



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

WOOD

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON LIABILITY AND  
RELIEF**

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**Counsel for the Applicant:**

Robbie Leighton, OSLA

**Counsel for the Respondent:**

Tamara Shockley, UNICEF

## **Introduction**

1. The Applicant is a former Information Management (IM) Specialist at the United Nations Children's Fund's (UNICEF) Jordan Country Office (JCO) in Amman. She served on a six-month Temporary Appointment (TA) at the P-3 level between 6 January and 5 July 2013.
2. On 19 December 2013, she filed the present Application contesting the non-renewal of her TA.
3. The Respondent filed a Reply to the Application on 20 January 2014.
4. The Tribunal heard the case from 2-3 June 2015 and the Parties filed their closing submissions on 31 July 2015.

## **Background and Facts**

5. The Applicant initially worked at the UNICEF JCO in Amman as an IM Specialist on secondment from the Global Water and Sanitation Hygiene (WASH) Cluster Rapid Response Team, through the Cooperative for Assistance and Relief Everywhere (CARE). Her secondment while holding a CARE contract was for three months and lasted from 27 September 2012 to 26 December 2012. During this period, the Applicant worked under Terms of Reference (TORs) specific to the WASH section.
6. Before completing her assignment on secondment, the Applicant was asked to draft a more general TORs for the TA of an IM Specialist at the P-3 level. She completed the draft on 3 November 2012. UNICEF subsequently recruited the Applicant to the position on a six-month TA for functions listed in the TORs she had drafted.
7. At the time that the Applicant first came to the JCO on secondment, she was the only IM Specialist in the Amman office and she was shared between different UNICEF departments or sectors. She was supervised by the Emergency Coordinator, Mr. Philip Leighton, until 1 February 2013, and thereafter by Mr. Lucio Melandri the overall Humanitarian Affairs Specialist at the JCO.

8. During the period that the Applicant worked at the JCO, two other IM Specialists came to work there on secondment from two NGOs and the Applicant coordinated their work.

9. Soon after becoming her supervisor in February 2013, the Applicant and Mr. Melandri disagreed over work plans and strategies for IM.

10. Their disagreements led to the Applicant submitting her letter of resignation to the Human Resources Section on 28 February 2013. After attending a meeting with the Country Representative (CR) and Mr. Melandri, the Applicant withdrew her resignation.

11. The disagreements between the Applicant and Mr. Melandri continued and were sometimes reported to the CR, Ms. Hyde, but were never resolved. On 7 June 2013, the Applicant met with the CR to discuss the issues she had reported about her supervisor. In answer to a question by the CR, the Applicant stated that she would not like to continue working with Mr. Melandri as her supervisor.

12. On 17 June 2013, the Applicant sent an email to Mr. Melandri asking if her contract would be renewed and asking also to be given reasons if a decision had been made not to renew it. Although Mr. Melandri did not reply, the CR sent her a response the same day and referred to their discussion only 10 days before on 7 June. She told the Applicant that she had indicated during the discussion that she did not want her contract to be extended.

13. The Applicant then requested a meeting with the CR to discuss the situation. Before the said meeting took place on 27 June 2013, the Applicant received a separation letter on 26 June 2013.

14. After the meeting between the Applicant and the CR at which the UNICEF Deputy Country Representative (DCR) was present, the contents of a written record of the said meeting were not agreed by the parties.

15. The Applicant's contract expired on 5 July 2013 and on 7 August 2013 she sought management evaluation of the decision not to extend her contract. On 23

September 2013, UNICEF's management evaluation upheld the administrative decision not to renew the said contract.

### **The hearing**

16. The Tribunal held an oral hearing of the case on 2 and 3 June 2015. The Applicant testified on her own behalf while her former supervisor Mr. Melandri and Ms. Hyde testified for the Respondent.

#### *The Applicant's testimony*

17. When the Applicant started working for UNICEF JCO in September 2012, she performed duties in all the sectors of the country office under general TORs taken from standardized documents.

18. Before the end of her secondment and at the request of her supervisor at the time, Mr. Leighton, she assessed the IM needs of the office and created TORs for required posts. She recommended one international IM Specialist for each sector and another for non-specific sector work. She recommended also that some national staff be hired.

19. She was selected for a six-month TA and was told that two international and two national IM Specialists would be recruited. Between March and May 2013, two others were brought in on secondment. While one of the new ones was completely dedicated to the Child Protection and Gender-based violence sectors, the Applicant and the other IM Specialist shared the work of all the other sectors.

20. The Applicant's appointment letter dated 12 December 2012 which offered her the six-month TA stated that any further contract extensions would be based on availability of funds, continued requirement of services and satisfactory performance.

21. Although she was not recruited to implement a structure for the work of IM Specialists, the Applicant assisted in organizing the distribution of work since she had been there longer than the other IM personnel. Her core functions were

those of an IM Specialist consisting of processing and presenting data for the different departments or sectors at the JCO.

22. There were no national IM Specialists in the JCO and the Applicant did not build the capacity of any national professionals to whom she could hand over her functions. She had to hand over to the other two international IM Specialists who were themselves on secondment and who left soon after her.

23. Shortly after she left, a new P-3 IM Specialist was recruited to replace the Applicant on a one year TA. While she was at the JCO, she shared all the IM Specialist work for the Education and WASH sectors and other more general work with another stand-by partner. If her contract had been extended, she could have performed the required functions.

24. While she was supervised by Mr. Melandri, his attitude toward her was not civil. He usually ignored her or interrupted her when she was speaking and would change the subject or just walk away. He often refused to discuss her work and said she was giving him orders. He told the CR and others that the Applicant did not get on with people. From 6 April until 17 June 2013, Mr. Melandri would avoid any communication with her thus making it difficult for her to do her work.

25. Whenever the Applicant asked questions about IM resourcing and management of REACH (a consortium of NGOs and United Nations entities working in IM) or Programme Cooperation Agreement (PCA), she was threatened by Mr. Melandri. She also raised with the CR such issues as the non-delivery of satellite imagery purchased by UNICEF, advice to sections on the optimum use of assets to mitigate flash flood risks, the use of UNICEF-funded staff to conduct a survey without the knowledge of UNICEF or UNHCR IM and forcing refugees to answer questionnaires in return for aid, but was told to drop the issue of the survey. The CR told her not to be upset about Mr. Melandri's behaviour.

26. In a private meeting with the CR on 7 June 2013, the Applicant was asked if she wanted to continue working with Mr. Melandri but she said she did not because she knew that there were plans to place the IM Specialists in different departments and she wanted to be placed in a department where she would not be

supervised by Mr. Melandri. She never said she did not want an extension of her contract. She did not know at that time that there were mechanisms for dealing with harassment and so did not make a formal complaint.

27. When on 17 June 2013 the Applicant wrote to Mr. Melandri to ask her if her contract was to be renewed, it was the CR who responded to say that it would not be renewed and that she (Applicant) had told her that she was not interested in staying at the JCO. She replied to the CR denying telling her so and the CR invited her to a meeting. She was not given any notice of non-renewal.

28. Before the meeting would take place, the Applicant was given a separation letter on 26 June 2013. On 27 June 2013 she met with the CR who again told her that her contract was not renewed because she said she did not want the renewal. The CR added that Mr. Melandri found her conduct challenging and said that the Agency for Technical Cooperation and Development (ACTED) had complained about an email she wrote. The CR never said that the functions of her post were no longer needed.

*Mr. Melandri's testimony*

29. The witness said he was deployed on 1 February 2013 as a Humanitarian Affairs Specialist at the UNICEF JCO. In that position, he became the Applicant's supervisor or First Reporting Officer (FRO).

30. He stated that the Applicant's TORs included two main areas of responsibility which were capacity building of national IM staff and the management of the IM REACH PCA. The Applicant's defined tasks and duties were to be accomplished within six months because her TA was established for the initial setting up of IM capacity at the start of the emergency declared in January 2013.

31. At the start of his work at the JCO, the Applicant told him of a need to expand the IM unit through the recruitment of three international and three national officers. When he told the JCO senior management about the Applicant's request, the response was that the office strategy did not include increasing IM capacity but rather to strengthen national staff capacity so that the Applicant could

hand over her responsibilities at the end of her six-month TA. The Applicant did not like this strategy and resigned a few days later.

32. When he later held a meeting with the CR and the Applicant on the issue, it was agreed that a partial increase in the IM capacity would be done through the temporary involvement of additional stand-by partners at no additional cost. The Applicant then withdrew her resignation.

33. The Applicant continued to ask for recruitment of international IM staff. She did not agree with senior management and her confrontational attitude affected other sections and staff members. In several emails, she accused her colleagues and JCO management of not being professional, not appreciating her work and not understanding the real need of IM. She would decide to work from home on some occasions without approval.

34. The Applicant's attitude undermined UNICEF internal working relations and affected UNICEF JCO's relationship with implementing partners. On one occasion, she refused to deal with or supervise REACH. She even accused her colleagues of being unprofessional and of criticising her work.

35. From the beginning of April 2013, the CR asked him to report to her any issues concerning the Applicant's behaviour and performance. He also decided not to have any meetings alone with the Applicant.

36. In June 2013, REACH made an informal complaint that the Applicant had sent a private email to the REACH Director asking questions about the implementation of a UNICEF-sponsored project.

37. Based on programmatic emergency requirements and availability of funding, the JCO decided to strengthen the IM capacity of local staff and to have a dedicated IM officer in the Education sector and the Monitoring and Evaluation (M&E) sector through stand-by partner capacity at the expiration of the Applicant's TA. The Applicant knew of these plans and stated in her email of 7 April 2013 that her contract would end on 4 July 2013.

38. The witness testified also that the Applicant refused to attend a meeting with him and the CR on 2 July 2013 to discuss her complaints against him. He then discussed the Applicant's PER with her in the presence of a Human Resources (HR) Officer on 3 July 2013, a few days to the end of her contract. He recognized her technical competencies and achievements and noted that she needed to improve in the core competencies of Communication and Working with People. The Applicant refused to sign it.

39. A new temporary P-3 international post was created for an IM Specialist in the M&E sector but the Applicant did not apply. She had the opportunity to activate the recruitment for national capacity but there was no national IM officer at the JCO.

*Ms. Hyde's testimony*

40. The witness was the CR at the JCO at the times material to this Application. The Applicant's TORs included capacity building of national IM staff so that the IM services could be handed over to them at the end of her assignment.

41. Shortly after his arrival, Mr. Melandri told her that the Applicant wanted an increase in international IM staff reporting to her in order to deal with a perceived weakness in the IM system. The witness said that she and the Deputy CR and Mr. Melandri together told the Applicant that no additional international staff would be hired and that the preferred focus was on training and building national capacity.

42. The Applicant disagreed and submitted her resignation for the end of February 2013, which she subsequently withdrew. The Applicant's concerns were based on the IM needs in the office. She explained to her that the JCO's strategy was to invest in national capacity rather than in international staff, and that she valued the Applicant's expertise in training new staff.

43. In May 2013, the witness said she was told that the Applicant's contract could not be renewed due to restructuring. Although she indicated in her 17 June



2013 email that there was potential for the Applicant to stay on for a while under the old structure, her post no longer existed after the restructuring.

44. The functions of the IM Specialist were divided among the different sectors of WASH, Child Protection and Education in the new structure. After the Applicant left, an IM Specialist was recruited for the M&E team.

45. The witness said that the Applicant had told her that she wanted to be able to report to another supervisor other than Mr. Melandri but that that request could not be granted.

46. Following the Applicant's complaints about her non-renewal, poor relationship with Mr. Melandri and the organization of IM work, she said she held a meeting with the Applicant and the DCR. At that meeting the Applicant stated that her contract was not renewed due to the animosity between her and Mr. Melandri and that he was harassing her. She told the Applicant that the decision not to renew her contract was in line with the terms of her contract and JCO's HR strategy.

47. With regards to the Applicant's allegation of harassment, she said she had asked her to substantiate it and also told her that she could always complain officially to headquarters. She also proposed a meeting between the Applicant and Mr. Melandri in the presence of a HR officer who would try to mediate. The Applicant refused to attend the meeting which was to take place on 2 July 2013.

48. The Applicant was given two months' notice of the non-renewal of her contract.

#### **The Applicant's case**

49. The Applicant's case as distilled from her pleadings, testimony and closing address is summarized below.

*There was a continuing need for the functions of the Applicant's post which necessitated the recruitment of a replacement for her.*

50. The Applicant's testimony concerning the flexible nature of the work of IM Specialists was not challenged. Apart from her uncontested testimony that she had worked for the WASH and across other sectors of the UNICEF JCO, the TORs for her post also show that she was expected to work in the WASH, Education and Child Protection sectors.

51. While the two witnesses for the Respondent claimed there was no on-going need for the functions of the Applicant and that national staff members were to take over the said functions, they did not deny the fact that a P-3 Professional Temporary Post was created for an IM Specialist in the M&E sector.

52. The new post has the same job title as that held by the Applicant and no evidence was tendered to show that the functions are different from those previously performed by her. Clearly, the creation of this new post is proof that there was an on-going need for the functions of the Applicant's post and that funding was available for it. Any restructuring that may have taken place did not extinguish the need for the functions of the Applicant's post.

53. In an effort to convince the Tribunal that the Applicant's functions had ended on the expiry of her TA, Mr Melandri asserted in his testimony that one of the two primary tasks for the Applicant was the management of the REACH project and the other was to build up the capacity of a national professional. The capacity building of a national professional was absent from the work outputs in the Applicant's performance appraisal and yet this was not reflected as a failure in the said appraisal by Mr Melandri.

54. The fact is that there was no national professional recruited to IM throughout the time that the Applicant worked at the JCO and this is not denied by any of the witnesses. It was therefore impossible for the Applicant to engage in any capacity building that would lead to a handover of functions to national professionals.

55. The evidence also shows that the CR had asked the Applicant in a discussion on 7 June 2013 if she would like to continue working after the expiry

of her contract. This fact in itself contradicts the Respondent's assertion that the functions of the Applicant's post were finite and completed.

56. The claim by the CR in her oral testimony that at the time of asking the Applicant if she would continue beyond the expiry of her contract she only suggested a one-month renewal cannot be believed. This was neither pleaded nor raised in the CR's 17 June 2013 email to the Applicant in which she told her she had refused an extension of her contract. Additionally, this claim was never put to the Applicant in cross-examination.

*There was bad faith on the part of decision makers.*

57. It is the Applicant's case that she was treated unfairly by her supervisor Mr. Melandri. She testified that she had complained about this many times to the CR without any results.

58. The CR stated that she had told Mr. Melandri about the Applicant's complaints and asked him to ensure that he listened to her.

59. For his part, Mr. Melandri testified that in April 2013 the CR had asked him to inform her of any issue relevant to the Applicant's behaviour and performance. It was his testimony that after receiving those instructions, he stopped having one-to-one meetings with the Applicant.

60. When the Applicant told the CR that she felt that the behaviour of her supervisor towards her was harassment, the CR arranged a confrontation between them on 2 July 2013 the day before the Applicant's performance appraisal was to take place. The note for the record prepared in respect of the said meeting contained observations made solely to discredit the Applicant.

61. Although the Respondent's case is that the Applicant's non-renewal had nothing to do with her relationships in the workplace, irrelevant evidence was tendered by the Respondent to show that the Applicant was a difficult employee.

62. Attempts by the Applicant to raise operational issues to her supervisor relating to how work was being done precipitated bad faith against her. In

particular, her concerns about a questionnaire administered in a refugee camp where the provision of aid was made to depend on whether the refugees replied to questions and her later efforts to ascertain if this was common practice by asking a former colleague made her supervisors unhappy.

63. It was bad faith and not operational reasons that resulted in the non-renewal of the Applicant's contract.

*The reasons given to the Applicant at the time her contract was not renewed differ from reasons given upon filing and hearing of this case.*

64. When the Applicant sought an explanation as to why her contract would not be renewed, no mention was made of a corporate priority to build the capacity of national staff neither was the issue of a restructuring of IM services raised. These reasons were given after the Applicant filed this Application.

65. The CR herself told the Applicant, in the 17 June 2013 email, that the reason for the non-renewal was that the Applicant herself had agreed to it.

66. At the meeting between the CR, Deputy CR and the Applicant on 27 June 2013, there was no mention of restructuring or capacity building. The CR only said that the Applicant had agreed to the non-renewal, that she was not happy in the office and that there were complaints from partners.

67. In the cases of *Obdeijn*<sup>1</sup> and *Fernandez de Cordoba Briz*<sup>2</sup>, the Tribunals' positions show that an inference can be drawn when no reasons have been provided for a decision or where the reasons provided are either faulty or belated. Not only are the reasons given here by the Respondent faulty, they were also given belatedly.

68. The fact that the Respondent's justifications for the impugned decision have continued to change from the time the Applicant was first informed of the impugned decision, exhibit grave material inconsistencies in the Respondent's case.

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<sup>1</sup> 2012-UNAT-201.

<sup>2</sup> UNDT/2013/069.

**The Respondent's case**

*The Applicant had no legitimate expectation of renewal of her TA. Her functions were no longer required as IM capacity was decentralized.*

69. The Applicant had no legitimate expectancy of the renewal of her TA. The UNICEF policy on “Types of Appointments and Categories of Staff” states that TAs expire on the date specified in the letter of appointment and do not carry any expectancy of renewal.

70. The Applicant was hired to assist in providing IM services and specifically to contribute towards the provision of emergency assistance. One of her major tasks was the training and capacity building of a national professional with the perspective to hand over the IM responsibility at the end of her six months assignment.

71. UNICEF has the discretionary authority to decide whether there was an organizational need for the continuation of short-term services. In order to respond to the developing humanitarian emergency crisis in the country, UNICEF JCO reviewed the office structure in May 2013 and proposed changes for decentralizing the IM functions.

72. It decided that no international IM post would be created and that IM capacity would be dedicated to national professionals. A new TA for a National Officer in the Education sector was created to address the needs of the emergency in the children refugee crisis. A new temporary P-3 International position for an IM Specialist in the M&E sector was created, but the Applicant did not apply for it.

73. The Applicant's temporary position was not funded and no IM post was established in the JCO budget. The selected candidate for the new position was a Jordanian national since UNICEF JCO aimed at building national capacity.

74. In May 2013, the Applicant's supervisor told her that her contract would not be renewed due to the changing priorities in the IM services. She was in the meetings of UNICEF JCO and therefore knew that an international post in IM

services would not be created. Also on 6 June 2013, the CR told the Applicant that her contract would not be renewed.

75. The Applicant knew that her contract was not going to be renewed and stated as much in an email in April 2013.

76. UNICEF did not promise the Applicant, implicitly or explicitly, that her contract would be renewed. The Applicant did not provide any proof of a legal expectation of renewal of her contract.

*The Applicant was difficult to work with.*

77. The Applicant had conveyed her request for the hiring of three additional international professional staff and three national officers in IM to Mr. Melandri but UNICEF JCO explained that it could not hire international staff due to budget constraints. The Applicant then submitted her resignation on 28 February 2013.

78. It was only when the CR and Mr Melandri met with her to explain the JCO strategy, and suggested the hiring of IM Specialists through stand-by partner arrangements that the Applicant withdrew her resignation.

79. The Applicant often disagreed with senior management decisions. Her approach was prone to conflict and communicating with her was difficult. These affected other sections and staff members.

80. In many communications and emails, the Applicant would directly accuse her colleagues and UNICEF JCO management of not being professional, criticizing her, not appreciating her work or understanding the real needs of IM. On many occasions, she decided to work from home without discussing with her supervisor or receiving authorization as required by the relevant procedures to do so.

81. The Applicant's attitude undermined her working relationship with her colleagues in UNICEF and also affected the relationship with others who were UNICEF's implementing partners. In particular, she had conflicts with UNICEF's

main IM partner, REACH, and at one point refused to deal with them or supervise their work and in that way was neither accountable nor responsible.

82. From April 2013, the CR asked Mr. Melandri to report to her any issues regarding the Applicant's behaviour and performance. Since then, he decided not to have any private meetings with the Applicant in order to prevent potential complaints from her.

83. The REACH Director made an informal complaint to UNICEF JCO in June 2013 about the Applicant sending him an email from her personal email account to make certain inquiries. The Director felt that she was seeking explanations from REACH in a non-transparent manner by doing so through a personal email.

84. The CR arranged a meeting on 2 July 2013 with the Applicant and her supervisor to discuss the Applicant's complaints. The Applicant sent an email on the day before the scheduled meeting to say she did not want to attend.

85. About two days before the end of the Applicant's contract, Mr. Melandri met with her in the presence of a HR representative for a performance evaluation discussion. He recognized her technical competence but stated that she needed improvement in the core competency of Communication and working with others. The Applicant refused to sign the appraisal.

*There was no harassment or personal animus on the part of the Supervisor.*

86. The Applicant while alleging that the decision not to renew her contract was based on communication issues with her supervisor and harassment on his part has not offered proof to substantiate her allegation.

87. Even after two IM Specialists were brought on board in March and April 2013, the Applicant continued to ask for the recruitment of internationals for the IM team but was always told that it was not feasible. The Applicant perceived the refusal by her supervisor to hire additional staff as harassment.

88. Mr. Melandri had found himself supervising the Applicant who though on a TA, wanted a long-term contract. The refusal of UNICEF JCO to change its management priorities to accommodate the Applicant's desire to extend her contract resulted in her making false allegations of harassment against Mr. Melandri.

89. The Applicant did not file any allegations of harassment as required under the UNICEF policy. She has also not discharged the burden of proof required to establish harassment or personal animosity.

90. The Applicant is not entitled to any compensation because she has not shown that she suffered any harm. The Application ought to be dismissed in its entirety.

### **Considerations**

91. It was submitted by the Respondent that the Applicant did not have any expectancy of renewal of her TA. It was also submitted that the Organization did not give the Applicant any promise that her contract would be renewed. Both submissions correctly depict both the state of the applicable law and the facts in this case.

92. But there are other considerations. The principal issue that arises for determination here is whether in view of all the surrounding circumstances, the non-renewal of the Applicant's TA was lawful. In interrogating the issue, the Tribunal will consider two questions as follows:

- a. Were the reasons given by the Respondent for the non-renewal of the Applicant's TA supported by the evidence?
- b. Was the non-renewal of the Applicant's TA due to animus on the part of her supervisors?



***Were the reasons given by the Respondent for the non-renewal of the Applicant's Temporary Appointment supported by the evidence?***

93. In considering this question, the Tribunal will review the email exchanges between the Applicant and the CR, Ms. Hyde, on the subject of renewal of the Applicant's TA. The Tribunal will also review the pleadings, testimony and submissions of the Parties as well as the relevant letter of offer.

94. The records show that the first time the issue of a renewal or non-renewal of the Applicant's TA arose was on 17 June 2013 when in an email to her FRO Mr. Melandri, the Applicant asked if her contract would be extended. Although Mr. Melandri did not respond, the CR Ms. Hyde replied to the Applicant by email on the same day.

95. Essentially, her response was that the TA would not be renewed because the Applicant herself told her in conversation about 10 days earlier that she (Applicant) did not want to remain at the JCO "under the current structure." The Applicant responded on the same day and affirmed that she had only told the CR that she did not want to continue to have Mr. Melandri as her supervisor. This clarification by the Applicant was not challenged.

96. In another email on the same day to the CR, the Applicant sought a response to her email of 11 June 2013 regarding communication between her and Mr. Melandri. Again in her response, Ms Hyde stated that the Applicant confirmed in the said email of 11 June 2013 that she did not intend to stay on.

97. When this Application was brought before the Tribunal, the reasons for the non-renewal as stated in the Respondent's Reply were based on the claims that: (a) the changing needs of the JCO for IM services led the said Country Office to propose and embark on the decentralization of IM functions. While the Applicant under her TA had provided IM services for all the sectors including the Emergency team at the JCO, a new TA was created to provide IM services to the Education sector and the JCO; and (b) under the Applicant's contract, she was expected to hand over IM services at the end of her TA.

98. At the oral hearing of this case, the two witnesses for the Respondent adopted their written witness statements. They also gave additional evidence and were cross-examined.

99. They gave three reasons for not extending the Applicant's contract. These reasons can be summarized as: (a) The JCO HR strategy was to decentralize IM capacity; (b) to strengthen the IM national staff capacity and (c) the defined tasks and duties of the Applicant were to be accomplished within a timeframe of six months in which she would have trained and strengthened local capacity and handed over to them.

100. The CR stated also in her witness statement that sometime in May 2013, she and Mr. Melandri informed the Applicant that due to restructuring, her contract would not be renewed. While this assertion was not corroborated by Mr. Melandri and was denied by the Applicant, it is strange that Ms. Hyde did not refer to it when she responded to the Applicant's email about contract extension in June 2013, only a month later. Instead her response was that the Applicant said she no longer wanted to work at the JCO.

101. In an apparent effort to explain why in her 17 June 2013 email to the Applicant she had referred to the fact that she asked the Applicant if she wanted to continue after the six months TA, the CR told the Tribunal in her oral testimony that she had only offered the Applicant a one-month extension beyond her TA. This explanation was neither pleaded nor stated in the CR's written witness statement, and appears to the Tribunal to be an afterthought.

102. It is pertinent to also consider the terms of the Respondent's Letter of Offer dated 12 December 2012. The letter clearly states that any contract extensions would be based on the availability of funds, the continued need for the Applicant's services and her satisfactory performance. It further stated that the terms would be subject to any changes in UNICEF's policy provisions for TAs.

103. With regard to the question as to whether the Respondent's stated reasons for not extending the Applicant's TA were borne out by the evidence before the Tribunal, it was submitted for the Applicant that the reasons provided by the

Respondent have changed over time and do not correspond to the facts. It was also submitted that the reasons provided in the Respondent's reply were faulty and belated.

104. The Tribunal's consideration of the evidence indeed reveals serious and material contradictions in the reasons given at different times for the non-extension of the Applicant's TA by UNICEF JCO.

105. For instance, while the Applicant was told that her contract would not be extended because she had allegedly told the CR that she did not want to continue working with the JCO, the Respondent claims in his pleadings and witness testimonies that the non-renewal was based on a corporate priority to decentralize IM capacity and to build the capacity of national staff.

106. Again, the Respondent's witnesses testified that a core responsibility of the Applicant during her six months TA was the capacity-building of national staff and a hand-over at the end of the TA. The case that that piece of evidence seeks to establish is that the Applicant's job with the JCO was completed in the six months of her TA and that there was nothing left for her to do but to hand over.

107. In challenging that claim, the Applicant's Counsel submitted in closing address that while the Applicant's performance appraisal did not reflect that she had the core responsibility to train national staff, the evidence clearly shows that no national staff were recruited in IM during the Applicant's time at the JCO and so she had no opportunity to train any.

108. Again, under the terms of the offer of the TA to the Applicant on 12 December 2012, any contract extension would be based on the availability of funds, continued need for the Applicant's services and her satisfactory performance. Can it be said that funds for the position of a P-3 IM officer were not available? Or that the Applicant's services were no longer needed?

109. Clearly, the fact that another P-3 IM Specialist was employed soon after the refusal to extend the Applicant's contract shows that funds were available and

that a continued need for IM services by an international professional existed. It is not the Respondent's case that the Applicant's performance was not satisfactory.

110. The Respondent correctly submitted that a TA has no expectancy of renewal and that he has a right to exercise his discretion to not extend the Applicant's contract. However, discretion is not exercised at the personal whim of the decision maker but must be exercised judiciously.<sup>3</sup>

111. In *Islam*<sup>4</sup>, UNAT held that where the Respondent provides justification for his exercise of discretion, such justification must be supported by the facts. The burden is therefore on the Respondent not only to show that his discretion was properly exercised but that his reasons for that exercise of discretion are supported by the facts. That burden has not been discharged by the Respondent here.

112. It was also decided in *Obdeijn*<sup>5</sup> that the Respondent has a duty to provide reasons for the non-renewal of contract when requested by the affected staff member. In this case, the reason given to the Applicant by the CR on 17 June 2013 for the non-extension of her contract when she first raised the matter with her supervisor was that she had indicated she did not want to stay on. Later, and in the course of hearing this case, the reasons have changed.

113. Following its review of the evidence before it, the Tribunal finds and holds that the reasons proffered by the Respondent for the non-extension of the Applicant's TA contract are not supported by the facts and are riddled with material inconsistencies, contradictions, somersaults and afterthoughts.

***Was the non-renewal of the Applicant's TA due to animus on the part of her supervisors?***

114. Part of the Applicant's case is that the Respondent's decision not to renew her TA is due to personal animus on the part of her supervisor Mr. Melandri and her complaint of harassment to the CR. On his part, the Respondent denies the

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<sup>3</sup> *Contreras* UNDT/2010/154; and *Verschuur* UNDT/2010/153.

<sup>4</sup> 2011-UNAT-115.

<sup>5</sup> 2012-UNAT-201.

existence of animus and contends that this claim is not supported by the facts in this case.

115. A review of the facts in this regard shows that the Applicant told the Tribunal that serious communication issues existed between her and her supervisor. She testified that he would sometimes ignore her and at other times either interrupted her or would speak over her or even walk away while she was addressing him. She said that when she raised serious issues regarding the functioning of the office, he would not address them but instead threaten that her life could be made difficult for raising them.

116. The Applicant also testified that from 6 April 2013, her supervisor avoided any communication whatsoever with her and would not talk to her. She said that he told others falsely that she did not get on with people and that she argued with many people.

117. She continued that she orally reported to the CR who was her Second Reporting Officer (SRO) about the problems she was having with her supervisor but was asked not to be upset because Mr. Melandri behaved like that with everyone. When things deteriorated further between them, she then wrote an email to the CR in which she complained about his behaviour.

118. Mr. Melandri testified that when he first started to supervise the Applicant in February 2013, she demanded a recruitment of three more international and three national IM Specialists. When this request was turned down, the Applicant tendered a resignation letter which she withdrew only after the JCO agreed to strengthen its IM capacity by bringing in two additional IM Specialists as stand-by partners.

119. The witness testified that not only did the Applicant oppose management decisions; she also opposed, criticized and disagreed with him and other staff members. The Applicant, he said, would work from home without authorization and undermined UNICEF's partnerships.

120. Mr. Melandri also told the Tribunal that at the beginning of April 2013, the CR Ms Hyde asked him to report to her on the behaviour and performance of

the Applicant including her complaints. From that time, the witness said he refused to have any meetings with the Applicant alone. In his performance appraisal of the Applicant at the end of her contract, he identified that she needed improvement in communication and working with others.

121. Ms. Hyde in her testimony stated that it was on 27 June 2013 that the Applicant first told her that she was working in a harassing environment with regards to Mr. Melandri. The witness said she asked the Applicant to substantiate her allegations and told her she could report officially to headquarters. She set up a meeting between the Applicant and Mr. Melandri on that issue but the Applicant did not attend.

122. In response to a question in cross-examination, Ms. Hyde denied that she told Mr. Melandri to specifically report to her on the behaviour and performance of the Applicant. She said she rather told him to report any problems he had with any staff to her.

123. The Respondent exhibited some emails sent by the Applicant to Mr. Melandri and some other work colleagues<sup>6</sup>. These emails tended to show that the Applicant was unhappy about certain situations at work at the time she wrote them. Also exhibited was a private email from the Applicant to an NGO official asking questions about the conduct of a project which was supported by UNICEF<sup>7</sup>.

124. In reviewing the evidence in relation to whether personal animus against the Applicant existed on the part of her supervisors, the Tribunal is not in any doubt that there was no love lost with regard to the working relationship between the Applicant and her FRO Mr. Melandri.

125. The evidence is clear that from 6 April 2013, barely two months into his supervision of the Applicant, Mr. Melandri was no longer talking to his supervisee; he was not communicating with her by email or even supervising her work in any way.

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<sup>6</sup> Annex 3.

<sup>7</sup> Annex4.

126. The Applicant's efforts to enlist the intervention of Ms. Hyde who was her SRO failed because Mr. Melandri's attitude of completely ignoring his supervisee was ostensibly supported by Ms. Hyde. Rather than help to resolve their differences and encourage the Applicant and her supervisor to work well together, Ms. Hyde helped to destroy whatever working relationship they had when she instructed him to bring her reports on the Applicant's behaviour, performance and complaints.

127. Four unhappy emails from the Applicant written on 8 April 2013 to her supervisor and other work colleagues were clearly not addressed by Mr. Melandri who at that time was (by his own admission) no longer talking to the Applicant. This state of affairs appears to have been fuelled by Ms. Hyde's directive that Mr. Melandri seek out, report and document every mis-step of the Applicant.

128. The same was the case with regard to the emails in Annex 4 concerning the Applicant's private communication with an NGO. While the Respondent claims that the Applicant wrongfully made private enquiries regarding a UNICEF project, the issue was never addressed with her by her supervisors. The first time it was mentioned to her was in the meeting between the Applicant and the CR, only one week to her separation, to discuss the non-extension of her TA.

129. The Respondent argued that there were performance issues with the Applicant's work and that Mr. Melandri properly made observations to that effect in her performance appraisal which did not amount to personal animus but merely a manager managing his supervisee.

130. The Tribunal disagrees with that submission. The Tribunal rather finds that while Mr. Melandri was quick to appraise the Applicant's performance and to rate her as 'developing proficiency' in the two competencies of 'Communication' and 'Working with People', he had not supervised her work for at least three of the five months she worked under him and had therefore failed in his duty to the Applicant.

131. Managerial competencies in this Organization are recognized to include building trust and managing performance. In building trust, a manager is expected

to provide an environment in which his or her supervisee can talk and act without fear of repercussion. The manager must also operate with transparency and without a hidden agenda.

132. Also in managing performance, the manager needs to regularly discuss performance and provide feedback and coaching to his or her supervisee. He must also monitor the progress of his supervisee effectively using milestones and deadlines.

133. A manager in the United Nations Organization is not supposed to set his or her supervisee up for failure as was done in this case. Rather, the manager has a duty to help the supervisee by affording him or her opportunity to improve in any area that his or her performance is found unsatisfactory.

134. In the case of *Das*<sup>8</sup>, UNAT held that Managers are required to record unsatisfactory performance and bring it to the attention of the staff member in a timely manner in order to offer the staff member an opportunity to improve his or her performance.

135. The manager's duty to bring unsatisfactory performance to the attention of a supervisee in a timely manner in order to help him or her improve applies in a TA as much as it applies in a fixed-term contract.

136. Unfortunately, the strategy adopted by both Ms. Hyde and Mr. Melandri in relation to the Applicant in this case was to ignore and side-step her complaints and to document her shortcomings with a view to ensuring that her TA was not extended. In employing the said strategy for their own personal agenda of ensuring the Applicant's exit after her six-month TA, they threw overboard the standards and good practices for which this Organization is known.

137. In view of the foregoing, the Tribunal finds that the non-renewal of the Applicant's TA was tainted by evident and undeniable personal animus on the parts of her FRO and SRO which cannot be ignored.

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<sup>8</sup> 2014-UNAT-421.



## **Summary of findings**

138. The Tribunal finds:

a. There were serious and material contradictions in the reasons given at different times for the non-extension of the Applicant's TA by UNICEF JCO.

b. The reasons proffered by the Respondent for the non-renewal of the Applicant's TA contract continued to change and are riddled with material inconsistencies, contradictions, somersaults and afterthoughts.

c. The fact that another P-3 IM Specialist was employed soon after the refusal to extend the Applicant's contract shows that funds were available and that a continued need for IM services by an international professional existed.

d. While the Applicant's FRO was quick in his performance appraisal of the Applicant to rate her as 'Developing Proficiency' in the two competencies of 'Communication' and 'Working with People', he had mostly not even supervised her work and failed in his duty as manager.

e. The strategy adopted by her FRO and SRO in relation to the Applicant in this case was to ignore and side-step her complaints and to document her shortcomings with a view to ensuring that her TA was not extended. In employing the said strategy for their own personal agenda, they threw overboard the standards and good practices for which this Organization is known.

f. The non-renewal of the Applicant's TA was tainted by personal animus against her on the part of her supervisors.

## **Judgment**

139. In view of its findings above, the Tribunal awards the Applicant three months' net base salary as compensation.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 1<sup>st</sup> day of September 2016

Entered in the Register on this 1<sup>st</sup> day of September 2016

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi