



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

Judgment No. 2021-UNAT-1143

**Edward E. Hammond
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Kanwaldeep Sandhu Judge Dimitrios Raikos
Case No.:	2020-1439
Date:	25 June 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Secretary-General:	André Luiz Pereira de Oliveira

JUDGE MARTHA HALFELD, PRESIDING.

1. Mr. Hammond, a former Administrative Officer at the P-4 level in the Communications and Public Information Section of the United Nations-African Union Mission in Darfur (“UNAMID”), contests the decision not to renew his appointment. In its Judgment, the UNDT found that he did not request management evaluation of the impugned decision in a timely manner and dismissed the application on grounds of receivability.

2. For the reasons set out below, the Appeals Tribunal affirms the UNDT Judgment.

Facts and Procedure

3. Mr. Hammond (“Appellant”) served as an Administrative Officer at the P-4 level in the Communications and Public Information Section (“CPIS”), UNAMID. The Appellant served on a fixed-term appointment.

4. On 31 October 2017, in his proposed UNAMID budget for 2017 to 2018 (“Budget”), the Secretary-General recommended the conversion of the Appellant’s Administrative Officer post from the P-4 level in the Professional category to the FS-6 level in the Field Service category, effective 31 December 2017. The General Assembly approved the Budget on 24 December 2017.

5. UNAMID placed the Appellant against a vacant P-4 Human Rights Officer post effective 1 January 2018, in order for him to serve out the remainder of his fixed-term appointment, which expired on 30 June 2018. This decision allowed the Appellant to utilize his residual his sick leave entitlement.

6. On 23 April 2018, UNAMID wrote to the Appellant to inform him that his fixed-term appointment would not be renewed beyond 30 June 2018 due to reclassification of his post. The Appellant went on certified sick leave on 29 April 2018. Starting 1 July 2018, following the expiration of his appointment, UNAMID granted the Appellant month-to-month contract extensions to allow him to exhaust his certified sick leave entitlement.

7. In e-mails dated 16 and 17 October 2018, UNAMID Human Resources (“HR”) erroneously informed the Appellant that his appointment would be renewed on a monthly basis pending the outcomes of the cases the Appellant had filed with the Dispute Tribunal

(unrelated to the present case). On 11 November 2018, the Director of Mission Support told the Appellant by e-mail that the non-renewal of his appointment was “put in abeyance for the period of the authorized sick leave pursuant to Section 3.9 of ST/AI/2005/3” and that there was no expectation of renewal beyond this point.

8. The Appellant’s last day of certified sick leave was 9 March 2019. He was separated 10 March 2019. On 23 April 2019, UNAMID HR informed the Appellant that he had been effectively separated from service on 9 March 2019.

9. The Appellant requested management evaluation of the contested decision on 22 June 2019. On 25 October 2019, the Management Evaluation Unit (“MEU”) informed the Appellant that his management evaluation request was time-barred, and thus not receivable. The MEU considered the Appellant to have been notified of the contested decision in the 23 April 2018 letter.

10. On 1 November 2019, the Appellant filed an application with the Dispute Tribunal (“Application”), challenging the contested decision. On 29 June 2020, the Dispute Tribunal issued Judgment No. UNDT/2020/098 (“Judgment”). The Dispute Tribunal found that the Appellant’s Application was not receivable *ratione temporis*.

11. The disputed issue before the Dispute Tribunal was the precise date of notification of the decision not to renew the Appellant’s fixed-term appointment. The Dispute Tribunal found that UNAMID’s 23 April 2018 letter did not give the Appellant clear and unambiguous notification that his fixed-term appointment would not be renewed beyond its expiry on 20 June 2018.¹

12. The Dispute Tribunal found that UNAMID’s 11 November 2018 letter provided clear notification to the Appellant that his fixed-term appointment would only be renewed until the exhaustion of his sick leave entitlement. The Appellant did not request a management evaluation of this decision until 22 June 2019, over seven months later. Staff rules require a staff member to submit a request for management evaluation of an administrative decision within sixty days of when the staff member received notice of the

¹ Impugned Judgment, para. 31.

decision. Thus, the Dispute Tribunal found that the Appellant's Application was not receivable *ratione temporis*.

Submissions

Mr. Hammond's Appeal

13. The Appellant contends that the Dispute Tribunal erred in its Judgment by omitting major facts, relying on mis-represented facts and/or mistakes, and misinterpreting the contested decision. The Appellant argues that the substance of his complaint was not simply the non-extension of a fixed-term contract, as it was interpreted by the Dispute Tribunal. Instead, the Appellant posits that he seeks remedy for "Promises in Writing' not honoured by the Administration".²

14. The Appellant cites two "promises not honoured". First, the Appellant asserts that on 1 June 2018 the Respondent extended the Appellant's contract from 1 July 2018 through the end of December 2018. The Appellant argues that the Administration's placement of the Appellant against an open Human Rights post constituted a "promise of extension" until 31 December 2018.

15. The Appellant contends that UNAMID made the second promise in its HR e-mails dated 16 and 17 October 2018, in which the Appellant was told that his contract would be renewed on a monthly basis pending the outcome of his separate cases before the Dispute Tribunal. In his Brief, the Appellant writes that the second promise "is clearly understood to be a replacement of the first promise".

16. The Appellant argues that the Dispute Tribunal made several errors in fact in its Judgment. The Dispute Tribunal stated that the General Assembly approved a "conversion" of the Appellant's P-4 post. The Appellant argues that his post was "reclassified" rather than "converted", and that the two terms are not interchangeable. The Appellant cites as error the Judgment's supposed misstatement of the start date of the Appellant's sick leave. The Appellant contends that these errors demonstrate that his complaint "has somehow been distorted/misunderstood", and that justice has been denied.

² Appeal Brief, para. 2.

17. Appellant seeks the reversal of the UNDT Judgment, and requests that the Appeals Tribunal award damages as it sees fit.

The Secretary-General's Answer

18. In his Answer to the Appeal, the Respondent argues that the Dispute Tribunal properly found that the Appellant's Application was not receivable *ratione temporis*, because the Appellant failed to submit his request for a management evaluation within sixty days of having been notified about the contested decision. The Respondent argues that the Dispute Tribunal properly found that the 11 November 2018 letter from the Director of Mission Support provided clear and unambiguous notice of the non-renewal decision to the Appellant. This letter stated that the Appellant's fixed-term appointment would not be renewed past the exhaustion of his sick leave entitlement. The Respondent argues that because the Appellant did not submit his management evaluation request until 22 June 2019, his Application is time-barred.

19. The Respondent also argues that the Appellant does not establish that the Dispute Tribunal committed any error of law or fact warranting the reversal of its Judgment. He argues that the Appellant fails to satisfy the requirements of Article 2(1) of the UNAT Statute because the Appellant does not identify and explain the alleged defects in the appealed Judgment. The Respondent contends that an appellant must do more than disagree with the Dispute Tribunal's findings of fact or conclusions of law; the Appellant must show that the Dispute Tribunal erred or that its judgment is otherwise defective.

20. The Respondent requests that the Appeals Tribunal uphold the UNDT Judgment and dismiss the Appeal in its entirety.

Considerations

21. As a preliminary matter, Mr. Hammond has requested that the Appeals Tribunal holds an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal's Statute and Article 18(1) of the Appeals Tribunal's Rules of Procedure (Rules). The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. Moreover, 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, particularly in light of the matter in discussion, which deals with the receivability of the application. Thus, the request for an oral hearing is denied.

22. The issue under consideration in this appeal is whether the UNDT erred when it found that Mr. Hammond's Application was not receivable, since he had failed to file a timely request for management evaluation.

23. It is settled case law that requesting management evaluation is a mandatory first step in the appeal process.³ The Appeals Tribunal has noted many times that the requirement of management evaluation assures that there is an opportunity to quickly resolve a staff member's complaint or dispute without the need for judicial intervention.⁴ Neither the Dispute Tribunal nor the Appeals Tribunal has jurisdiction to waive deadlines for the filing of requests for management evaluation or to grant any exceptions to it as it is a mandatory requirement pursuant to the Staff Rules.⁵

24. Staff Rule 11.2 sets out the requirements for a request by a staff member for management evaluation. It states, in its relevant part, that:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

³ *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

⁴ *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13, citing *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 17, in turn citing *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22 and citations therein.

⁵ *Faust v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-695, para. 40, citing *Eggesfield v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-402, para. 23 and citations therein.

25. As established by our jurisprudence, a determination of the date of receipt of notification for purposes of Staff Rule 11.2(c) depends on the facts and circumstances of each case. The Appeals Tribunal has repeatedly ruled that the decisive moment of notification for purposes of Staff Rule 11.2(c) is when “all relevant facts ... were known, or should have reasonably been known”.⁶ Further, “[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine”.⁷

26. The precise determination of the date of notification for purposes of Staff Rule 11.2(c) is crucial, and beneficial, for both the Organization and staff members. This is why, as a general rule, written notification most effectively satisfies the commitment to clarity and transparency, which are priority interests and ongoing concerns of the Organization.

27. In this appeal, Mr. Hammond claims that the contested decision is comprised of two promises in writing not honoured by the Administration. Mr. Hammond mentions that they “arise directly from an unfair performance evaluation in UNAMID followed by breaches of UN.ST/AI/1998/9 policy on Reclassification of Posts” relating to his P-4 post.⁸ However, there is no indication that this latter line of argument had been raised previously before the UNDT in this case so as to allow any appeal therefrom, since a party cannot introduce new claims for the first time on appeal, on pain of infringement of the two-tier principle of administration of justice.⁹ Mr. Hammond also asserts that the decision under examination is that communicated to him by the 23 April 2019 e-mail.

⁶ *Mokrova v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1092, para. 28, citing *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-691, para. 21.

⁷ *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 28, citing *Rabee v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-296, para. 19, in turn citing *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273, para. 25.

⁸ The Appellant has additionally appealed Judgment No. UNDT/2020/096 rendered by the Dispute Tribunal, regarding his 2016-2017 performance evaluation and the decision to reclassify his previously held post. That case (No. 2020-1433) was also considered at the Appeals Tribunal’s 2021 Summer Session. See Judgment No. 2021-UNAT-1142.

⁹ *Ho v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-791, para. 37; *Haimour and Al Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-688, para. 38; *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 25; *Simmons v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-221, para. 61.

28. In the present case, the UNDT considered that the contested administrative decision was the non-renewal of Mr. Hammond's fixed-term appointment.¹⁰ Likewise, the Appeals Tribunal will also consider this as the contested administrative decision under examination, which is in keeping with Mr. Hammond's claim of "breach of legitimate expectations of renewal since promises made in writing were not honoured" brought by his appeal. Next, it is crucial for the determination of the present appeal to identify when Mr. Hammond received formal communication of this decision, so as to allow the Appeals Tribunal to assess whether there was any error in the UNDT's finding which ultimately led to its conclusion that the request for management evaluation was time-barred.

29. In this regard, the UNDT firstly rejected the 23 April 2018 letter as having formally conveyed the decision not to extend Mr. Hammond's contract, before finding that the 11 November 2018 letter provided notification of the contested administration decision.

30. The UNDT did not err in this regard. On the one hand, the 23 April 2018 letter could not have possibly given formal notification of the decision not to renew Mr. Hammond's contract, in light of the subsequent extensions beyond 30 June 2018, date on which his contract was supposed to expire, until he was ultimately separated on 9 March 2019.

31. On the other hand, the 11 November 2018 letter communicated the final administrative decision subject to judicial review, since it contained its key characteristic of producing "direct legal consequences' affecting a staff member's terms and conditions of appointment".¹¹ Indeed, this specific letter explicitly referred to previous communications informing Mr. Hammond of the decision of non-renewal of his fixed-term appointment on grounds of the abolition of the post. Despite that, the letter stated:

the non-extension of [his] appointment was put in abeyance for the period of the authorized sick leave pursuant to Section 3.9 of ST/AI/2005/3. The decision not to separate [him] on the basis of aforementioned staff rule does not carry an expectation of further extension of [his] fixed-term appointment beyond the period of certified sick leave.

¹⁰ Impugned Judgment, para. 1.

¹¹ *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 28, citing *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, in turn citing former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V and *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, para. 17.

32. This extension of appointment was in line with the applicable legal framework, which provides in relevant part:¹²

When a staff member on a fixed-term appointment is incapacitated for service by reason of an illness that continues beyond the date of expiration of the appointment, he or she shall be granted an extension of the appointment, after consultation with the Medical Director or designated medical officer, for the continuous period of certified illness up to the maximum entitlement to sick leave at full pay and half pay under staff rules 106.2 or 206.3.

33. Moreover, apart from the fact that the heading of this particular letter clearly mentioned the “Non-extension upon expiry of fixed-term appointment”, it likewise clearly referred to Resolution 2429 of the United Nations Security Council, which endorsed the reduction of the Mission’s civilian personnel, allowing for the abolition of Mr. Hammond’s post. Moreover, this same letter served to inform Mr. Hammond of the aforementioned developments “to enable [him to] prepare for this eventuality”.

34. It is true that in e-mails sent on 16 and 17 October 2018, UNAMID HR told the Appellant that his appointment would be renewed on a monthly basis pending the outcome of the Appellant’s unrelated cases before the UNDT. In this regard, the UNDT acknowledged that the Organisation mistakenly asserted in those e-mails that Mr. Hammond’s appointment would be extended pending the outcome of his cases before the UNDT — and not until he exhausted his sick leave.¹³ However, as discussed, the subsequent 11 November 2018 letter communicated a different, although clear and unambiguous, decision, challenging Mr. Hammond to dispute its content, which he did not do in a timely manner.

35. Mr. Hammond’s allegation that it was the 23 April 2019 e-mail which notified him of the contested administrative decision is not tenable. This last communication just reiterated what had been previously expressed, which was that his contract had not been extended, because his last certification of sick leave had been approved up to 9 March 2019. Since no further certification of sick leave had been received, his contract was subsequently not extended.

¹² Administrative Instruction ST/AI/2005/3, Sect. 3.9.

¹³ Impugned Judgment, paras. 32–34.

36. Therefore, it was incumbent upon Mr. Hammond to challenge the decision communicated by the 11 November 2018 letter, which he only did on 22 June 2019, well beyond the legal time limit to request management evaluation. The UNDT thus did not err in its finding that the Application was not receivable.

37. Mr. Hammond's other claims about possible additional errors in the UNDT Judgment are not consequential to the outcome of the present case. Indeed, whether there had been conversion or reclassification of his post, what mattered the most in the present case was the fact that his fixed-term appointment was not renewed.¹⁴ The remainder of the arguments raised by Mr. Hammond in his appeal concern the merits of the case, since they relate to assessment of evidence and a possible promise to extend his contract. None of these claims can be assessed at this stage of the proceedings, which are terminated at the receivability phase.

38. The appeal accordingly fails.

¹⁴ See the first paragraph of the 11 November 2018 letter, communicating the administrative decision. As noted above, Mr. Hammond's application pertaining to the reclassification of the post was considered by the Appeals Tribunal in a separate case, No. 2020-1433. See Judgment No. 2021-UNAT-1142.

Judgment

39. The appeal is dismissed and Judgment No. UNDT/2020/098 is affirmed.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Halfeld, Presiding
Juiz de Fora, Brazil

(Signed)

Judge Sandhu
Vancouver, Canada

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 24th day of August 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar