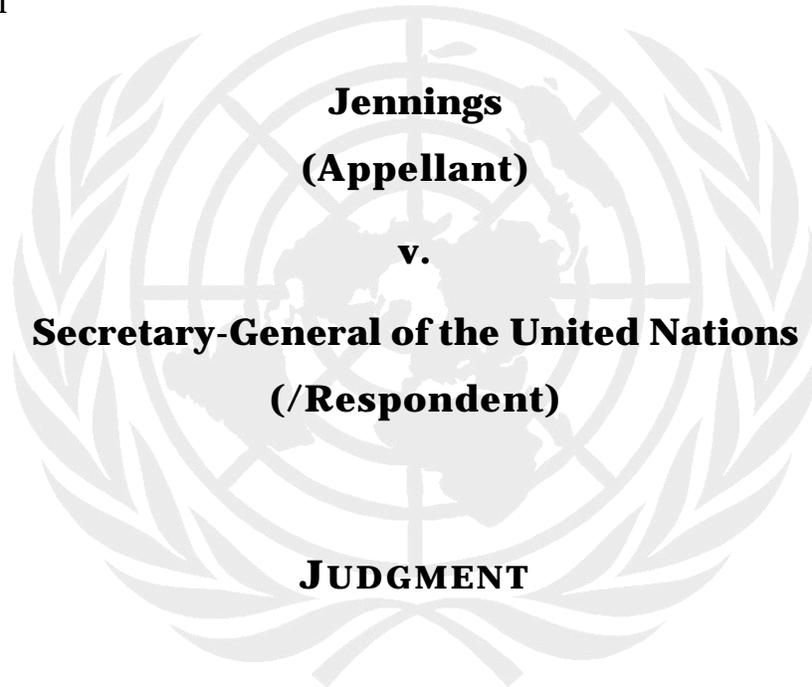




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2011-191



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Before:	Judge Jean Courtial, Presiding Judge Sophia Adinyira Judge Inés Weinberg de Roca
Judgment No.:	2011-UNAT-184
Date:	21 October 2011
Registrar:	Weicheng Lin

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Wambui Mwangi

**JUDGE JEAN COURTIAL, Presiding.**

**Synopsis**

1. A fixed-term contract does not carry any expectancy of renewal or of any other type of appointment. The allegations of Ms. Andrea Jennings that the staff member who recruited her had given her assurances liable to create an expectation of her contract being renewed are not justified. While the Appellant contends that the United Nations Dispute Tribunal (UNDT or Dispute tribunal) erred on questions of law and fact by failing to agree that the decision not to renew her contract constituted retaliation against her for having filed complaints of harassment and abuse of authority, she does not provide evidence to justify her allegations.

2. Ms. Jennings' other conclusions relate to issues separate from the decision not to renew her contract. They have not previously been submitted for management evaluation. It follows that the Dispute Tribunal did not fail to exercise the jurisdiction vested in it by dismissing these conclusions as non-receivable.

**Facts and procedure**

3. Ms. Jennings was recruited by the Organization on 20 May 2008 for a position at the P-2 level in the Procurement Division of the Department of Management. Her 11-month contract expired on 19 April 2009. It was extended until 17 July 2009.

4. During those 14 months, Ms. Jennings worked successively in three sections under three different team leaders, the changes of section having been effected at her own request. Her performance during the first period, from 20 May 2008 to 7 September 2008, was viewed as sub-par. Ms. Jennings had several meetings with her managers in that regard. The second period ran until 9 November 2008. The second team leader signed off on a mid-point review that contained comments critical of the Appellant's performance.

5. The Appellant's e-PAS should have been completed by 31 March 2009. However, the process was reset to accommodate the Appellant's request to include the comments of other reporting officers. The e-PAS was completed on 15 July 2009. It includes the comments and signatures of the three successive first reporting officers, two second

reporting officers and two additional supervisors. Ms. Jennings was finally given the rating “Partially meets performance expectations”. She contested that rating before the rebuttal panel, which confirmed it on 23 September 2010.

6. Previously, on 28 May 2009, Ms. Jennings had been informed that her contract would not be renewed. On 23 June 2009, she had submitted to the Secretary-General a request for administrative review of that decision. Furthermore, she had filed a request with the Joint Appeals Board for a suspension of action of the decision. That request had been granted since the Appellant had been retained in service until the e-PAS process under way was completed.

7. Meanwhile, on 17 June 2009, she had lodged a complaint with the Ethics Office claiming that the decision not to renew her contract had been taken in retaliation for the fact that she had reported misconducts in her unit. However, the Ethics Office set aside the complaint as unfounded. Similarly, a complaint of harassment and abuse of authority filed with the Office of Human Resources Management was dismissed because there were insufficient grounds to warrant an investigation.

8. Ms. Jennings filed an application with the UNDT, which found that the decision not to renew her contract was based on lawful grounds. However, the Dispute Tribunal ordered that the Organization pay the Applicant USD 6,000 as compensation for the damage resulting from the rebuttal panel’s unreasonable delay in completing the rebuttal process.

9. On 11 January 2011, Ms. Jennings filed an appeal against this judgment insofar as it was unfavourable to her. The Secretary-General submitted an answer on 3 March 2011.

### **Submissions**

#### **Ms Jennings’s appeal**

10. The Appellant alleges that the Dispute Tribunal unlawfully admitted testimony from witnesses who had not sworn to tell the truth, in breach of the applicable rules of procedure.

11. The Appellant contests the level (P-2) at which she was recruited, maintaining that it was unlawfully offered. She contends that the UNDT was competent to rule on this issue, as well as on the misconduct of her previous counsel, and that it ignored its duties by failing to do so.

12. Ms. Jennings contends that the Dispute Tribunal erred on questions of law and fact in ruling that she had not received from the Administration a binding promise of contract renewal.

13. She adds that the Dispute Tribunal erred on questions of law and fact in ignoring the irregularities vitiating the decision not to renew her contract. According to the Appellant, the Dispute Tribunal should have set aside the assessments of the two first reporting officers in favour of the more favourable assessments made by the third first reporting officer. The Dispute Tribunal should have noted the irregularities vitiating the performance appraisal process, particularly at the stage of the rebuttal procedure.

14. Furthermore, according to the Appellant, the Dispute Tribunal did not take account of the fact that the decision was related to the complaints of harassment and abuse of authority that had been filed by her and had not given rise to an investigation, in violation of her rights. She maintains that the contested decision was motivated by her managers' resentment against her.

**Secretary-General's answer**

15. The Secretary-General contends that Ms. Jennings' submission before the United Nations Appeals Tribunal (Appeals Tribunal) essentially reiterates the arguments submitted to the judge of first instance, without the Appellant indicating what errors the first judge might have committed. The jurisprudence of the Appeals Tribunal demonstrates that such a submission is not receivable.

16. The Respondent maintains that the Dispute Tribunal did not commit any error in ruling that the scope of its review was limited to the issues that Ms. Jennings had previously raised in her request for administrative review, in other words, the fact that she contested the decision not to renew her contract, and did not include issues such as the grade level and the conduct of the Appellant's counsel.

17. The Secretary-General notes that the letter of appointment sent to the Appellant was clear as to the absence of any right to contract renewal and that the Administration gave no promise of renewal.

18. He maintains that the Dispute Tribunal did not err on any question of law or fact in concluding that the only grounds for the decision not to renew the contract, excluding budgetary considerations, were the sub-par performance of Ms. Jennings, which was regularly assessed, and that those grounds constituted a lawful basis for the decision. The Dispute Tribunal was not persuaded by Ms. Jennings' allegations regarding retaliation since she filed a complaint after having been informed of the contested decision and her allegations were not sufficiently substantiated. The Administration had no obligation to offer Ms. Jennings, who had been unable to take advantage of the opportunities to improve her work that had previously been given to her, a further opportunity for improvement.

### Considerations

#### *Concerning the regularity of the proceeding before the Dispute Tribunal*

19. The judge of the Dispute Tribunal, having considered the circumstances under which the witness statements selected by the Respondent were presented to the Tribunal, decided, in paragraph 7 of the contested judgment, not to admit them as evidence and therefore not to use them to make any determinations either for or against the Appellant. The judge concluded that the documentary evidence was sufficient to determine the matter.

20. The Appeals Tribunal notes that there is no evidence to support the Appellant's allegations that the above-mentioned statements were used in their entirety by the Dispute Tribunal. Consequently, even supposing that the Dispute Tribunal had been in breach of its rules of procedure by taking those statements, it has not been established that the said breach gave rise to an error in procedure liable to influence the judgment on the case.

*Concerning the decision not to renew the Appellant's contract*

21. As stated by the judge of first instance, pursuant to rules 104.12 and 109.7 of the former Staff Rules, a fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment. Ms. Jennings' allegation that the staff member who recruited her had given her assurances liable to create a well-founded expectation of contract renewal are not justified.

22. The Appellant furthermore alleges that the decision not to renew her contract was not based on lawful grounds. She mentions in particular the animosity of managers unhappy with her reporting of corrupt practices within the Procurement Division.

23. The Dispute Tribunal was not persuaded by Ms. Jennings' submission. It recalled in its judgment that the complaints addressed to the Office of Human Resources Management and the Ethics Office were filed after she had been informed that her contract would not be renewed and that those complaints were not successful since they were unsubstantiated.

24. On the contrary, the judge of the Dispute Tribunal considered that the decision not to renew the contract was lawfully based on the evaluation of Ms. Jennings' performance by her managers. On that matter, the Dispute Tribunal considered that there was no basis to question the assessment of the Applicant's performance as "partially meeting performance expectations", confirmed by the rebuttal panel constituted in accordance with administrative instruction ST/AI/2002/3 then in force.

25. The burden of proving that the grounds for non-renewal were unlawful lies with the staff member contesting the decision not to renew his or her contract, and the burden of proving that the judge of first instance erred on a question of fact, resulting in a manifestly unreasonable decision, lies with the Appellant. In the present case, Ms. Jennings has been unable to produce sufficient evidence to support her allegations that the Dispute Tribunal erred on questions of fact.

*Concerning the other conclusions*

26. Ms. Jennings submits other conclusions on issues separate from the decision not to renew her contract, which have not previously been submitted for management

evaluation. In that regard, it is the staff member's responsibility to ensure that she is aware of the applicable procedure in the context of the administration of justice at the United Nations. Ignorance cannot be invoked as an excuse. It follows that the Dispute Tribunal did not fail to exercise the jurisdiction vested in it by dismissing these conclusions as non-receivable.

27. It follows from the foregoing that the Appeals Tribunal, which notes that the Secretary-General has not filed an appeal against the contested judgment insofar as it ordered him to pay compensation to Ms. Jennings, cannot but dismiss the conclusions of the Appellant's appeal.

**Judgment**

28. The appeal of Ms. Jennings is dismissed.

Original and authoritative version: French

Dated this 21<sup>st</sup> day of October 2011 in New York, United States.

*(Signed)*

*(Signed)*

*(Signed)*

Judge Courtial, Presiding

Judge Adinyira

Judge Weinberg de Roca

Entered in the Register on this 2<sup>nd</sup> day of December 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar