



**Before:** Judge Alexander W. Hunter, Jr.

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

RUSSO-GOT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

**ON CASE MANAGEMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Jameel Baasit, UNOPS

## **Introduction**

1. On 5 February 2019, the Applicant filed this application in which he, *inter alia*, contests:

a. “[T]he decision of the Administration to abolish his current post of Project Manager at the P-3 level, and to subsequently not renew his fixed-term contract beyond the close of business (COB) 31 January 2019 and the Administration failed to meet commitment”;

b. “[T]he decision of the Administration not to make good faith efforts to assist him in finding an alternative position after it decided to abolish his post”.

2. On 6 February 2019, the Registry acknowledged receipt of this application and instructed the Respondent to file the reply within the mandatory 30-day time limit set out in art. 10 of the Dispute Tribunal’s Rules of Procedure. The case was not assigned to a specified Judge.

3. On 8 March 2019, the Respondent duly filed his reply, submitting that the application is not receivable and, in any event, without merit.

4. By Order No. 48 (NY/2019) dated 22 March 2019, the Duty Judge rejected the Applicant’s motion for interim measures.

5. On 1 April 2020, the case was assigned to the undersigned Judge.

## **Consideration**

### *The scope of the case*

6. The Appeals Tribunal has held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party

and to identify the subject(s) of judicial review”. When defining the issues of a case, the Appeals Tribunal further held that “the Dispute Tribunal may consider the application as a whole”. See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

7. In the application, in addition to the decisions regarding the abolition of the post and the non-renewal of his fixed-term appointment, the Applicant also challenges, in what appears to be a separate third claim, “that he is retaliated [against], and his human rights were violated”. The Tribunal notes that circumstances such as those described above cannot be defined as separate and independent administrative decisions that are appealable under art. 2.1 of the Statute of the Dispute Tribunal, but rather constitute assertions and/or arguments in support of the other decisions under review.

8. The Tribunal’s judicial review is therefore limited to the contested abolition and non-renewal decisions.

#### *Receivability*

9. For the purpose of judicial economy, the Tribunal will handle the issue of receivability as a preliminary matter.

10. The Respondent submits that the application is not receivable because it was filed after the 60-day time limit stipulated in staff rule 11.2(c). To this end, the Respondent, in essence, contends that the Applicant has admitted that he was notified about the contested decisions at a meeting on 25 October 2018, but only filed his request for management evaluation on 23 January 2019 (90 days later):

... UNOPS Senior Portfolio Manager (Yvrose Strachan) scheduled and held a meeting with the Applicant on 25 October 2018 specifically to inform the Applicant of the contested decisions to abolish his post and not renew his contract. The Applicant only requested management evaluation of these contested decisions on 23 January 2019 (i.e. after the 60-day time limit set out in Staff Rule

11.2(c) had expired) [...] It is admitted in the Application that the Applicant did meet with Ms. Strachan. *Auda* 2017-UNAT-746 shows that such a verbal communication is sufficient for the purposes of Staff Rule 11.2(c), and that the lateness of the request for management evaluation means the Application is not receivable and must be dismissed.

11. In *Auda* 2017-UNAT-746, the Appeals Tribunal, in effect, held that if the relevant staff member admits that s/he was verbally notified about the contested decision, then the time limit for management evaluation starts to run from that moment and not from the time of a subsequent follow-up written notification (previously, the Appeals Tribunal held that for the purpose of the time limit for management evaluation to start, a notification had to be in writing; see, for instance, *Manco* 2013-UNAT-342, paras. 19-20):

25. In the instant case, Mr. Auda accepts that he was verbally informed on 2 October 2015 by Ms. Pollard, the then ASG/DGACM, that his fixed-term appointment would not be renewed beyond 31 December 2015. He also admits that the non-renewal decision was further communicated to him on 6 October 2015 by Mr. Gettu, the then USG/DGACM, and that on 12 November 2015, he was again informed by memorandum (in writing) that his fixed-term contract would not be renewed. On 2 December 2015, Mr. Auda submitted a request for management evaluation of the decision not to renew his fixed-term appointment.

26. Staff Rule 11.2, simply put, requires a staff member to request management evaluation within 60 calendar days of receiving notification of the administrative decision. The question to be determined is what amounts to “notification of the administrative decision to be contested” in accordance with Staff Rule 11.2 and when the time limit thus starts to run.

27. The UNDT ruled that the time limit started to run from the date of the written notification of non-renewal even though the decision had been previously verbally communicated to Mr. Auda.

28. It is our finding that Ms. Pollard’s verbal communication of 2 October 2016 to Mr. Auda was in fact the notification of the non-renewal decision within the meaning of Staff Rule 11.2. Mr. Auda should therefore have filed a request for management evaluation by 1 December 2016 at the very latest.

29. The UNDT erred in its reasoning that the time limit to file for management evaluation began on 12 November 2015 which was the date when Mr. Auda received the written confirmation of the non-renewal decision and, as a result, when it concluded that Mr. Auda's request for management evaluation was not time-barred.

30. The fact that the original decision was made verbally is, by itself, of no consequence since there is no explicit requirement in law for such notification to be in writing. Staff Rule 11.2(c) does not require a written notification as a prerequisite to contest an administrative decision.

31. The Appeals Tribunal has repeatedly ruled that the decisive moment of notification for purposes of Staff Rule 11.2(c) is when "all relevant facts ... were known, or should have reasonably been known"<sup>7</sup> which was undoubtedly the case on 2 October 2015. In the instant case, the Dispute Tribunal found that it was "stipulated by the parties" and stated by Mr. Auda in his application on the merits before the UNDT that he was explicitly informed on 2 October 2015 that his contract would not be renewed upon expiry.<sup>8</sup> The e-mail of 12 November 2015 expressly served to "confirm" the preceding, orally communicated decision.<sup>9</sup> There is thus no dispute as to the date and content of the administrative decision in question. The non-renewal decision was also communicated with sufficient gravitas as it was conveyed by Ms. Pollard, a high ranking official, and in the course of an official meeting on Mr. Auda's midpoint review. The situation is therefore different from one involving an informal or casual verbal communication or one where the content of the verbal communication is disputed and the facts do not support a reasonable basis upon which to make the necessary findings of "clear and unambiguous" and "sufficient gravitas".

12. The Applicant, in the application, submits that he was verbally notified about the decision to abolish his post at the 25 October 2018 meeting, but it is not clear from this factual assertion whether he was also told about the non-renewal of his fixed-term appointment:

7. On 25 October 2018 at 11:00 AM - 11:30 AM, Mr. Russo-Got held a meeting with Mrs. Jeanette Ferguson, Chief Enterprise Project Management Office (ePMO) and Mrs. Yvrose Strachan, Sr. Portfolio Manage UNOPS/UNDG/ECR and he was informed that, based on budget restriction, his post will be abolished. Mr. Russo-Got requested to receive, as per contract [that] "Director of UNOPS will give 30 days' written notice", a letter of written notice. On the same day at

12:10 p.m. EST, Mrs. Yvrose Strachan has called Mr. Russo-Got, and she confirmed that written notification from Director of UNOPS would be sent with two months in advance in case that the decision will not be changed. Note: Mr. Erzen Ilijazi is my second line manager.

13. From the separation letter dated 22 January 2019 (appended by the Applicant to the application), it would appear that the Applicant was, in fact, verbally informed about the non-renewal at the 25 October 2018 meeting:

I refer to the 25 October 2018 meeting attended by you and Ms. Yrvrose Strachan, Senior Portfolio Manager, as well as Ms. Jeanette Ferguson, Chief Enterprise Project Management Office, at which it was noted that the Project Manager position that you are encumbering will cease to exist on 31 January 2019, and that we hoped that you would secure another post before then.

We regretfully note that the efforts to secure a post for you have not been successful.

In view of the foregoing, I must with deep regret now give you formal notice that your contract will not be renewed when it expires COB 31 January 2019 and you will be separated from UNOPS effective that date.

Should you secure a new post on or before 31 January 2019, you will of course be offered an extension of your contract.

14. Before making any final determination on the receivability of the application, the Tribunal will therefore allow the Applicant to file a submission thereon in which he must address the issue of whether as a matter of fact, he was verbally informed about the non-renewal of his fixed-term appointment at the 25 October 2018 meeting.

15. The Tribunal will thereafter determine the matter on the papers before it, unless the Applicant's submission gives rise to further evidentiary inquiries.

16. In light of the above,

IT IS ORDERED THAT:

17. By **4:00 p.m. on Tuesday, 21 April 2020**, the Applicant is to file a submission on the receivability of the application, including by stating whether he was verbally notified of the non-renewal of his fixed-term appointment at the 25 October 2018 meeting;

18. Unless otherwise ordered, on receipt of the abovementioned submission or at the expiration of the provided time limit, the Tribunal will adjudicate on the matter and deliver Judgment based on the papers filed on record.

*(Signed)*

Judge Alexander W. Hunter, Jr.

Dated this 6<sup>th</sup> day of April 2020