



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2024/018
Judgment No.:	UNDT/2025/017
Date:	16 April 2025
Original:	English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

NK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Anna Mildemberger, UNHCR
Jan Schrankel, UNHCR

Introduction

1. On 15 April 2024, the Applicant, a staff member at the Office of the United Nations High Commissioner for Refugees (“UNHCR”) filed an application contesting several administrative decisions. The Applicant contests:

- a. unjustified delays in processing his medical accommodation request;
- b. the issuance of a “premature” performance rating of “Partially Meets Expectations” for the year 2022 prior to the initiation of an official Performance Improvement Plan (“PIP”);
- c. the maintenance of the “Partially Meets Expectations” rating by the rebuttal panel;
- d. contract renewal limitations;
- e. the letter of intent and subsequent decision to discontinue his position;
- f. the provision of partial justifications concerning the non-renewal of his employment contract;
- g. the deliberate alignment of his contract’s expiry date with the effective date of his position’s discontinuation, indicating discriminatory and retaliatory practices; and
- h. the determination of “No Prima Facie Case of Retaliation” by the UNHCR Ethics Office, without initiating a formal investigation.

2. In his 4 September 2024 rejoinder to the Respondent’s reply, the Applicant submits that the final administrative decisions in his case are the discontinuation of his position of Senior Resettlement Assistant and the non-renewal of his employment contract. He requests the Tribunal to review the preparatory steps leading to these final administrative decisions in the context of assessing the legality of the final decision.

3. The Tribunal heard the case on 7 March 2025. Affidavits and oral evidence were adduced from four witnesses, including the Applicant.

4. The parties filed closing submissions on 17 March 2025.

Facts

5. Although it will be lengthy, a detailed account of the factual history is essential for an understanding of the case.

6. From 1 March 2022 to 28 February 2023, the Applicant was employed as a UNHCR Senior Resettlement Assistant in Lebanon under a fixed-term appointment (“FTA”).¹ Among his duties was to interview refugees and then to complete and submit a Resettlement Registration Form (“RRF”) with detailed information about the person’s background, the details of their refugee claim and an assessment of their resettlement needs. According to the UNHCR Resettlement Handbook, the RRF is a crucial document used by UNHCR to prepare submissions for resettlement, which in turn “are a means for providing international protection and durable solutions to refugees.”

7. According to the Applicant, in 2021 he suspected that there were “underlying reasons behind [his] shortcomings” because no matter how many hours he spent at the office “it was very hard for [him] to be able to meet the required targets when on full interviewing tasks.” Given some similar family history, he sought medical help and, in August 2021, was told that he needed to be assessed by a neuropsychologist to confirm a diagnosis. Apparently, the Applicant did not pursue the assessment for over a year.

8. In an email dated 2 September 2022, concerns about the status of the Applicant’s cases were raised with him. Specifically, a supervisor noted that

[Six] cases were scheduled for your RRF interview/drafting[/]recommendation back in December 2021 [and] appear to still be pending drafting with you. Can you please confirm

¹ This was the Applicant’s first appointment. Prior to that he had worked at UNHCR for several years in various positions as a contractor through the United Nations Office for Project Services (“UNOPS”).

where you are at on each case and if you require some support in order to finalize these cases? These families should not be left waiting longer.

9. On Tuesday, 20 September 2022, the Applicant responded with “apologies for the late reply” and said he would be prioritizing those cases. He said, “since I no longer have a backlog at the ID level [t]hese cases should be done by my next drafting day on Monday”.

10. By the next Tuesday, 27 September 2022, the supervisor followed up requesting a status update. This time, the Applicant responded promptly noting that he still was “dealing with these cases as a top priority, but it is a bit time-consuming ... a second case will follow today, and I will be working on the remaining two this week.” He added that the following week, “if needed (Hopefully not), we can discuss should I require some support.”

11. In early October 2022, the Applicant met with his supervisors to discuss an “agreed support plan” for the Applicant since he was finding it hard to meet his required targets on interviewing tasks. According to him, the support plan “was not presented as a formal performance improvement plan at the time during the meeting.”

12. In the meeting the Applicant told his supervisors of his concern about a possible medical condition and said that he had just booked an appointment with a neuropsychologist for confirmation. In response, the supervisors said he should pursue the evaluation. However, in the meantime, they were going to implement the agreed support plan.

13. The plan was memorialized in an email dated 5 October 2022, and incorporated a dozen strategies and targets for the Applicant to implement “to improve [his] performance and follow up on tasks, as required.” The plan included expectations that the Applicant would conduct two resettlement interviews on each of four days a week, leaving a fifth day as a drafting day to finalize the write-up of the interviews. It also required the Applicant to inform his supervisor immediately of any issues or backlog, to update and share the case tracker on a weekly basis, and

to promptly provide feedback on the output of the additional drafting days that the Applicant was allocated. It also provided for weekly meetings with the supervisor to “touch base on the progress.” The Applicant also was given two additional drafting days to catch up on his work.

14. On 18 October 2022, his supervisor wrote another follow-up email to the Applicant saying

I would like you to indicate next to every case what exactly you followed up on. I am also a bit confused as to why these cases are still with you given that you told us that you finalized all your ID cases during the extra drafting week you had a while back.

The Applicant responded that he was “aware ... that the tracking sheet should include all the cases but it took some time to follow[] up on cases.” He also said that he was in the process of preparing “an organized clear tracking sheet for ease of reference reflecting everything.”

15. On 25 October 2022, another supervisor wrote inquiring about the six older cases previously identified. “Please provide us an update, these should be submitted for review ASAP.” The Applicant responded on 1 November 2022 that three of the six cases were still pending, one of which “is almost done and will be submitted ... by tomorrow.” On 18 November 2022, the supervisor wrote to the Applicant saying that “we are still waiting on [one] case”, and the Applicant promptly confirmed this was correct.

16. Meanwhile, in a report dated 18 November 2022, the neuropsychologist determined that the Applicant’s “neurobehavioral and neurocognitive profile is therefore compatible with a DSM 5 Attention Deficit with Hyperactivity Disorder (ADHD).” The Applicant shared this report with his supervisors and the Medical Services Unit on 23 November 2022.

17. The next day, the Medical Services Unit told the Applicant that his case would be discussed amongst the doctors to determine what accommodations could be recommended for his workplace. The Applicant then requested a meeting with the Medical Services Unit.

18. On 25 November 2022, his supervisor again wrote to the Applicant that

Even though this has been discussed and I've reminded you again this week and last week about the importance of receiving your tracking sheets with all cases you've interviewed regardless of their status, I have not received yours yet. This is the last reminder to duly share your tracking sheet by the end of each drafting day.

She went on to say that she would be on leave for two weeks and another supervisor would be expecting his tracking sheets during that time. However, she would be back on 8 December 2022 "so I will be expecting the sheet during that week."

19. On 13 December 2022, the supervisor again wrote to the Applicant: "I will very much appreciate if you can send me your complete tracking sheet today COB [close of business] ... I also take this opportunity to remind you to systematically share the weekly stats on Friday ...".

20. The Applicant met with Medical Services on 5 December 2022, and as a result, Medical Services requested additional information about the Applicant's diagnosis and treatment. The Applicant asked his treating doctor for the information 10 days later.

21. On 10 January 2023, the Applicant was given a three-month extension of his contract until the end of May 2023 and put on a formal PIP as a follow up to the support plan. The PIP observed that the Applicant

has demonstrated performance related issues inherent to his function of case worker (interviewer) in terms of quantity of interviews conducted and submitted for review, which resulted in the creation of extensive backlogs and inefficiency on timely follow up and finalizing the cases interviewed. The time management (prioritizing tasks, efficiently and timely follow ups on cases, allocation of necessary time for various tasks) being one of the biggest obstacles.

The PIP went on to identify five steps needed to achieve performance expectations, listed specific actions to be undertaken by the Applicant and mandated weekly progress meetings.

22. In his comments to the PIP, the Applicant expressly thanked "management for taking the time to prepare this PIP and considering the recommendation of

medical services when setting the targets.” He noted that “the number of interviews per week was reduced to five”, but he stated his desire “to have the same workload as everyone else.” According to his comment, the Applicant and his supervisor had discussed an arrangement to “help [him] be more productive” and that he was “thrilled with the arrangement and cannot thank [her] enough for [her] support.”

23. The Applicant also wrote that he had hoped that a “PIP would not be initiated, given that the previous shortcomings were mainly related to time management which was justified by medical services and acknowledged by management through the accommodations in this PIP.” He concluded his comments by saying “I want to thank my supervisor ... and management for their support, and I promise I will work hard to meet their expectations.”

24. On 16 January 2023, the Applicant signed a consent form authorising release of his medical information to the Diversity, Equity, and Inclusion Section (“DEI”) of the Division of Human Resources. On 23 January 2023, the Applicant’s doctor provided additional information about his diagnosis which was shared with Medical Services. Medical Services, in turn, consulted with DEI and, on 13 February 2023, provided recommendations on workplace accommodations for the Applicant.

25. On 28 February 2023, in follow up to the Medical Services’ recommendations, the Applicant’s supervisor discussed with him options to give him a quiet place to work, while not isolating him from the rest of the team. On 3 March 2023, the supervisor approved the Medical Services’ recommendations and the PIP target parameters were modified accordingly.

26. On 31 March 2023, the Applicant’s annual performance appraisal (“Evolve”) for 2022 resulted in an overall rating of “Partially Achieved”. One supervisor observed that the Applicant “was provided extra support to minimize his workload and backlog” but despite this support, he had failed to pre-screen several urgent referrals and “had to be regularly reminded to send his daily report.” He was also unable to finalize his cases in a timely manner and needed constant reminders to provide his weekly tracking sheet “which was important to keep track of the cases

that he interviewed and to provide him with any needed support to reduce his backlog.”

27. His supervisor for the second half of 2022 also expressed similar concerns. “[The Applicant] exhibited difficulties to deliver cases for review in a timely manner which led to accumulation of a backlog”, he had “difficulty in providing an accurate and comprehensive tracking sheet of his ID cases ... V4 entries were not accurately and systematically updated”, and his “attendance was looked into given that attendance reports showed long hours of stay in the office meanwhile it was observed that he sometimes started his interviews later than the scheduled time”. She also observed that, despite the support plan, he “continued to struggle to meet the set targets and deadlines.”

28. A third supervisor also shared these same concerns in the Evolve appraisal report.

29. On 13 April 2023, the Applicant sought an extension of the deadline to file a rebuttal of his 2022 Evolve rating. Although an extension was granted until 30 April 2023, he did not file the rebuttal request until 1 May 2023. (The rebuttal process later concluded that the “Partially Achieved” rating was appropriate).

30. On the recommendation of his supervisor, the Applicant’s FTA was extended until 31 August 2023 (along with the workplace accommodations) to allow him additional time to improve and to enable an accurate and fair assessment of his performance as set out in the January 2023 PIP.

31. Meanwhile, a realignment exercise was begun by UNHCR in light of decreased humanitarian funding. At the Applicant’s duty station, this involved an annual staffing review. As a result of the funding shortfall and the staffing review, 101 positions were discontinued in Lebanon, affecting 85 national staff. This included the Applicant’s position.

32. The Applicant submitted a new medical report dated 29 May 2023, indicating he had benefitted from the prior workplace accommodation. Accordingly, on

27 June 2023, Medical Services recommended extending the accommodations until the end of his FTA.

33. The Applicant's PIP was closed on 31 July 2023 with a notation that he had achieved the required improvement.

34. During a meeting on 4 August 2023, the Applicant was informed that his appointment would only be extended for three months.

35. On 10 August 2023, the Applicant filed a rebuttal to his Evolve "Partially Achieved" evaluation for 2022. This resulted in a further extension of his FTA until 31 December 2023, to allow the rebuttal process to play out.

36. By letter dated 22 August 2023, which the Applicant received on 23 August 2023, the UNHCR Representative in Lebanon notified the Applicant that his position had been identified for discontinuation effective 1 January 2024 and that his employment contract would not be renewed upon its expiration on 31 December 2023. This notice further indicated that the decision was made "[f]ollowing a thorough review of operational needs, structure and resources".

37. On 9 September 2023, the High Commissioner emailed all UNHCR personnel to provide additional information on the realignment exercise. The email noted "a backdrop of a global economic decline, shrinking donor budgets, and growing needs of the displaced. This reality means that there will be a reduction of posts as we prioritise delivery of assistance to refugees, asylum seekers, IDPs and stateless people."

38. On 11 September 2023, the Applicant's rebuttal of his 2022 Evolve was concluded and the final rating of "Partially Achieved" was upheld.

39. On 29 September 2023, the UNHCR Representative in Lebanon wrote to the Applicant confirming the decision to discontinue his position effective 1 January 2024, and thus not to renew his appointment beyond its contract expiration date.

40. On 2 October 2023, the Applicant requested management evaluation of the 4 August 2023 decision to renew his contract “for a mere three months”.

41. On 16 October 2023, in a meeting with Medical Services, the Applicant was told that his “current accommodation as drafted” was found to be “not reasonable” by the DEI Unit. The Applicant submitted that the meeting took place after his “persistent follow-ups and a period of unresponsiveness”.

42. On 22 October 2023, the Applicant requested management evaluation of “[t]he letter of decision to end [his] contract”, referring to the 22 August 2023 letter advising him that UNHCR intended to discontinue his position and thus not renew his appointment.

43. The following day, in an email to the Applicant, the UNHCR Representative reaffirmed, in light of the unsuccessful rebuttal, the earlier discontinuation/non-renewal decision.

44. On 3 November 2023, the High Commissioner sent all UNHCR personnel another email updating them on the status of the realignment exercise and advising that “[a]s of today, 1,665 positions are to be discontinued next year”.

45. On 8 November 2023, the Applicant filed a third management evaluation request in which he contested “the extensive unjustified delays in processing [his] request for accommodation which had an impact on [his] performance appraisal and the information that [he] recently received from the Medical Unit related to considering the medical accommodation as not reasonable.” He also contested the outcome of his rebuttal of his 2022 performance appraisal.

46. On 30 November 2023, the Applicant submitted a request for protection against retaliation (“PaR”) to the Ethics Office alleging retaliation against him by three UNHCR staff members for having engaged in protected activities.

47. On 17 December 2023, the Applicant filed a fourth management evaluation request, this time contesting “the partial justification shared by the representative

regarding the non-renewal of [his] contract and “the decision to choose [his] specific position for discontinuation”.

48. On 28 December 2023, the UNHCR Office of the Deputy High Commissioner acknowledged receipt of the Applicant’s submission of 17 December 2023 and informed him that his management evaluation requests were put on hold temporarily in light of the pending Ethics Office review of his retaliation protection request. The Applicant’s FTA was extended for another two months pending the outcome of said retaliation assessment.

49. The Applicant’s appointment was initially extended from 1 January 2024 until 29 February 2024, and then again from 1 March 2024 to 30 April 2024. According to the Respondent, these renewals were necessitated by the ongoing PaR case, alongside a pending case on discrimination, harassment, and abuse of authority.

50. On 21 March 2024, the Applicant requested the Dispute Tribunal to extend the time for filing his application challenging the discontinuance of his post. The Tribunal granted the request and ordered the Applicant to file his application by 15 April 2024.

51. On 5 April 2024, the Ethics Office issued its report concluding that the Applicant had not established a *prima facie* case of retaliation. The Applicant told the Deputy High Commissioner that he intended to appeal this determination to the chairperson of the Ethics Panel and that he had also filed a complaint of discrimination with the Inspector General’s Office (“IGO”) of UNHCR.

52. On 15 April 2024, the Applicant filed an (incomplete) application with the Tribunal, along with a motion for interim measures to suspend implementation of the decision pending finalization of the retaliation and discrimination claims. On the same day, he requested the Deputy High Commissioner’s Office to suspend implementation of the decision to end his contract pending the final outcomes of both the retaliation review and the discrimination review.

53. On 25 April 2024, the Applicant received the management evaluation response to his numerous requests, which upheld the contested decisions.

54. On 30 April 2024, the Tribunal denied the Applicant's motion for interim measures in Order No. 49 (NBI/2024).

55. On 14 May 2024, the Applicant completed his application.

Parties' submissions

56. The Applicant's principal contentions are summarized below.

a. The decisions to issue a "Partially Achieved" rating and the subsequent non-renewal of his appointment were premeditated, in bad faith, and an abuse of discretion by the Respondent.

b. The administrative decisions being challenged are not limited to the unlawful non-renewal of his appointment but also extend to the discriminatory targeting of his position for discontinuation and the deliberate alignment of the contract expiry with the effective date of the position's discontinuation.

c. He was the only staff member at his duty station whose position discontinuation was set for 1 January 2024 without being automatically moved to another position. This deliberate act effectively excluded him from any opportunity for continued employment and removed any chance of securing an alternative role, in stark contrast to how other staff members were treated.

d. The Respondent repeatedly failed to adhere to the UNHCR Policy on Performance Management and Development Framework (UNHCR/HCP/2022/05) as demonstrated by the following:

- i. Failure to properly implement a PIP;
 - ii. Retrospective justification of performance ratings; and
 - iii. Contradictions and false representations to the Rebuttal Officer.
- e. He was subjected to retaliation for requesting accommodations for his medical condition. Misleading information was provided to the Medical Services Unit, portraying him as a burden rather than engaging in genuine efforts to support him.
- f. UNHCR management failed to provide credible justification for his alleged underperformance. The Respondent's argument that his appointment was renewed purely pending the rebuttal outcome was a pretext. The Respondent initially justified the non-renewal based on budget constraints but later shifted their reasoning to the "Partially Achieved" rating. When he raised concerns with the UNHCR Representative, management retrospectively attempted to justify the decision based on prior performance ratings. However, no non-renewal order existed to substantiate the claim that the contract was only being renewed administratively.
- g. This was further exposed during the hearing where one of the witnesses called by the Respondent refused to answer multiple direct and clearly formulated questions regarding the basis for non-renewal and administrative renewals, instead providing irrelevant responses that can be considered as an attempt to mislead the Tribunal. Another witness called by the Respondent confirmed in her oral testimony that no recommendation for non-renewal had been made, further contradicting the Respondent's claims.
- h. His former supervisor, in her affidavit, stated that she never recommended non-renewal of his appointment due to "low performance" and this was corroborated by another witness called by the Respondent. This underscores that the justification provided in the Management Evaluation Response and one of the witnesses called by the Respondent's affidavit

regarding the alleged administrative renewals, lack credibility and cannot be correct.

57. The Applicant seeks the following relief.

- a. Moral and material damages in an amount that exceeds any previously granted to other applicants given the severity of harm caused and reflecting the undue psychological and professional hardship
- b. Given the “egregious nature of the procedural breaches and the retaliatory motives underlying the decision”, the Applicant requests the Tribunal to refer the responsible officials to the Secretary-General for accountability.

58. The Respondent’s principal contentions are summarized below.

- a. The application is not receivable. The matters listed by the Applicant under “Details of the contested decision” (para. 1 above) are preliminary steps or actions without direct impact on the terms of appointment or contract of employment of the Applicant. Such preliminary steps or actions are not administrative decisions subject to appeal.
- b. The only appealable final administrative decision in this case is the decision not to renew the Applicant’s FTA. However, the Applicant neither requested an extension of time to file an application contesting the decision not to renew his FTA nor was such an extension granted by the Tribunal. The Applicant is time-barred from contesting the only appealable final administrative decision in the present case.
- c. The application is without merit because the Applicant had no legitimate expectation of renewal of his FTA.
- d. The decision not to renew his FTA was lawful and resulted from the Applicant’s unsatisfactory performance in 2022 and the discontinuation of the post he encumbered.

e. The burden of proving improper motives, such as the alleged abuse of authority, discrimination, retaliation or harassment, rests with the Applicant. The Applicant has not met his burden of proving improper motives.

f. The Applicant is not entitled to any damages because the decision not to renew his FTA was lawful.

Consideration

Receivability

59. Before addressing the merits of the application, it is necessary to examine whether the application is receivable. The Respondent argues that this application is not receivable because: 1) the matters that the Applicant complains of amount to preliminary steps to the ultimate decision; and 2) the challenge to the decision not to renew the Applicant's FTA was not timely filed.

60. The law is clear that, to be reviewable, a decision must be a final decision having a direct impact on the terms and conditions of the individual's employment contract. See, for example, *Qasem Abdelilah Mohammed Qasem* 2024-UNAT-1467, para. 62, (citing *Lee* 2014-UNAT-481, para. 49). Intermediate or preliminary decisions are not final, do not themselves affect a staff member's terms of employment, and thus are not reviewable. *Philippe Schifferling* 2024-UNAT-1499, para. 77, (citing, among others, *Marius Mihail Russo-Got* 2022-UNAT-1300, para. 23).

61. The Respondent argues that the application is founded upon preliminary steps which are not reviewable. To be sure, the application is not a model of clarity. It includes numerous allegations among which are claims about delays in processing his request for medical accommodation, a "premature performance rating", and limited contract renewals. These are preliminary to the final decision that the Applicant seeks to have reviewed, that of the discontinuance and non-renewal of his FTA. However, the application also expressly illustrates that the Applicant is complaining about the 29 September 2023 decision to discontinue and not renew his appointment and attaches a copy of the letter containing that decision.

62. In his rejoinder, the Applicant confirms this.

The two clear contestable decisions are the non-renewal of my contract and the discontinuation of my specific position ... [other] elements, whether considered preparatory steps or contributing factors, all played a significant role in leading to the final decisions that directly impacted my employment ... [the] tribunal has jurisdiction to asses[s] these steps in the context of assessing the legality of the final decision.

63. Given that the Applicant is self-represented and that it is uncontested that he has been diagnosed with a mental condition which affects his time management and organizational abilities, the Tribunal finds that the application sufficiently alleges a reviewable decision. See for example, *Hammad* 2024-UNAT-1435, para. 15 (“jurisprudence is consistent on allowing some latitude if an appellant is not legally represented”) and *Najjar* 2021-UNAT-1084, para. 26.

64. To the extent that the application contains other allegations of wrongdoing by the Administration, the Tribunal will not accept them as independent reviewable administrative decisions but will consider them as evidence of alleged discriminatory or other improper considerations in the contested decision.

65. The Respondent also argues that the only reviewable decision is the one not to renew the Applicant’s appointment, and that this decision is not receivable *ratione temporis*. The Respondent points out that the Applicant’s motion for extension of time to file an application (which was granted by the Tribunal) identified the contested decision as the “[d]ecision to discontinue my position”. However, the Respondent seems to argue that the discontinuation of the Applicant’s position is distinct from the non-renewal of his position. The Tribunal rejects this argument.

66. It is clear from the record that, from the outset, the contested decision is combined as both the discontinuation of the post and non-renewal of the Applicant’s contract. The original notice of this decision was communicated to the Applicant by a Letter of Intent from the UNHCR Representative in Lebanon dated 22 August 2023. In that letter, the Representative said, “I write to inform you that the position which you encumber has been identified for **discontinuation effective**

1 January 2024 and your contract will not be renewed upon its expiration on 31 December 2023.” (Emphasis added). Clearly, the decision-maker linked the discontinuation with the non-renewal. A month later, the Representative followed up with a formal Letter of Decision dated 29 September 2023, wherein he told the Applicant that:

I hereby notify you of the decision to discontinue the position effective 01 January 2024. Your contract end date will be respected, and you will be able to continue to serve on your current position until that date. However, **due to the discontinuation of your position, we will unfortunately not be able to renew your appointment** beyond that date unless you are selected to another position in the operation. While there is no legal requirement to notify staff members of a non-renewal of their appointment, we do so to help you plan accordingly ... (emphasis added).

Again, the discontinuation and non-renewal are inextricably interrelated.

67. The Respondent’s distinction, while perhaps academically correct, would make receivability no more than a word game in which choosing amongst various words in an administrative decision determines whether a staff member can seek judicial review of that decision. Given that the General Assembly has stressed the “importance of ensuring access for all staff members to the system of administration of justice” (*see, e.g., A/RES/79/254*), this Tribunal declines to play that game and thereby refuses to adopt the Respondent’s position.

68. The Applicant filed within the extended deadline set by the Tribunal in Order No. 39 (NBI/2024) and therefore, the Respondent’s argument that the claim is not receivable *ratione temporis* is rejected.

Merits

69. Unfortunately for the Applicant, whether the contested decision is framed as a discontinuation of his position or the non-renewal of his appointment, he has a steep hill to climb to prevail in this case.

70. If framed as discontinuance, the hill is a near Sisyphean climb², because “it is well settled jurisprudence that ‘an international organisation necessarily has power to restructure some or all of its departments or units, including the abolition of posts ...’” *Gehr* 2012-UNAT-236, para. 25 (quoting ILOAT Judgment Nos. 2967, 2510 and 2856). *See also*, *Pacheco* 2013-UNAT-281, para. 22; *Lee* 2014-UNAT-481, para. 51; *Toure* 2016-UNAT-660, para. 29; and *Loeber* 2018-UNAT-844, paras. 24-25. However, “even in a restructuring exercise, like any other administrative decision, the Administration has the duty to act fairly, justly and transparently in dealing with staff members.” *Loeber*, para. 18 (citing *De Aguirre* 2016-UNAT-705 and *Matadi* 2015-UNAT-592).

71. If framed as a non-renewal, the climb is not impossible but extremely difficult as the law is clear that there is no expectation of renewal of FTAs. United Nations staff rule 4.13(c), provides that “[a] fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion”. *See also, inter alia*, *Syed* 2010-UNAT-061, para. 13; *Badawi* 2012-UNAT-261, para. 33; *Appellee* 2013-UNAT-341, para. 16; *Hepworth* 2015-UNAT-503, para. 42; *Munir* 2015-UNAT-522, para. 24; and *Nouinou* 2020-UNAT-981, paras. 65-66.

72. The Appeals Tribunal recently observed that, in a case of non-renewal,

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

Koura 2024-UNAT-1486, para. 42 (citing *Afeworki* 2019-UNAT-903, para. 20 and *Rolland* 2011-UNAT-122, para 26). This means that the Applicant must show, by

² In Greek mythology, King Sisyphus believed he was more clever than the gods. As punishment for this hubris, Sisyphus was sentenced to spend eternity rolling a boulder up a steep hill in Tartarus, the deep abyss below Hades in the underworld. Thus, “Sisyphean” has come to be used in describing a useless or pointless activity.

clear and convincing evidence, that the non-renewal decision was motivated by bias, prejudice or improper motive.

73. Additionally, a non-renewal may be unlawful if the Administration abused its discretion or made an express promise creating an expectation of renewal. *Ahmed* 2011-UNAT-153, para. 47; *Abdalla* 2011-UNAT-138, para. 23-24; *Appellee* 2013-UNAT-341, para. 15; and *Muwambi* 2017-UNAT-780, para. 27.

74. Hence, it is clear that both the discontinuance decision and the concomitant non-renewal decision both require the Administration to act fairly, justly and transparently, and not from bias, prejudice, or improper motive. Accordingly, the Tribunal will first examine the Applicant's claims in this regard.

75. In the record is a Letter of Intent dated 22 August 2023, from the UNHCR Representative in Lebanon which states: "[f]ollowing a thorough review of operational needs, structure and resources, I write to inform you that the position which you encumber has been identified for discontinuation effective 1 January 2024, and your contract will not be renewed upon its expiration on 31 December 2023." This was followed by a letter dated 29 September 2023 from the Representative titled, "Letter of Decision", formally notifying the Applicant of the decision to discontinue his position and not to renew his appointment beyond the contract end date.

76. Additionally, the record includes various other communications from the Administration regarding shrinking donor budgets and the resulting need to eliminate numerous existing posts. On their face, the letters to the Applicant and the other communications regarding the restructuring exercise indicate that the contested decision was taken regularly by the Organization in the face of great budgetary restrictions. Thus, the burden to prove to the contrary shifts to the Applicant.

77. In this case, the Applicant alleges that the contested decision was "neither about budgetary constraints nor performance, but ... part of a targeted effort to portray [him] as a burden to the unit." He claims that the decision was discriminatory, retaliatory and procedurally flawed.

78. The essence of the Applicant's claims is that he suffers from a medical condition for which he sought accommodations. He claims that he was retaliated against for requesting these accommodations and that the Organization failed to follow the UNHCR Performance Management Framework.

79. It is not contested that the Applicant has been diagnosed with ADHD and that, at some point, he requested and received workplace accommodations. However, that is insufficient to bear his burden.

80. First, the Applicant presents no evidence to support his allegation that the contested decision(s) were not about budgetary constraints. Given the evidence in the record to the contrary ("1,665 positions are to be discontinued next year" and 101 positions discontinued at the Applicant's duty station, affecting 85 national staff), it is plainly obvious that the discontinuation decision was based on budgetary constraints.

81. Second, the issue of the Applicant's performance was raised by him in an email dated 4 October 2023, to the UNHCR Representative, "[g]iven your involvement and the support you've graciously extended." In this email, the Applicant pointed out that a transfer to another position would face "a notable challenge tied to [his] recent evaluation [of] 'partially meets expectations'" which he attempted to explain away.

82. In responding, the Representative said "[i]t is important to note ... the outcome of rebuttal case review for your Annual Evolve – 01/01/2022 to 31/12/2022, in which you have received an overall rating of 'Partially meets expectations'." He then explained that a "partially achieved" rating could provide the basis for a non-renewal before reiterating that "as you have been notified, following the review of the operational needs, structure and resources, the position you are currently encumbering ... has been identified for discontinuation effective 1 January 2024. Therefore, your current Fixed Term Appointment expiring on 31 December 2023 will not be renewed beyond its expiry."

83. At best, this is akin to an alternative reason that could justify non-renewal, but this opinion “is immaterial”. *See, Islam* 2011-UNAT-115, para. 31, affirming *Islam* UNDT/2010/091. Thus, so are all the Applicant’s arguments about his “partially meets” rating (including the need for a prior PIP, etc).

84. Third, the Applicant has failed to present any evidence to substantiate his allegation that the contested decisions were “part of a targeted effort to portray [him] as a burden to the unit.”

85. The Applicant has also not shown that the contested decisions were either discriminatory or retaliatory. On the contrary, the record shows that the Administration went out of its way to assist the Applicant in addressing his shortcomings in numerous ways.

86. It developed and implemented a support plan to assist him. When he raised the possibility of a medical condition, the Administration encouraged him to get a diagnosis. When he presented the diagnosis, the Administration consulted the appropriate unit for guidance on developing adequate accommodations based on the diagnosis. As the Medical Unit was trying to obtain more information from the Applicant’s doctor, the Administration extended the Applicant’s contract for three months and transitioned him to a PIP. In his comments at the time, the Applicant thanked “management for taking the time to prepare this PIP and considering the recommendation of medical services when setting the targets.”

87. When formal accommodation recommendations were made, the Applicant’s supervisor consulted with him as to how he would prefer that these accommodations be implemented without isolating him from the team, and she modified the target parameters accordingly.

88. All these actions indicate good intentions on the part of the Administration and the Applicant’s supervisors, not discriminatory or retaliatory motives. Thus, the Tribunal finds that the Respondent complied with his duty to act fairly, justly, and transparently in the discontinuance and non-renewal decisions.

89. The Applicant also claims that the Administration abused its discretion in the non-renewal decision. However, the record is clear that the non-renewal decision was a valid exercise of discretion. Indeed, it would be an abuse of discretion to renew an appointment on a position that had been discontinued.

90. The Applicant also alleges “unjustified delays” in processing his medical accommodation request. However, the record indicates that the request was handled relatively promptly by the Administration. In fact, any delays were frequently caused by the Applicant, including his delay in pursuing an evaluation to confirm his suspected medical condition, and later providing additional records. As such, the Applicant’s argument about administrative delay is denied.

91. The Applicant also complains of “contract renewal limitations” and the “deliberate alignment of this contract’s expiry date with the effective date of his position discontinuation.” With respect to the latter, it makes eminent sense to align the discontinuation and non-renewal dates. Otherwise, a renewal would be ineffective if there were not an approved position for him to hold. Thereafter, the renewals were of a duration appropriate to their stated purpose.

92. Finally, the Applicant does not claim that the Administration made an express promise creating an expectancy for the renewal. Accordingly, the decision not to renew the Applicant’s position beyond its expiration on 31 December 2023, is affirmed.

93. The Applicant also complains about the Ethics Office decision to close his complaint of retaliation without an investigation. Initially, the Tribunal notes that the Ethics Office decision is neither preliminary to, nor part of, the discontinuation/non-renewal decision by UNHCR, which is the subject of this case. In fact, the Applicant complained to the Ethics office about the discontinuation/non-renewal decision. So, the decision on that complaint will not be considered as part of this case. However, the application raising this issue was timely filed with the Dispute Tribunal, so it has been considered by the Tribunal.

94. As a stand-alone case, the Applicant has failed to explain anywhere in his exhaustive submissions (totalling 991 pages of the 1343-page record) exactly what an investigation would have added to the Ethics Office analysis. The record indicates that the IGO conducted a fact-finding inquiry from 1 December 2023 until 7 March 2024, which resulted in a report. The Applicant does not identify any problems with this inquiry either.

95. Instead, it appears that the Applicant simply disagrees with the conclusions reached by the Ethics Office. In that regard, he specifies two alleged failures of the Ethics Office “disregarding several protected activities that [he] was engaged in while assessing the case; [and deciding] that requesting a medical accommodation is not a protected activity.” Here again, the Applicant does not identify the “several protected activities” he claims were disregarded, beyond “requesting a medical accommodation.”

96. The definition of “protected activity” is found in para. 4.1.2 of UNHCR/AI/2018/10/Rev. 1 (Administrative Instruction on Protection against Retaliation), which says

... any UNHCR personnel are entitled to protection against retaliation under this Administrative Instruction if they engage in the following protected activities:

- a) Reporting alleged misconduct in good faith;
- b) Cooperating with a duly authorized audit, investigation, inquiry, evaluation or review, including the provision of witness testimony before the United Nations Dispute Tribunal or the United Nations Appeals Tribunal; or
- c) Contacting, cooperating with or participating in the activities of the Office of the Ombudsman and Mediator.

Notably absent from this definition is “requesting a medical accommodation,” or anything even remotely like that.

97. This definition is repeated in the PaR form that the Applicant used to file his request. In filling out that form, the Applicant checked the box for “Cooperating

with a duly authorized audit, investigation, evaluation or review, incl. witness testimony before the UNDT or UNAT.” He then noted that “Requesting work accommodation **might be, in my views, covered** under the broader umbrella of cooperating with inquiries, evaluations, or reviews, especially if the accommodation request is related to a disability or medical condition.” (emphasis added). Hence, it is clear that from the outset the Applicant recognized “requesting a medical accommodation” might not fit within the definition of “protected activity”.

98. And it is equally clear from the plain language of the AI that “requesting a medical accommodation” does not fall within this category. The Ethics Office decision methodically examined the definitions of “evaluations”, “review”, “inquiry” and correctly determined that the Applicant’s interpretation of these terms was unsupported. The decision also properly noted that the AI requires that such inquiries, evaluations or reviews be duly authorized and the fact that no such authorization existed.

99. Whether or not “requesting a medical accommodation” should be considered a protected activity is a matter of policy to be determined by the Administration. The Ethics Office is obligated to apply the policy as it currently exists as set out in the AI, not as the Applicant or the Ethics Office wishes it did. And the Tribunal must as well.

100. The decision of the Ethics Office is a detailed analysis of the Applicant’s request, addressing point after point. It is worthy of note that the Ethics Office at times differed from the analysis of the IGO’s fact-finding report, in the Applicant’s favour. The Tribunal can find no fault with the Ethics Office decision.

101. Additionally, the Tribunal has already found that the discontinuation/non-renewal decision was lawful and not motivated by any improper motivation, such as retaliation for requesting a medical accommodation. Thus, the Applicant’s challenge to the Ethics Office decision is denied.

102. Having found that the challenged decisions were proper, there is no basis on which to grant the Applicant any of the relief he seeks.

Conclusion

103. In view of the foregoing, the Tribunal DECIDES to dismiss the application in its entirety.

(Signed)

Judge Sean Wallace

Dated this 16th day of April 2025

Entered in the Register on this 16th day of April 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi