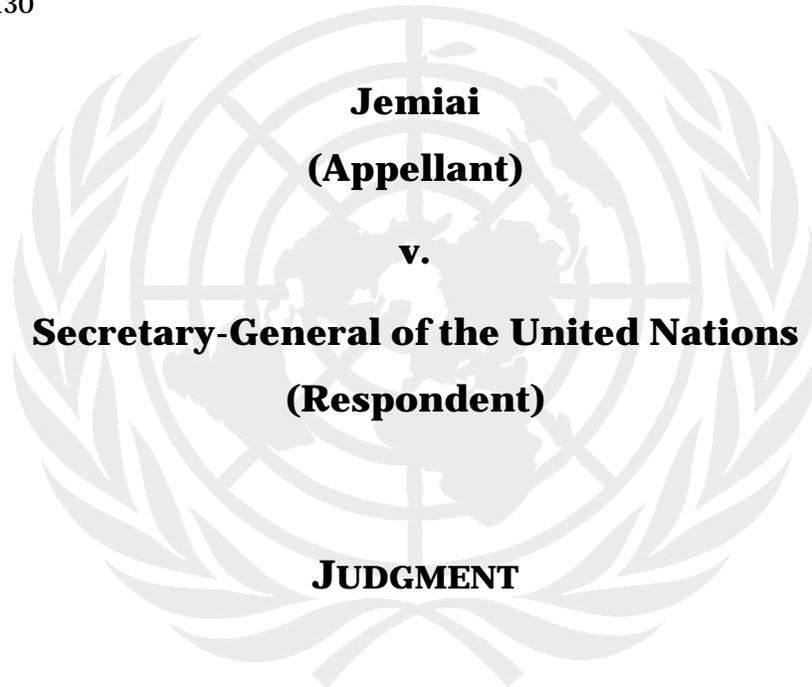




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-130



Before: Judge Mark P. Painter, Presiding
Judge Jean Courtial
Judge Mary Faherty

Judgment No.: 2011-UNAT-137

Date: 8 July 2011

Registrar: Weicheng Lin

Counsel for Appellant: Joseph Grinblat

Counsel for Respondent: Amy Wood

JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. When a staff member signs a Memorandum of Understanding (MOU), it will normally be enforced. Here, a staff member seeks to both keep the benefits she made and raise a supposed technical violation. It was not a violation at all.

2. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) heard and decided this case and found that Yolande Jemiai (Jemiai) received notice of her termination date when she signed the MOU, some four months before. The fact that a formal letter was received later neither abrogated the MOU nor gave rise to any further compensation.

Facts and Procedure

3. On 19 July 2006, the Under-Secretary-General for Management authorized the Office of Human Resources Management (OHRM) to enter into an agreed termination of the (then fixed-term) appointment of Jemiai, to take effect on 31 July 2006, and Jemiai was so informed on 26 July 2006. Jemiai expressed her willingness to consent to the agreed termination, but asked that it take effect on 31 December 2006 instead. In August 2006, OHRM informed her that her request could be accommodated and changed the separation date to 31 December 2006. OHRM also informed Jemiai that it was not in a position to enter into further negotiations or changes in the offer as it had been presented to her and that, since she had been given advance notice of the arrangement, she would not be entitled to payment in lieu of final notice.

4. On 31 August 2006, Jemiai signed a MOU, agreeing to the terms governing the termination of her appointment. The MOU provided “that, should the Secretary-General decide to terminate [Jemiai’s] appointment under the provision of Staff Regulation 9.1(a), effective 31 December 2006, [she] will not contest such decision or any decision related to this termination action”; “that [she] will be paid [a] termination indemnity in accordance with Annex III to the Staff Regulations”; “that the Organization has no further obligation, financial or otherwise, upon separation...”; “that [she] agree[s] to withdraw any and all claims and appeals [she] may have pending against the Organization and to refrain from filing any further claims or appeals against

the Organization arising from any terms of appointment”; and “that [she is] not eligible for employment with the United Nations, its subsidiary organs and programmes, for a period of four years following separation”. The MOU further stated that “[Jemiai has] decided to accept termination of [her] appointment under the above terms and conditions” and that “[t]his is subject to the approval of the Secretary-General”.

5. On 27 December 2006, Jemiai received from the Officer-in-Charge, OHRM, a formal notice that “the Secretary-General has decided to terminate [her] permanent appointment” effective 31 December 2006.

6. On 17 April 2007, Jemiai wrote to OHRM, pointing out that she had not received the three months’ salary in lieu of notice in addition to the termination indemnity to which she was entitled under Regulation 9.3 and Rule 109.3, in view of the fact that she had only been formally informed of her termination four days prior to it taking effect and taking into consideration the conversion of her contract from fixed-term to permanent effective 1 September 2006.

7. On 25 June 2007, OHRM responded that it maintained the original decision and, in September 2007, the Chief, Administrative Law Unit, OHRM, rejected her request for administrative review. Jemiai then submitted a statement of appeal to the Joint Appeals Board (JAB). On 9 December 2008, Jemiai was notified of the Secretary-General’s decision to accept the recommendation of the JAB to maintain the original decision. Jemiai appealed the decision to the former Administrative Tribunal. The former Administrative Tribunal did not dispose of the appeal before its abolishment and the appeal was transferred to the Dispute Tribunal as of 1 January 2010.

8. On 20 August 2010, the UNDT issued its Judgment No. UNDT/2010/149. It determined that former Staff Rule 109.3 did not apply to the termination of Jemiai’s appointment because the terms and conditions had been negotiated between the parties and were recorded in the MOU. The termination of Jemiai’s appointment was therefore governed by the MOU and not the staff rules, and under the MOU, Jemiai was not entitled to compensation in lieu of notice. Moreover, the MOU contained a clause whereby she waived her right to challenge the implementation of any decision relating to the termination. The UNDT found that, in any event, the circumstances surrounding the

agreed termination by the MOU revealed that Jemiai had been provided with adequate notice of her termination. The UNDT dismissed the application in its entirety.

9. Jemiai appeals the UNDT Judgment.

Submissions

Jemiai's Appeal

10. Jemiai submits that the UNDT erred in law and fact in concluding that the Secretary-General did not violate former Staff Rule 109.3 and requests that the United Nations Appeals Tribunal (Appeals Tribunal) order the Secretary-General to pay her three months' salary as provided for under the staff rules.

Secretary-General's Answer

11. The Secretary-General responds that the UNDT correctly concluded that by signing the MOU for the agreed termination, Jemiai was precluded from further challenging the amount that she had received for the agreed termination.

12. The Secretary-General further contends that the UNDT correctly determined that Jemiai was not entitled to compensation in lieu of notice under the MOU; and that, in any event, Jemiai was on notice of the terms of the agreed termination as early as August 2006 that her appointment would be terminated effective 31 December 2006.

Considerations

13. The parties freely made an agreement. Jemiai received benefits under it. Now she seeks additional benefits (without giving up those she bargained for), because she did not receive proper notice. But, as the trial court found as a fact, she received notice of her termination date when she signed the MOU, some four months before. The fact that a formal letter was received later neither abrogated the MOU nor gave rise to any further compensation.

14. Judge Meeran of the UNDT heard and decided this case. We can find no error. The UNDT correctly determined that Jemiai was not entitled to compensation in lieu of

notice under the MOU—she received notice and, in any event, she gave up her right to contest her termination in the MOU.

Judgment

15. We affirm the UNDT's Judgment.

Original and Authoritative Version: English

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

(Signed)

Judge Painter, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Faherty

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

(Signed)

Weicheng Lin, Registrar