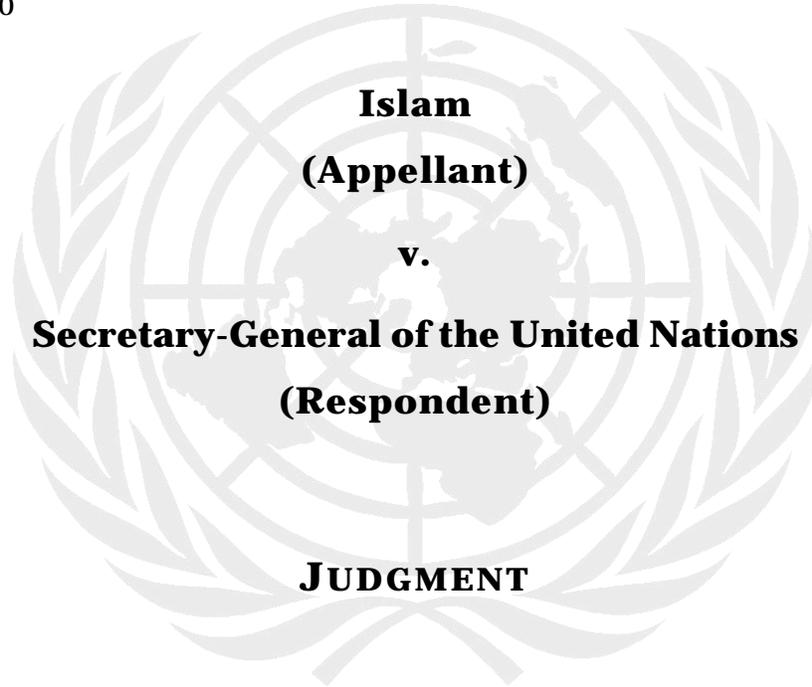




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-110



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**Before:** Judge Sophia Adinyira, Presiding  
Judge Kamaljit Singh Garewal  
Judge Mark P. Painter

**Judgment No.:** 2011-UNAT-115

**Date:** 11 March 2011

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Bart Willemsen

**Counsel for Respondent:** Amy Wood

**JUDGE SOPHIA ADINYIRA**, Presiding.

**Synopsis**

1. The Appellant, Nazrul Islam (Islam), joined the United Nations Assistance Mission for Iraq (UNAMI) in September 2004 as a P-3 level IT Officer with Communications and Information Technology Services (CITS). On 29 October 2007, the Chief Civilian Personnel Officer (CCPO) informed Islam in writing that as a result of the reorganization of CITS, UNAMI “no longer require[d] the post of Information Technology Officer” that Islam was encumbering, and his contract would not be further extended beyond 30 November 2007.
2. Islam’s application against the non-extension decision was dismissed by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal).
3. Islam submits that there was evidence that the true reason for the non-renewal of his contract was perceived performance deficiencies by his supervisors, whilst a different and therefore false reason was communicated to him.
4. Islam also submits that the UNDT erred in fact or exceeded its jurisdiction in finding that both the available evidence and the parties’ submissions support the finding that the true and sole reason for the impugned decision was the stated reorganization of CITS.
5. The Secretary-General submits that a fixed-term appointment carries no expectancy of renewal. He submits further that Islam’s arguments merely suggest an alternative basis for the non-renewal of his appointment, and that Islam thus fails to demonstrate that the UNDT erred on a question of fact resulting in a manifestly unreasonable decision.
6. The reason given for the non-renewal of Islam’s contract was the stated reorganization of CITS. Islam conceded that the restructuring was properly done. We therefore agree with the UNDT that the opinion expressed by the Chief of CITS that Islam’s performance deficiencies and shortcomings could justify the non-renewal of his contract was immaterial.
7. We conclude that the Administration provided Islam with legitimate reasons for the non-renewal of his appointment.

8. We find no merit in this appeal. The appeal is dismissed. The UNDT Judgment is affirmed.

### Facts and Procedure

9. Islam joined UNAMI in September 2004 as a P-3 level IT Officer on a 100-series fixed-term appointment. On 28 September 2004, he was appointed to the post of Chief IT Officer.

10. On 9 March 2005, Islam received a “Request for extension of Appointment/Assignment/Secondment of International Staff Members”, signed by the CCPO and Islam’s supervisor, Chief of CITS. The document indicated that Islam was rated as partly meeting performance expectations. It informed Islam that his appointment would be extended for one month only until 30 April 2005, due to reorganization, which resulted in his post being realigned to cover the functions of budget, planning and logistics support. The new post was called Budget, Planning and Logistics Officer (BPLO).

11. On 3 April 2005, Islam filed a rebuttal of the performance rating given to him by his supervisor. His contract was consequently extended beyond 30 April 2005. Islam did not apply for the new post of BPLO. He served on a number of successive short-term appointments on a variety of projects.

12. By memorandum dated 29 October 2007, CCPO advised Islam that his contract would not be further extended beyond 30 November 2007. CCPO explained that as a result of reorganization, UNAMI “no longer requires the post of Information Technology Officer” that Islam was encumbering.

13. Islam was not separated from service of UNAMI on 30 November 2007, but remained on board on certified sick leave from 29 November 2007 to 7 March 2008, after which time his contract was not renewed.

14. After he filed a request for administrative review and was informed that the decision not to renew his contract had been properly taken, Islam appealed to the Joint Appeals Board (JAB) on 15 April 2008. The JAB did not have an opportunity to review this case before its abolition at the end of June 2009. The case was subsequently transferred to the Dispute Tribunal.

15. On 11 May 2010, the UNDT issued Judgment No. UNDT/2010/091, in which it dismissed Islam's application.

### **Submissions**

#### **Islam's Appeal**

16. Islam submits that the UNDT erred in fact or exceeded its jurisdiction in finding that both the available evidence and the parties' submissions support the finding that the true and sole reason for the impugned decision was the stated reorganization of CITS. He also submits that there was evidence that the true reason for the non-renewal of his contract was perceived performance deficiencies by his supervisors, whilst a different and therefore false reason was communicated to him.

#### **Secretary-General's Answer**

17. The Secretary-General submits that Islam's arguments merely suggest an alternative basis for the non-renewal of his appointment, and he thus fails to demonstrate that the UNDT erred on a question of fact resulting in a manifestly unreasonable decision.

18. The Secretary-General submits further that a fixed-term appointment carries no expectancy of renewal and the Organization has no obligation to provide reasons for the non-renewal of a fixed-term appointment.

### **Considerations**

#### **On preliminary matters**

19. On 28 June 2010, Islam appealed against the Judgment. An answer was due on 16 August 2010. But on 31 August 2010, the Secretary-General wrote to the Registry, apologizing for his oversight in failing to timely forward Islam's appeal internally for processing and requesting an extension of the time limit. The President of the Appeals Tribunal granted the request and by Order No. 7 (2010) ordered the Secretary-General to file an answer by 17 September 2010, which he did.

20. Islam demands that the Appeals Tribunal “clarify the legal basis for having considered the Request” for extension of time “*ex parte* excluding him from the proceedings”.

21. The Statute and Rules of Procedure of the Appeals Tribunal do not specify whether requests for extension of time should be heard *ex parte* or on notice. For a fair and expeditious disposal of appeals this Tribunal adopted the practice for such applications to be dealt with *ex-parte* except when the President of the Tribunal or Duty Judge determined that the application ought to be on notice.

22. We therefore find that the President of this Tribunal acted rightly in exercising his discretion to consider the Secretary-General’s request for extension of time limit *ex parte*.

23. Islam also wants to know why the information on the cases to be considered for the fall session 2010 was communicated to the Secretary- General.

24. We find this complaint petty as it is normal for parties/counsel to enquire about the state of their cases from the registry of a court or tribunal without the need to inform or notify the party or counsel on the other side.

**On merits**

25. The Appeals Tribunal in paragraph 29 of Judgment No. 2010-UNAT-051 (*Ilic*) stated:

The appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective. It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal.

26. Judge Adams noted the reorganization of CITS was the official reason given by UNAMI for Islam’s separation. He also noted the evidence given by the Chief of CITS, Islam’s supervisor, showing that, in the view of the Chief, Islam’s non-performance and short-comings also constituted the reasons for the non-extension of Islam’s contract.

27. Islam contends that those were the true reasons for his separation, but UNAMI wrongfully failed to disclose them in its official communications. The resulting decision not to extend Islam's contract was vitiated by such failure and was thus unlawful.

28. Judge Adams wrote that "if a decision-maker has several valid reasons not to renew a staff member's contract, each being sufficient to justify the decision and complying with all necessary requirements ..., the decision-maker can choose to rely on any of those reasons in making the decision".

29. We however note that when a justification is given by the Administration for the exercise of its discretion it must be supported by the facts.

30. The reason given for the non-renewal of Islam's contract was the reorganization of CITS. Islam conceded that the restructuring was properly done.

31. We therefore agree with the UNDT that the opinion expressed by the Chief of CITS that Islam's performance deficiencies and shortcomings could justify the non-renewal of his contract was immaterial.

32. We conclude that the Administration provided Islam with legitimate reasons for the non-renewal of his appointment.

33. We find no merit in this appeal.

**Judgment**

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

Original and Authoritative Version: English

Dated this 11<sup>th</sup> day of March 2011 in New York, United States.

*(Signed)*

Judge Adinyira, Presiding

*(Signed)*

Judge Garewal

*(Signed)*

Judge Painter

Entered in the Register on this 19<sup>th</sup> day of April 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar