



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

RIXEN

v.

SECRETARY-GENERAL  
OF THE WORLD METEOROLOGICAL  
ORGANIZATION

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**JUDGMENT**

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**Counsel for Applicant:**

Christopher Bollen

**Counsel for Respondent:**

Daniel Trup, WMO

## **Introduction**

1. The Applicant joined the World Meteorological Organization (“WMO”) Secretariat in August 2011 to work for the World Climate Research Program (“WCRP”), as a P-5 Senior Scientific Officer under a two-year fixed-term appointment (“FTA”). The Applicant’s FTA was renewed several times and the latest expired on 31 August 2021.

## **Facts**

2. On 3 June 2020, the Head of Human Resources, WMO, informed the Applicant that, in the framework of the WMO restructuring exercise, his post was going to be abolished effective 30 September 2020.

3. On 3 September 2020, the Secretary-General approved a postponement of the Applicant’s separation until 31 December 2020. On 24 November 2020, another postponement was agreed upon until 31 March 2021, and, lastly, on 4 February 2021, the separation was deferred until 31 May 2021.

4. On 22 March 2021, the Head, WCRP Secretariat, announced via email that a new P-3 staff member would be entering into duty on 23 May 2021, and that the Applicant would end his service on 31 May 2021.

5. On 24 March 2021, the Applicant informed WMO that he was not interested in any further postponement of his separation. Accordingly, he pointed out that he expected his separation date to be effective and associated formalities to be calculated on 31 May 2021, as previously agreed.

6. On 25 March 2021, the Head of Human Resources, WMO, informed the Applicant that the decision to terminate his contract had been rescinded and that his FTA would run until its original expiration date, i.e., 31 August 2021. This is the “contested decision”.

7. On 14 April 2021, the Applicant requested administrative review of the contested decision.

8. On 29 July 2021, the Applicant filed the current application contesting the decision to not terminate his appointment at the agreed date but rather to extend it until the end of his FTA, resulting in him not qualifying for termination indemnity.

9. On 11 August 2021, the Respondent filed his reply.

10. On 19 August 2021, the Applicant filed a motion requesting leave to file comments on the Respondent's reply and to produce further evidence.

11. By Order No. 91 (GVA/2022) of 18 October 2022, the Tribunal invited the parties to a Case Management Discussion ("CMD") on 2 November 2022. In the same Order, the Tribunal granted the Applicant's motion for leave to file comments on the reply and instructed the Respondent to provide the unredacted version of annex J to his reply on an *ex parte* basis so it could rule on whether it should be disclosed to the Applicant or not.

12. On 19 October 2022, the Respondent filed *ex parte* the unredacted version of annex J and his comments in this respect.

13. By Order No. 94 (GVA/2022) of 21 October 2022, the Tribunal lifted the *ex parte* status of the Respondent's annex J and shared it with the Applicant.

14. On 2 November 2022, the parties attended a CMD.

15. By Order No. 102 (GVA/2022) of 3 November 2022, the Tribunal instructed the parties to file their closing submissions by 18 November 2022. In addition, the Applicant was authorized to include in his closing submission his comments on the Respondent's reply.

16. On 18 November 2022, the parties filed their respective closing submissions.

17. By Order No. 111 (GVA/2022) of 23 November 2022, the Tribunal ordered the parties to file additional information, and the Respondent to comment on the new evidence submitted by the Applicant with his closing submission.

18. On 24 November 2022, the Applicant filed a motion for leave to file observations on new annexes submitted by the Respondent with his closing submission.

19. By Order No. 114 (GVA/2022) of 25 November 2022, the Tribunal granted the Applicant's 24 November 2022 motion.

20. On 30 November 2022, the parties filed their comments in response to Orders No.111 (GVA/2022) and 114 (GVA/2022).

### **Consideration**

21. The Tribunal is seized of an application in which the Applicant contests the decision to rescind a decision to abolish his post and terminate his appointment.

22. The Applicant claims, *inter alia*, that the Organization abused its managerial discretion and breached its duty of care by rescinding the decision to terminate his appointment and, instead, demanding that he fulfils his FTA until expiry, which allegedly caused financial loss, as well as professional and medical harm.

23. In contrast, the Respondent challenges the receivability *ratione materiae* of the application and, in its merits, argues that the contested decision is lawful. According to the Respondent, if the needs of the Organization require an extension of the deadline by which a post is abolished, as it was the case in the present matter due to delays in the selection process of new staff members, thereby extending a staff member's appointment, it has a right and the authority to do so. The Applicant, however, does not have a right to demand termination simply because of financial reasons.

24. In this context, the Tribunal has identified the following legal issues to be determined: whether the application is receivable *ratione materiae*, whether the contested decision is lawful and, if not, whether the Applicant is entitled to any remedies.

*Receivability*

25. The Respondent challenges the receivability of the instant application arguing that the short-term extensions granted to the Applicant together with the decision to allow him to fulfil his FTA until expiry had no adverse impact on his terms of appointment or contract of employment.

26. Indeed, it results from the case file that the original decision dated 3 June 2020 to abolish the Applicant's post and terminate his appointment on 30 September 2020 was subsequently postponed until 31 December 2020, then again until 31 March 2021 and, finally, until 31 May 2021. However, on 25 March 2021, the Head of Human Resources, WMO, informed the Applicant that the decision to terminate his contract had been rescinded and that he was expected to serve out the duration of his contract until 31 August 2021, as per the extract below:

Subject/Object: Rescission of decision to terminate your contract

I write with reference to the initial notification of termination which was communicated to you on 3 June 2020. I further refer to subsequent communications during the latter part of 2020 and early 2021 in which the implementation of that decision was delayed several times due to the exigencies of the office and the requirements of the ongoing work in WCRP.

I now inform you that, after a careful consideration of the operational needs in WCRP in the coming months, the decision to terminate your contract has been rescinded.

Based on our discussion of 23 March 2021, I am aware that this is not your expressed preference at this point. However, I trust that you understand that the needs of the organisation require that you remain in post to serve out the duration of your contract.

27. The Tribunal is mindful of the fact that staff members can only contest administrative decisions that have a direct and adverse impact on their terms of appointment or employment contract, as per art. 2.1 of the UNDT Statute, whose definition is consensual in international administrative law. In this connection it is worth recalling UNAT Judgment *Lloret Alcañiz et al.* 2018-UNAT-840, para. 61:

An administrative decision is a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences.

28. However, the arguments put forward by the Respondent are misleading and do not take into consideration the totality of the facts, and the situation in which the Applicant found himself.

29. An employment relationship between a staff member and an international organization is a bilateral agreement contemplating a set of rights and obligations imposed on both sides.

30. On the one hand, staff members have a duty to cooperate with the Organization and to contribute with their expertise and workforce to the development of the Organization's mandate. On the other hand, the Organization has not only the duty to comply with its financial obligations towards its staff, but also has an overall duty of care and due diligence vis-à-vis its employees.

31. In the case at hand, the Organization took the initiative to abolish the Applicant's post and to terminate his appointment. It is well-settled case law that international organizations have the right to conduct restructuring exercises that may lead to abolishment of posts. Said decision is not, therefore, unlawful.

32. Notwithstanding, after the decision to abolish the Applicant's post and terminate his appointment, the Organization decided, on its own volition and self-interest, to postpone the Applicant's separation several times allegedly because of operational needs.

33. Up until the last postponement *i.e.* 31 May 2021, the Applicant had agreed with the Organization's requests and was hopeful to find a more permanent solution for his contract.

34. However, following an announcement made on 22 March 2021 by the Head, WCRP Secretariat, that a new staff member would be entering into duty on 23 May 2021, and that the Applicant would end his service on 31 May 2021, on 24 March 2021 the Applicant informed the Administration via email that he would not accept further contract extensions, stating the following:

As I indicated to [the Head, WCRP] two weeks ago, I would most likely not accept a further delayed separation and have so far never asked for one beyond 31 May. I hope one would understand that I cannot plan efficiently the WCRP work, nor my career, nor my personal life on those short-term extensions, and this is why I am currently planning on a different career path after 31 May.

In addition, as you might have seen, [the Head, WCRP] already informed the entire WCRP community that I would be leaving WCRP on 31 May, following which I am already making arrangements elsewhere beyond that date.

Following some external consultation, I understand that any delayed separation needs to be mutually agreed upon and cannot be decided unilaterally. I should note that I was consulted on the previous delayed separations but not this potential one.

I would hereby appreciate being consulted and involved, to the extent possible, in any further discussions regarding my contract to avoid any misunderstanding.

The discussion around a new separation date is adding yet another significant stress on what I had to endure over the last 15 months, and it continues to impact my health and wellbeing.

For these reasons, I am not interested in any further delayed separation and hence expect my separation date and associated formalities to remain the 31 May as currently mutually agreed on.

However, should WMO have the opportunity to offer me a concrete long-term perspective within the Organisation, then yes, I would be happy to discuss this, but this would have to happen very soon.

35. The next day, on 25 March 2021, however, the Organization decided to rescind the previously agreed and announced decision to terminate the Applicant's contract, and, instead, decided that the Applicant would need to serve out the duration of his FTA until its expiration on 31 August 2021.

36. Said decision of 25 March 2021 is in clear contradiction with the Respondent's previous decisions and announcements, with the Applicant's interests and with the conditions that had already been mutually agreed on by both parties.

37. The Respondent's decision to rescind the decision to terminate the Applicant's contract on 31 May 2021 constitutes an abusive exercise of managerial discretion that affected the Applicant's terms of appointment, and which can be contested before this Tribunal.

38. The Respondent took undue advantage of the Applicant's cooperative attitude and good faith. Then, changed its mind without any further justification and decided, unilaterally, without consulting the Applicant whose professional life had been put in a "limbo" since September 2020, that, instead of having his appointment terminated as previously notified, and receiving the subsequent termination indemnity as expected, he would in fact need to serve out his contract until expiration thus receiving no termination indemnity.

39. In this context, the Tribunal considers that the contested decision did in fact impact the Applicant's terms of appointment or contract of employment. It had a negative impact on the Applicant's legal situation vis-à-vis his employer and on his ability to properly plan his professional life. It also altered the condition in which the Applicant was leaving the Organization from termination of contract due to abolishment of post to non-renewal.

40. Therefore, it is clear that the contested decision had an adverse impact in the Applicant's terms of appointment and that, therefore, the application is receivable *ratione materiae*.

*Whether the contested decision is lawful*

41. The Tribunal will now turn into the second legal issue at stake, i.e., whether the contested decision is lawful.

42. It is well-settled case law that administrative decisions are presumed to be legal, regular and rational unless otherwise demonstrated (*Rolland* 2011-UNAT-122, para. 26).



43. The burden of proof lays on the person contesting the decision and, in this case, it's the Applicant who needs to demonstrate that this decision was either abusive, arbitrary, discriminatory or irregular.

44. By looking carefully at the chronology of facts, it is noticeable that at least until the memo dated 4 February 2021 and the announcement made on 22 March 2021, there was an obvious intent to keep the Applicant working in the benefit and in the best interest of the Organization only until 31 May 2021.

45. Said intent is especially clear from the aforementioned announcement made by the Head, WCRD, WMO, which stated (emphasis added):

Just to let you know and to “welcome” [new staff member 1] (who many of you will know from [the project]) and [new staff member 2] (who you will all know!) to the WCRP Secretariat. **[New staff member 1] will officially start on May 23rd, allowing a week handover with [the Applicant].** [new staff member 2] works as a consultant with WCRP and will officially move as a full staff member on the 1st of August.

I would also like to take this opportunity to thank [the Applicant] for his continued work and dedication to WCRP. **[The Applicant] will remain with the secretariat until the end of May.**

46. Between the time of the above announcement on 22 March 2021 and the contested decision on 25 March 2021, there is no evidence on file supporting a new development or reasonable justification to change course and keep the Applicant in the Organization after 31 May 2021.

47. In fact, when asked by this Tribunal to explain the rationale for rescinding the decision, the Respondent explained that the Organisation planned to onboard 3 new P-3 Scientific Officers to manage the workload created by the restructuring exercise, and the departure of experienced staff members. The first Scientific Officer entered into duty on 17 May 2021, but the other two were expected only on 1 June 2021 and 14 July 2021, respectively.

48. The Respondent argues that the Organization suffered from significant staffing shortfalls and that the Applicant's retention was necessary to allow it time to manage the selection process for the new staff. While that may be true regarding the first three postponements, such allegation does not hold up against the Organization's own position of announcing to its whole community on 22 March 2021 that a new staff member would be entering into duty, that the Applicant would have a handover week with said staff member, and he would remain with the Secretariat only until the end of May. All of which while already aware that the other two new Scientific Officers would only take their respective position after the Applicant had left.

49. Indeed, nothing "new" happened in the three-days short lapse between 22 March 2021 and 25 March 2021 that could possibly justify such change of direction and narrative.

50. Contrary to the Respondent's arguments, the fact that the other two new staff members were not going to be onboarded by 31 May 2021 does not justify in itself that the Applicant was needed beyond such date. The decision to abolish the Applicant's post and terminate his contract was never conditional upon the hiring of three new staff members. The Organization was well aware of its own selection process when making the 22 March 2021 announcement and, in addition, said announcement explicitly mentioned that the new staff member would have a "week handover" with the Applicant, and that the Applicant would leave by the end of that month.

51. By acting as described, the Respondent abused its position as an employer, especially for not providing sound reasons to depart from its original decision to rescind the Applicant's appointment. The contested decision only mentions "operational needs in WCRP in the coming months" without any information on what those operational needs might be, while the Respondent's explanation upon request from this Tribunal is limited to the fact that not all new staff members were entering into duty by the time the Applicant was supposed to have left.

52. Having examined the evidence on record, the Tribunal finds that there is no evidence confirming the alleged operational needs in WCRP that could justify the contested decision keeping the Applicant beyond 31 May 2021.

53. Furthermore, the Tribunal recalls that one of the general principles of international administrative law is the protection of legitimate expectations, sometimes framed as the duty of international organizations to abide by the promises they make to their civil servants.

54. This legal principle has been reiterated by the jurisprudence of the Administrative Tribunal of the International Labour Organization (“ILOAT”) and is closely linked to good faith and duty of care (ILOAT, Judgment No. 3204, para. 9):

[It] is settled by the Tribunal’s case law that, according to the rules of good faith, anyone who was a staff member of an organisation and to whom a promise was made, may expect that promise to be kept by the organisation. However, the right to fulfilment of the promise is conditional. One condition is that the promise should be substantive. Another is that the promise is from someone who is competent or deemed competent to make it. Yet another is that the breach should cause injury to the person who relies on the promise.

55. On the subject of legitimate expectations in the context of non-renewals, the United Nations Appeals Tribunal has stated that a legitimate expectation [of renewal] can be created by an express promise made by the Organization (*Hepworth* 2015-UNAT-503, para. 42, *Ahmed* 2011-UNAT-153, para. 47). The jurisprudence places the burden on the staff member to show a legitimate expectancy of renewal or that the non-renewal of his fixed-term appointment was arbitrary or motivated by bias, prejudice or improper motive against the staff member (*Nouinou* 2020-UNAT-981, para. 65, citing *Hepworth*, para. 44, *Obdeijn* 2012-UNAT-201, para. 5).

56. Applying the jurisprudence of legitimate expectations to the instant scenario, the Tribunal identifies one key requirement that justifiably creates a legitimate expectation on the staff member vis-à-vis the Organisation: an express promise.

57. In this context, the Tribunal finds that the following documents, all combined, did in fact constitute an express promise of termination of appointment to the Applicant. Said promise then created a legitimate expectation on him that, indeed, his appointment would be terminated, and he would be separated on 31 May 2021:

- a. Inter-office memorandum dated 3 June 2020, which informed the Applicant of the abolition of his post and incoming termination of appointment;
- b. Inter-office memorandum dated and 25 August 2020, which included the end of service arrangements for the Applicant related to termination of appointment;
- c. Inter-office memorandum dated 4 February 2021, in which it is stated that the Applicant's effective date of separation be postponed until 31 May 2021; and
- d. The announcement made of 22 March 2021 made by the Head, WCRD, WMO, about the incoming new staff member, the handover week and the Applicant's departure at the end of the month.

58. In fact, the Tribunal can reasonably infer from the overall set of documents and circumstances that, indeed, a legitimate expectation of termination of contract was created, that the Organization breached its duty of care vis-à-vis the Applicant by disregarding his interests despite all his cooperation and good faith, and that the Organization abused its managerial discretion by rescinding the contested decision without a valid motive.

59. Consequently, the contested decision is unlawful and shall be rescinded.

*Remedies*

60. In his application, the Applicant requests the Tribunal to determine the effective date of his separation as 31 May 2021, and to order payment of compensation for financial harm, including all termination indemnities and separation entitlements, compensation for medical and professional harm, and the payment of legal fees.

61. The Tribunal reminds that it is bound by its Statute in relation to the remedies that can be granted subsequently to the rescission of an unlawful administrative decision.

62. Art. 10.5 of the UNDT's Statute reads, in its relevant part, as follows:

As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall normally not exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases order the payment of a higher compensation for harm, supported by evidence, and shall provide the reasons for that decision.

63. The Tribunal has found that the contested decision was unlawful and shall be rescinded. Said rescission implies re-establishing the abolition of the Applicant's post and his separation date following termination of appointment to 31 May 2021.

64. As a result, the Applicant is entitled to all the corresponding termination indemnities and separation entitlements, including accrued annual leave.

65. According to art. 10.5(a) of the Tribunal's Statute, in cases of rescission of a contested administrative decision that concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the Respondent may elect to pay as an alternative to the rescission of the contested decision.

66. It is settled jurisprudence that the very purpose of the *in lieu* compensation is to place the staff member in the same position in which he or she would have been, had the Organization complied with its contractual obligations. In establishing the amount of in lieu compensation, the Tribunal exercises discretion. However, it shall ordinarily give some justification and set an amount that it considers to be an appropriate substitution for rescission or specific performance in a given and concrete situation (*Ashour* 2019-UNAT-899, para. 18, *Yasmina Laasri* 2021-UAT-1122, para. 63).

67. In the case at hand, when the Applicant was expected to separate from service on 30 September 2020, the Administration informed him via Inter-Office Memorandum dated 25 August 2020 that he was entitled to termination indemnity equivalent to 9 months of net-salary. Since this memo, the Applicant accumulated another year of service.

68. In this context, the Tribunal considers appropriate to set compensation *in lieu* in the amount of ten months net-salary.

69. Regarding moral damages related to medical harm, the Tribunal is satisfied that the medical certificate dated 11 August 2021 is valid and sufficient evidence of the work-related suffering and anxiety caused by the contested decision. Namely, the Applicant's psychiatrist stated the following (unofficial translation):

1) Probable duration of work incapacity (start and end date)

Work incapacity covering the period from 25.03.2021 to 03.08.2021

2) Reason for psychiatric consultation

Overwork, burn out, physical and mental fatigue, insomnia, nightmares following excessive workload, and non-renewal of contract.

70. From the aforementioned medical certificate, plus the fact that the Applicant was placed on Certified Sick Leave from 26 March 2023 until 3 August 2021, it is noticeable that the work-related medical harm suffered by the Applicant started after he received the contested decision, which rescinded the termination of his appointment.

71. Accordingly, based on the medical certificate and the overall context in which the Applicant was placed, namely that of great uncertainty and stress caused by the Organization, the Tribunal finds that there is enough evidence that the Applicant's medical issues were a direct result of the contested decision.

72. Therefore, the Tribunal finds it adequate and proportionate to grant the Applicant compensation for moral damages in the amount of USD5000.

73. In relation to the remaining remedies requested, the Tribunal cannot grant the payment of legal fees as this is not allowed under its legal framework. Likewise, the request for compensation for professional harm cannot be granted for lack of evidence of said harm.

### **Conclusion**

74. In view of the foregoing, the Tribunal DECIDES:

- a. The contested decision is rescinded, and the Applicant's separation date following termination of appointment shall be re-set to 31 May 2021;
- b. The Respondent shall pay all the corresponding termination indemnities and separation entitlements, including accrued annual leave and any other applicable benefit, to be calculated by the Administration once this judgment becomes executable;
- c. The Respondent may elect to pay compensation *in lieu* of rescinding the decision in the amount of ten months net-salary; and

d. The Respondent shall also pay compensation for moral damages in the amount of USD5000.

75. The aforementioned compensation shall bear interest at the United States of America prime rate, with effect from the date it becomes executable until payment of said compensation. An additional five per cent shall be applied to the United States America prime rate 60 days from the date this judgement becomes executable.

76. All other claims are rejected.

*(Signed)*

Judge Teresa Bravo

Dated this 22<sup>nd</sup> day of December 2022

Entered in the Register on this 22<sup>nd</sup> day of December 2022

*(Signed)*

René M. Vargas M., Registrar, Geneva