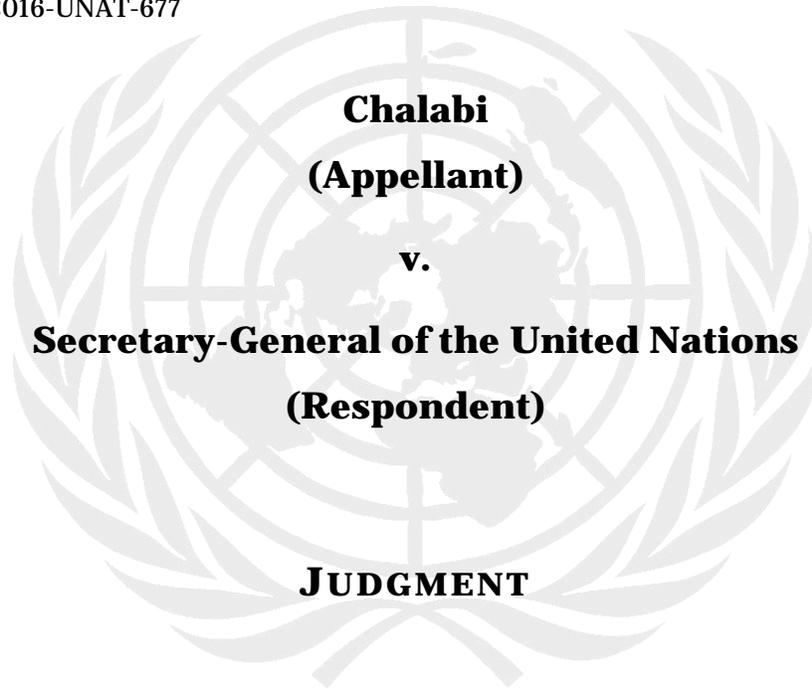




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-677



Before:	Judge Deborah Thomas-Felix, Presiding Judge Luis María Simón Judge Mary Faherty
Case No.:	2016-903
Date:	30 June 2016
Registrar:	Weicheng Lin

Counsel for Mr. Chalabi:	Self-represented
Counsel for Secretary-General:	Nathalie Defrasne

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Mohammed Hassan Chalabi of Judgment No. UNDT/2015/122, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 31 December 2015, in the case of *Chalabi v. Secretary-General of the United Nations*. On 25 February 2016, Mr. Chalabi filed his appeal and, on 29 April 2016, the Secretary-General filed his answer.

Facts and Procedure

2. Mr. Chalabi challenges the non-renewal of his fixed-term appointment beyond 31 December 2013. In 2009, Mr. Chalabi was locally recruited to the Kirkuk duty station of the United Nations Assistance Mission for Iraq (UNAMI) as an Associate Political Affairs Officer (APAO) in the Office of Political Affairs (OPA). The position was in the National Professional Officer (NPO) category of staff. Mr. Chalabi's position in Kirkuk was funded by a post that was "temporarily transferred" from Baghdad. Mr. Chalabi maintains that he was not informed of this fact.

3. On 22 March 2012, the Department of Political Affairs (DPA) and the Department of Field Services (DFS) at Headquarters instructed UNAMI to "review the Mission's posture and activities in Iraq; rationalize staffing; and realign functions, while reducing the budget by 15 percent".¹ At this time, the political situation in Iraq had led to an increase in OPA's workload. Accordingly, the Mission proposed returning the posts that were "on loan" from Kirkuk to Baghdad or deployed in the field as part of the Baghdad office's governorate liaison network. These posts included three NPO posts on loan to Kirkuk, one of which was encumbered by Mr. Chalabi.

4. By e-mail dated 7 January 2013, the Director of OPA (Director) advised Mr. Chalabi and two other NPOs in the Kirkuk office as follows:

Following the approval of the 2013 UNAMI budget, I am writing to advise you that from 1 January 2013 the post you encumber has been redeployed to Baghdad under the supervision of the Chief of Political Affairs. As such, steps are being taken to fill these positions locally in Baghdad.

¹ Impugned Judgment, para. 6.

As the current incumbent of the post you are given priority to express your interest to be reappointed at your current level in Baghdad. Please note that any expenses against the movement/reappointment will be borne by you.

In the event that you are not interested in the reappointment in Baghdad, the posts will be advertised for Baghdad duty location on 1 February 2013 and suitable candidates willing to work in Baghdad will be selected.

Please let me know your decision by 6 of February if you are interested.

5. On 14 January 2013, Mr. Chalabi sent an e-mail to the Director, in which he sought clarification of certain issues before he responded to the Director's invitation to apply. He sent follow-up e-mails on 21 and 22 January 2013. Mr. Chalabi also sent an e-mail to the Deputy Special Representative of the Secretary-General requesting his assistance.

6. On 28 January 2013, a Political Affairs Officer, on behalf of the Director, wrote to Mr. Chalabi explaining the decision. On 29 January 2013, Mr. Chalabi sent an e-mail to the Director in which he stated that the e-mail he had received from the Political Affairs Officer contradicted what the Director had told him during a phone call. Mr. Chalabi also questioned why his request for clarification had not been responded to, as promised.

7. In an e-mail dated 7 February 2013 to the Director, Mr. Chalabi noted that the deadline for him to express interest in being reappointed in Baghdad had passed without him receiving the clarifications he had requested.

8. On 8 May 2013, the Chief of Staff of UNAMI advised Mr. Chalabi that his appointment, which was due to expire on 30 June 2013, would be extended to 31 December 2013 on an exceptional basis. At this time, UNAMI was attempting to secure more APAO posts in Kirkuk in the Mission's 2014 budget. However, these efforts were not successful.

9. On 5 November 2013, the Head of Office, Kirkuk, UNAMI forwarded to Mr. Chalabi an e-mail dated 27 October 2013 that he had received from the UNAMI Senior Political Affairs Officer. The e-mail advised that there would be no contract extension for Mr. Chalabi and the two other NPOs in Kirkuk beyond 31 December 2013.

10. On 12 November 2013, Mr. Chalabi requested management evaluation of the decision not to renew his fixed-term contract beyond 31 December 2013.

11. On 14 November 2013, the Director advised Mr. Chalabi and the three other APAOs in Kirkuk that one APAO post would remain in Kirkuk and the other three posts would be “returned” to Baghdad in accordance with the Mission’s budget, with effect from 1 January 2014. The Director invited the APAOs to participate in a written assessment in order to determine which APAO would remain in Kirkuk. Mr. Chalabi was invited to participate but did not take the test. In an e-mail dated 17 November 2013, Mr. Chalabi asked the Director for clarification regarding the test and expressed his concern about the restructuring process.

12. On 6 January 2014, the Under-Secretary-General for Management advised Mr. Chalabi that the Secretary-General had decided to uphold the decision not to renew his fixed-term appointment beyond 31 December 2013.

13. Mr. Chalabi’s appointment was extended until 31 January 2014 to enable him to complete the check-out process.

14. On 8 February 2014, UNAMI advertised three job openings for APAO positions at the NPO-A level in Baghdad. Mr. Chalabi did not apply for any of these positions.

15. Mr. Chalabi appealed the decision not to renew his fixed-term contract to the UNDT. In its Judgment, the UNDT dismissed the application, having found that Mr. Chalabi had been adequately consulted prior to the contested decision being taken. Further, the UNDT held that Mr. Chalabi did not have a legitimate expectation that his fixed-term appointment would be renewed. Neither UNAMI’s 2014 budget proposal nor any views expressed by the Head of Office, Kirkuk, UNAMI, could be interpreted as an express promise that his contract would be renewed. Finally, the UNDT found that the Administration’s decision was not ill-motivated or made in bad faith. Mr. Chalabi did not provide sufficient evidence to displace the presumption of regularity of the non-renewal decision.

16. Mr. Chalabi appealed the UNDT Judgment to the Appeals Tribunal.²

² Mr. Chalabi’s appeal and the Secretary-General’s answer are almost identical to those in respect of Mr. Khalaf, another APAO with UNAMI who contested the decision not to renew his fixed-term appointment beyond 31 December 2013. See *Khalaf v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-678.

Submissions

Mr. Chalabi's Appeal

17. Mr. Chalabi alleges that the UNDT made several errors of fact. He argues that the UNDT ignored many documented facts and failed to address certain issues.

18. Mr. Chalabi claims that the UNDT erred when it found that he had been properly consulted about the contested decision. He states that the UNDT did not consider the fact that there was no consultation prior to the decision to redeploy his post, which was communicated to him on 7 January 2013. Mr. Chalabi states that the matter was predetermined prior to this communication from UNAMI.

19. Mr. Chalabi contests the UNDT's conclusion that he did not have a legitimate expectation of renewal of his appointment in the context of UNAMI's 2014 budget proposal and other communications.

20. Finally, Mr. Chalabi challenges the UNDT's determination that the contested decision was not ill-motivated or taken in bad faith. In particular, he contests the finding that he was "on loan" from Baghdad to Kirkuk at any stage during his appointment with UNAMI, which was used as a reason for his non-renewal.

21. Mr. Chalabi requests that the Appeals Tribunal reverse the UNDT's Judgment and award the remedies he sought in his UNDT application, including: (a) rescission of UNAMI's decision not to renew his fixed-term contract; (b) reinstatement to his original position or any other similar position with benefits, retroactive from 1 February 2014; and (c) compensation for breach of his rights, moral damage and damage to his professional reputation.

The Secretary-General's Answer

22. The UNDT correctly concluded that Mr. Chalabi had been consulted during the restructuring of OPA. Mr. Chalabi received written notice of the impending decision to return his post to Baghdad. He was also advised of the exceptional extension of his appointment. He engaged in extensive correspondence with the Administration about the relocation of his post back to Baghdad and the potential non-renewal of his appointment.

23. Mr. Chalabi did not challenge the decision to restructure OPA or the decision to return his post to Baghdad where it was originally located under UNAMI's budget. He challenged the decision not to renew his fixed-term appointment. A fixed-term appointment does not carry any expectancy of renewal. Separation can occur without prior notice on the expiration date specified in the letter of appointment. There is no obligation to consult a staff member regarding the non-renewal of his or her fixed-term appointment.

24. UNAMI's efforts to maintain the APAO posts in Kirkuk in the draft budget for 2014 and the support from the Head of Office, Kirkuk, of the proposal to maintain the APAO posts in Kirkuk cannot be construed as an express promise to renew Mr. Chalabi's fixed-term appointment.

25. Mr. Chalabi's claim that UNAMI's decision not to renew his appointment was ill-motivated concerned alleged events which pre-dated the contested decision by a considerable period of time. The alleged events have no nexus to the contested decision. In relation to whether Mr. Chalabi was on loan to Kirkuk, the documents show that while his "actual location" was Kirkuk, his "budget location" for the purposes of the budget templates from 2009-2013 was Baghdad. The UNDT correctly found that the post encumbered by Mr. Chalabi had been temporarily transferred from Baghdad to Kirkuk. In any case, Mr. Chalabi did not show any connection between this fact and any possible ill-motivation or bad faith on the part of the UNAMI Administration.

26. Mr. Chalabi's claims on appeal reiterate his claims before the UNDT. He has failed to identify any excess or failure of jurisdiction, errors of law, material errors of fact or errors of procedure on the part of the UNDT.

27. The Secretary-General requests that the Appeals Tribunal affirm the UNDT's Judgment and dismiss the appeal in its entirety.

Considerations

28. As a preliminary matter, Mr. Chalabi requests that the Appeals Tribunal hold an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). We find that the factual and legal issues which arise from this appeal have been clearly defined by the parties and there is no need for further clarification. We do not find that an oral hearing would assist

in the expeditious and fair disposal of the case, as required by Article 18(1) of the Rules. The request for an oral hearing is therefore denied.

29. One of the issues to be considered by the Appeals Tribunal is whether Mr. Chalabi had a legitimate expectation for the renewal of his fixed-term contract and rights related to the renewal of his fixed-term contract.

30. Staff Rule 4.13(c) provides *inter alia* that “[a] fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service”. In order for a staff member’s claim of legitimate expectation of a renewal of appointment to be sustained, it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case.³

31. In the absence of any evidence of a firm commitment of renewal, there is no basis to support Mr. Chalabi’s claim of legitimate expectation and/or right for the renewal of his contract. As a consequence, any pecuniary claim made by Mr. Chalabi which is related to what he perceives as his legitimate right of the renewal of his contract fails. We uphold the findings of the UNDT in this regard.

32. It is clear from the evidence that the Administration was involved in the process of revising the activities in Iraq and realigning its functions. We agree with and uphold the findings of the UNDT that Mr. Chalabi was adequately consulted on the organizational restructuring before the contested decision was taken, and that the contested decision was not ill-motivated or taken in bad faith.

33. We have examined all of the evidence and reviewed all the other grounds of Mr. Chalabi’s appeal and find them to be without merit. We find no fault with the decision of the UNDT.

Judgment

34. The appeal is dismissed. Judgment No. UNDT/2015/122 is upheld.

³ *Kalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-580, para. 67; *Munir v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-522, para. 24.

Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Simón

(Signed)

Judge Faherty

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar