the Register on this 13th day of May 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar