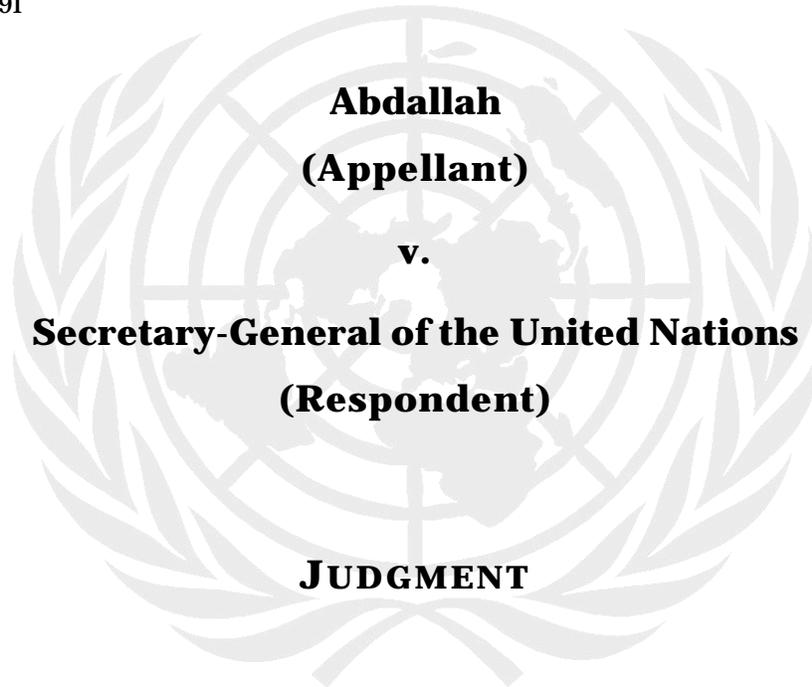




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-091



**Abdallah
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Kamaljit Singh Garewal, Presiding Judge Sophia Adinyira Judge Luis María Simón
Judgment No.:	2010-UNAT-091
Date:	27 October 2010
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Melanie Shannon

JUDGE KAMALJIT SINGH GAREWAL, Presiding.

Synopsis

1. The Appellant is Ibrahim Ninah Abdallah (Abdallah) whose fixed-term contract was not extended. He challenged this decision before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on the ground that his due process rights were violated without completion of his final e-PAS. The Respondent's case was that the decision was taken on account of Abdallah's chronic absenteeism. The UNDT held against the Appellant and dismissed his application. We find no reason to differ. The appeal is dismissed.

Facts and Procedure

2. Abdallah joined the International Criminal Tribunal for Rwanda (ICTR) on 15 July 1997, as a Messenger at the G-1B level under a 100 series fixed-term contract. In February 2000, he was promoted to the G-2 level as a result of a reclassification exercise. His post was upgraded and its functional title changed to Reproduction Clerk. Abdallah's most recent fixed-term appointment began on 30 November 2007 and was due to expire on 30 January 2008.

3. On 23 January 2008, Abdallah was informed in writing that his fixed-term appointment had been approved for a "final extension" until 29 February 2008. Upon Abdallah's request, the President of the ICTR Staff Association wrote to the Registrar of the ICTR on 18 February 2008, asserting that Abdallah's supervisor had not duly considered the reasons for Abdallah's absences and had failed to put in place an improvement or remedial plan for him.

4. On 25 February 2008, Abdallah's supervisor replied that Abdallah had been given oral and written warnings; that Abdallah kept promising to improve his attendance record but never kept his promises; and that Abdallah had received a "partially meets performance expectations" rating for at least three e-PAS cycles.

5. The Chief, Division of Administrative Support Services, ICTR, also responded to the Staff Association's memorandum on 11 March 2008 by stating that the ICTR Administration had duly taken into account Abdallah's explanations about any absences

from work whenever he showed good cause. He stated that the ICTR Administration had never refused to take into account leave approval from concerned medical officers. Most of Abdallah's absences were allegedly due to ill health, which had never been confirmed by the ICTR medical officer.

6. On 10 April 2008, Abdallah sought administrative review and suspension of action of the decision not to renew his fixed-term appointment beyond 29 February 2008. On 16 April, the Secretary of the Joint Appeals Board (JAB) informed Abdallah that the action could not be suspended because his appointment had already expired. On 10 June, the Administrative Law Unit rejected Abdallah's request for administrative review.

7. Abdallah filed an appeal with the New York JAB on 11 August 2008. The JAB did not review his case before its abolition on 1 July 2009. Abdallah's case was subsequently transferred to the UNDT Nairobi

8. The UNDT issued its Judgment on 30 March 2010 (UNDT/2010/049), dismissing Abdallah's application. It found that the impugned decision "was not informed by improper motive"; the Administration did not abuse its authority; "[t]he circumstances of this case [did] not justify the inference that [Abdallah] had any expectancy of renewal of his contract under the terms of his appointment"; and that "the ICTR Administration had taken steps to rectify the situation in respect of [Abdallah's] chronic absenteeism as required by the relevant Rules".

9. Abdallah filed an appeal against the UNDT Judgment on 14 May 2010. The Registry of the Appeals Tribunal forwarded the appeal to the Secretary-General on 20 May, and the Secretary-General filed his answer on 6 July 2010.

Submissions

Abdallah's Appeal

10. Abdallah submits that the UNDT Judgment does not address all the issues raised in his submissions, is one-sided, and favoured the Secretary-General.

11. Abdallah submits that his basic rights as a staff member were violated since his e-PAS had not been completed before the non-renewal of his contract. The decision not to renew his contract was arbitrary, flawed, and blemished. The circumstances in which he was urged to vacate his post were suspicious, motivated by bias as well as a hidden desire of his supervisor to have his contract terminated.

12. Abdallah alleges inconsistencies on the part of the Office of Human Resources and Planning Section (HRPS). He cites two instances: receiving a two months extension on 9 January whereas it was to end on 30 January, and receiving a one month contract on 14 February whereas it was to end on 29 February.

13. Abdallah submits that he was informed by the Chief of the Staff Administration Unit that his fixed-term appointment would not be renewed, without being given any details.

14. Abdallah asserts that he was unjustifiably misled by his supervisor. He had a reasonable expectation that his contract would be renewed because it had been renewed for 11 years on the basis of performance appraisals. He also had a right to be evaluated for the last five months, and he possessed the relevant skills to perform the duties. The ICTR Administration and the UNDT should have considered his expression of remorse and granted him another chance to deliver as a changed person.

15. Abdallah also argues that his due process rights were violated by the failure of his supervisor to complete his appraisal for the last five months. One of the critical elements on which the Secretary-General must base his decision whether or not to renew a contract is the appraisal of the staff member for the reporting period at stake. The appraisal was not done, and the decision of the Secretary-General was therefore lacking an element which was critical for a fair and reasonable decision.

16. Abdallah requests that the Appeals Tribunal order the immediate renewal of his contract for at least a year to enable him to complete his e-PAS; and that he be placed under a different supervisor. He also requests that the circumstances in which he was offered short-term contracts in violation of the Organization's policies and practices be formally investigated.

Secretary-General's Answer

17. In response to Abdallah's argument that his fixed-term appointment carried an expectancy of renewal, as he had served for more than 11 years, the Secretary-General submits that former Staff Rule 104.12(b)(ii) specifically provided that "[t]he fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment".

18. The Secretary-General contends that the UNDT correctly dismissed Abdallah's application and that Abdallah failed to identify any errors of the UNDT that would warrant a reversal of its decision to dismiss him.

Considerations

19. Chronic absenteeism by Abdallah has led to his fixed-term contract not getting renewed. Let us examine if his absenteeism was a one-time default or if there was a pattern in his behavior.

20. We have on record Abdallah's e-PAS covering the period from April 2002 to March 2007. On 22 June 2003, the reporting officer remarked that he "has to reduce his frequent absences to his duty because of family reasons". To this Abdallah agreed and promised to "provide the supporting documents for [his] absent[ee]ism".

21. The next two reporting cycles were somewhat uneventful, but absenteeism re-emerged in Abdallah's Mid-Point Review on 10 January 2006. It was recorded that "the [s]taff member has been so regularly absent from work for many reasons. ... Performance therefore needs a lot of improvement because it does not meet expectations". And in the End-Of-Cycle appraisal it was recorded on 6 April 2006 that "[w]henever the employee has been on duty, performance has been satisfactory. Unfortunately his absences from work have been so regular that reprographic work has suffered". Repeated absences from work were also noted in comments under values and competencies. The overall comments were that "[d]espite the warning given to the employee during the mid-term review, little progress has been observed". Of course, the staff member's comments were also recorded to the effect that he had a family who sometimes needed his attention which required his absence from duty but that he always reported to his supervisor.

22. On 22 May 2007, in the end-of-cycle appraisal it was recorded that “the [s]taff member has been very regularly absent from work”. Under comments on values and competencies the remark recorded was that “[d]espite the warning given to the employee during the mid-term review, little progress has been observed”. Under overall comments it was recorded that “[d]uring the relevant period, the reprographic work has suffered due to the regular absences from work”.

23. Abdallah has tried to explain away his absences from work on one ground or another, either illness or injuries. We think no supervisor or manager would refuse to accept any reasonable reason for absence from work. People do fall ill, they can also sustain injuries requiring hospitalization, their children or family members may likewise fall ill or get hospitalized. All this is understandable, but what is difficult to accept is why anyone’s supervisor would record these absences in the annual reports if these were untrue and not a general pattern of behaviour.

24. Abdallah also submits that his final e-PAS for the period from 24 October 2007 through 29 February 2008 had not been completed and that in the absence of this final report, his fixed-term contract could not come to an end. We fail to understand this argument. Here is a staff member who is least interested in his work, remains regularly absent from work, and shows no sign of improvement. There is a pattern in all this. No organization can be compelled to keep such a staff member who has no intention of coming up to the mark. To report to work on time, regularly, and without break is a basic duty of any one who is employed. When the absences are pointed out and recorded in the annual reports, the staff member should choke up and start coming to work on time and without break. We find no evidence of this having happened in the case of Abdallah. In our view, the ICTR Administration was not required under Administrative Instruction ST/AI/2002/3 to raise a separate performance appraisal to cover Abdallah’s last five months with ICTR before separating him from service (paragraph 3.3 of ST/AI/2002/3).

25. We have examined the Abdallah’s case from all angles and find that he has not been able to show any illegality of fact, procedure or law in the UNDT Judgment which may compel us to decide in his favour. Abdallah was given a fair hearing before the UNDT, the reasons for dismissing his appeal were valid. The administrative decision not to renew the appellant’s fixed-term contract was validly taken and calls for no interference.

Judgment

27. This appeal is without merit and is rejected.

Dated this 27th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Garewal, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Simón

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar