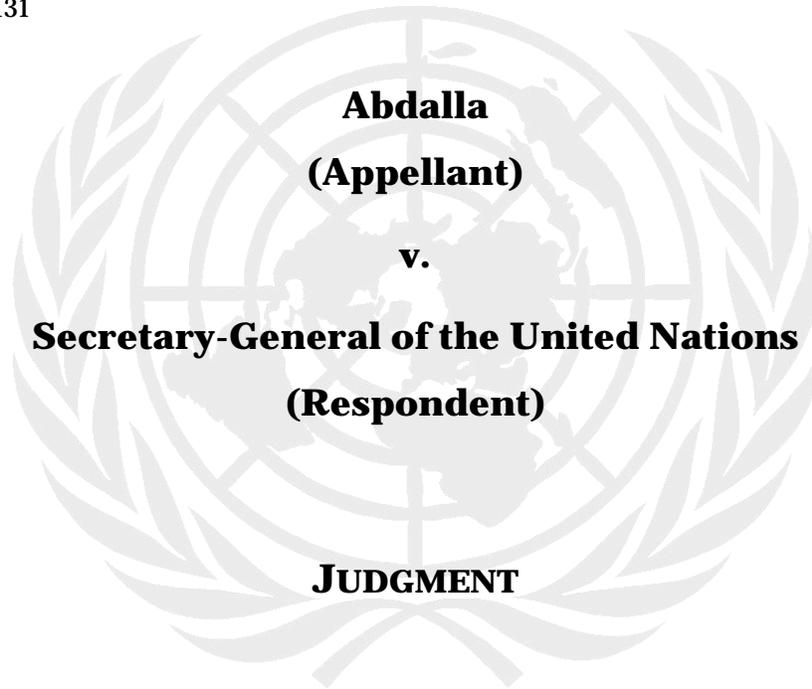




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-131



Before: Judge Sophia Adinyira, Presiding
Judge Inés Weinberg de Roca
Judge Mary Faherty

Judgment No.: 2011-UNAT-138

Date: 8 July 2011

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: John Stompor

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. Abdalla Saifeldin (Abdalla) contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the Secretary-General's decision not to renew his temporary appointment with the United Nations Assistance Mission for Iraq (UNAMI) on the ground that he took up his temporary position with the understanding that within three months a post at the FS-5 level would be advertised and that he would be interviewed.
2. Under Staff Rule 4.12(a) and (c) and Staff Rule 9.4, a temporary appointment carries no expectancy of renewal or conversion to any other type of appointment.
3. In order to determine the lawfulness of the non-renewal decision, the UNDT must determine whether the Administration has made an "express promise ... that gives a staff member an expectancy that his or her appointment will be extended", whether it abused its discretion, or whether it was motivated by discriminatory or improper grounds in not extending the appointment.
4. The UNDT found no evidence of such understanding to create a translator post for Abdalla, nor improper motives for his non-renewal.
5. Abdalla has failed to establish any error warranting a reversal of the UNDT Judgment.
6. The Judgment of the UNDT is affirmed.

Facts and Procedure

7. Abdalla joined the United Nations International Independent Investigation Commission (UNIIC) on 19 August 2008 as a Language Assistant at the FS-5/A level. As a result of the downsizing of UNIIC, Abdalla took up a three-month temporary duty assignment with UNAMI as an Administrative Assistant at the FS-5 level from 1 May 2009.
8. As from 1 July 2009, Abdalla held a temporary appointment which was due to expire on 31 October 2009. In July and October 2009, Abdalla was informed by the Chief of the Human Resources Section (HRS) that UNAMI would not be able to recruit

him because there was no available Language Assistant or Translator post at the FS-5 level, and that the post he was appointed against would be abolished.

9. On 1 November 2009, Abdalla's appointment was extended until 31 December 2009. On 31 December 2009, the Chief, HRS, informed Abdalla that his appointment would not be extended due to "unavailability of the function of Interpreter/Language Assistant at the FS-5 level". However, Abdalla's appointment was extended for a final time until 3 February 2010.

10. Following Abdalla's request for management evaluation, the decision not to renew his appointment was upheld by the Secretary-General. In March 2010, Abdalla filed an application with the Dispute Tribunal contesting the non-renewal decision.

11. On 4 August 2010, the Dispute Tribunal issued Judgment No. UNDT/2010/140, which rejected Abdalla's application. The Dispute Tribunal found that there was no right to renewal of a temporary appointment under the provisional Staff Rules, and that the decision not to renew the appointment was not tainted as a result of improper motives or countervailing circumstances. There was no improper exercise of discretion: the appointment was not renewed because there were no budgeted or approved posts for Language Assistants, Interpreters or Translators at Abdalla's level in UNAMI. Further, Abdalla was encumbering a post which was on loan from the Humanitarian Coordination Unit and was abolished in 2010. As Abdalla held a temporary appointment, he appeared to fall beyond the scope of provisional Staff Rule 9.6(e) which imposes a duty on the Organization to find an alternative post for certain staff members upon the abolishment of a post. The Dispute Tribunal found that, nevertheless, the Organization made a bona fides effort to find Abdalla an alternative post as his appointment was for a total period of nine months, during which time he had the chance to apply for vacant positions. However, Abdalla did not apply for any vacant post at UNAMI or other missions, and the Organization was not obliged to create a specific post for him.

12. The Dispute Tribunal also found that Abdalla did not have a legitimate expectancy of renewal of his contract. Abdalla claimed that there was an understanding that, within three months of his appointment, a post at the FS-5 level would be advertised. However, there was no evidence of such a commitment. Further, the Dispute Tribunal found that the decision not to renew Abdalla's temporary appointment was not tainted by

discrimination or other extraneous factors. Other staff members from UNIIIC were competitively selected for posts with UNAMI. However, the circumstances did not reveal discrimination against Abdalla.

13. Abdalla appeals the UNDT Judgment.

Submissions

Abdalla's Appeal

14. Abdalla submits that he joined UNAMI with the understanding that, within three months, a post at the FS-5 level would be advertised and that he would be interviewed. His supervisor repeatedly asked for the recruitment process to be expedited. Further, there was an ongoing need for translator services at UNAMI.

15. Abdalla argues that the Judgment violates the guidelines established for temporary duty assignments which are extended beyond three months. Abdalla also contends that, while UNAMI claimed that his post was abolished due to financial constraints, a vacant P-3 post for a translator was in the process of being filled in April 2010.

16. Abdalla requests that his contract with UNAMI be renewed and seeks compensation for the period during which he was unemployed.

Secretary-General's Answer

17. The Secretary-General submits that the appeal does not establish any error warranting a reversal of the findings of the Dispute Tribunal. The Secretary-General argues that Abdalla has not provided any evidence to support his assertions regarding the recruitment for the P-3 translator post; Abdalla would not be eligible for the post as he was a field service staff member and has not passed a competitive examination as required under provisional Staff Rule 4.16; and the Organization was not obliged to create a post for him.

18. The Secretary-General argues that the guidelines in respect of temporary duty assignments concern the salary and allowances of staff members who are placed on temporary duty assignments and do not create any expectancy of renewal of Abdalla's appointment.

19. The Secretary-General requests that the Appeals Tribunal affirm the Judgment and reject the appeal in its entirety.

Considerations

20. Abdalla contested the decision by the Secretary-General not to renew his temporary appointment on the ground that he joined UNAMI with the understanding that within three months a post at the FS-5 level would be advertised and that he would be interviewed.

21. Temporary appointments are governed by Staff Rule 4.12 which provides, *inter alia*, as follows:

(a) A temporary appointment shall be granted for a period of less than one year to meet seasonal or peak workloads and specific short-term requirements, having an expiration date specified in the letter of appointment.

...

(c) A temporary appointment does not carry any expectancy, legal or otherwise, of renewal. A temporary appointment shall not be converted to any other type of appointment.

Staff Rule 9.4 stipulates:

A temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment.

22. Under the above rules, a staff member holding a temporary appointment has no expectancy of renewal of his or her appointment, or of conversion to any other type of appointment. These rules are similar to the staff rules applicable to fixed-term appointments.

23. In *Ahmed*, the United Nations Appeals Tribunal (Appeals Tribunal) held:

45. It is recognized that, if based on valid reasons and in compliance with procedural requirements, fixed-term appointments may not be renewed. Accordingly, an administrative decision not to renew a fixed-term appointment can be challenged as there is a duty and requirement on the Organization to act fairly, justly, and transparently in its dealings with the staff members.

46. In that respect, if the Administration gives a staff member a legitimate expectancy of renewal of his or her fixed-term appointment, then that may be a good reason for the Tribunal to interfere with the non-renewal decision on the grounds of unfairness and unjust dealing with the staff member. Similarly where a decision of non-renewal does not follow the fair procedure or is based on improper grounds, the Tribunal may intervene.

47. We concur with the former Administrative Tribunal which held that, unless the Administration has made an “express promise ... that gives a staff member an expectancy that his or her appointment will be extended”, or unless it abused its discretion, or was motivated by discriminatory or improper grounds in not extending the appointment, the non-renewal of a staff member’s fixed-term appointment is not unlawful.¹

24. The same standard of review applies to non-renewal decisions of temporary appointments. In order for Abdalla’s claim of legitimate expectation of renewal of appointment to be sustained, it must not be based on mere verbal assertions, but on a firm commitment to renewal revealed by the circumstances of the case.² The UNDT found no evidence of such a commitment, and we find no reason to reverse the finding.

25. Abdalla next submits that he performed well in the past as a translator and that there was an ongoing need for translator services at UNAMI. We are of the view that the efficient or outstanding performance of a staff member on a temporary appointment cannot legitimately create an expectancy of renewal of appointment. Furthermore, there are no provisions in the Staff Regulations and Rules that require the Organization to create or find a suitable post for a staff member on a temporary assignment in cases of abolition of post. Accordingly, the need for translator services at UNAMI could not have created a legitimate expectation or right for Abdalla to have his appointment renewed, or to have his post changed from administrative assistant to language assistant.

26. Abdalla further submits that, while UNAMI claimed that his post was abolished due to financial constraints, a vacant post for a translator services at the P-3 level was in the process of being filled in April 2010. The Secretary-General correctly argued that even if a translator post at the P-3 level was available or had been advertised, Abdalla

¹ *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153.

² *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153.

would not have been eligible as he was a staff member at the FS-5 level. The UNDT found as a fact that Abdalla did not even apply for the post.

27. The evidence showed that there was no budgeted or approved post of Language Assistant, Interpreter, or Translator at his FS-5 level in UNAMI. The post he encumbered as Administrative Assistant at UNAMI was on loan from the Humanitarian Coordination Unit and it was abolished in December 2010. The UNDT “consider[ed] that the Organization made a bona fides effort by assigning him to UNAMI for a total of nine months” upon the abolition of his post at UNIIC; and that Abdalla had the opportunity to apply for vacant positions and be competitively selected, but that he failed to apply.

28. The arguments raised in the appeal are essentially identical to those raised before the UNDT. Abdalla fails to identify any specific error made by the UNDT. Abdalla has not met the burden of demonstrating how the UNDT erred in making the impugned Judgment.³

29. We note that the UNDT examined whether improper motives or countervailing circumstances existed in the decision not to renew Abdalla’s temporary appointment. The UNDT reached the conclusion that the non-renewal of Abdalla’s temporary appointment was not tainted by any discrimination or improper motives, and Abdalla failed to demonstrate any error warranting the reversal of the UNDT Judgment.

³ Cf. *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

Judgment

30. The appeal is dismissed. The Judgment of the UNDT is affirmed.

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Faherty

Entered in the Register on this 29th day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar