



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

Judgment No. 2021-UNAT-1163

**Beatriz Fernández Carrillo
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Graeme Colgan Judge Dimitrios Raikos
Case Nos.:	2020-1500
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Ms. Fernández Carrillo: Self-represented

Counsel for the Secretary-General: Ms. Angélique Trouche

JUDGE KANWALDEEP SANDHU, PRESIDING.

Introduction

1. The Appellant, the former Chief Technical Adviser at the United Nations Development Programme (UNDP) in Nepal, contested the decision not to renew her fixed-term appointment (FTA).
2. In Judgment No. UNDT/2020/187 (impugned Judgment) dated 3 November 2020, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found the contested decision to be lawful and dismissed her application.
3. For reasons set out below, we dismiss the appeal and affirm the UNDT decision.

Facts and Procedure

4. The Appellant joined UNDP on 8 January 2017 as Chief Technical Advisor serving on an FTA at the P-5 level overseeing the operations and the substantive side of the Rule of Law and Human Rights Protection System in Nepal Programme (ROLHR or Programme). She reported to the UNDP Deputy Country Director. She was the only senior woman in the Programme.
5. The Programme commenced in 2013 with the aim of concluding by December 2017 according to the UNDP Final Report on ROLHR (July – August 2017). The purpose of the Programme was to strengthen and uphold human rights and justice sector delivery to vulnerable populations in Nepal, including women.
6. In a 12 December 2017 e-mail from the Deputy Country Directory of UNDP, who wrote to the core team of the Programme including the Appellant, the Appellant was informed that the Programme would be replaced by a new phase with more limited resources called the Access to Justice project. The e-mail spoke of “uncertainty about donor funding commitments”. Due to the Deputy Country Director’s commitment of resources for the new phase of the [Rule of Law] project, she confirmed that UNDP would extend the contracts of the core staff for six months “under resource limitation”. Therefore, the Appellant’s post was extended for an additional six months from 1 January to 30 June 2018 to facilitate the transition to the new phase of the project.

7. The Appellant was on sick leave from 21 December 2017 to 10 April 2018 and then on maternity leave from 11 April 2018 to 31 July 2018. To allow her to conclude her maternity leave, her FTA was extended beyond its expiry of 30 June 2018 until 12 August 2018.

8. The new phase consisted of the Access to Justice Reform Project 2018-2020 to start in June 2018 and end in December 2020 with a reduced budget compared to the Programme. The Access to Justice project was to build on the achievements of the Programme in the reform and strengthening of the justice sector, in particular the legal aid system, legislative reform including the implementation of newly adopted criminal and civil legislation, and access to justice at the local level.

9. Via memorandum dated 8 August 2018, the UNDP Resident Representative *ad interim* in Nepal notified the Appellant that the Rule of Law project for which she was the Chief Technical Advisor was closed and, therefore, her post was abolished as of June 2018. This memorandum explained that the project initially intended to close in December 2017 but was extended to June 2018 with reduced personnel and limited activities given the available financial resources. She was, accordingly, informed that her FTA was not renewed beyond the completion of her maternity leave on 12 August 2018.

10. Also, around 7 August 2018, the Appellant learned that the contracts of all her colleagues had been extended for a year, except for hers.

11. On 12 August 2018 the Appellant was separated from the Organisation.

12. On 28 August 2018, the Appellant filed a request for management evaluation and received a response from the Management Evaluation Unit (MEU) on 11 October 2018 upholding the Administration's decisions. On 4 January 2019, she filed an application to contest the decision not to renew her FTA beyond its expiration.

UNDT Judgment

13. In the impugned Judgment, the UNDT found the Appellant's post was abolished when the project to which it was attached ended in December 2017, and that her contract was extended for an additional period of six months to cover the limited extension of the project pending the creation and implementation of a new project.¹ The UNDT held that the decision to abolish the Appellant's post was lawful.² The UNDT further held that her non-renewal was lawful as the Administration gave reasons for the non-renewal that were neither arbitrary nor improper.³

14. In addition, the UNDT held that the Appellant's fixed term appointment was not terminated but had expired. There was no obligation to retain her upon the end of her maternity leave as Staff Rule 4.13(c) provides no expectation of renewal.⁴

Submissions

Appellant's Appeal

15. The Appellant states that the UNDT erred in fact by finding that her post had been abolished in December 2017 and not in June 2018 because the post was maintained through a different budget from the rest of the core team posts. The Appellant states that there are inconsistencies regarding the date her post ended which suggests that the decision was arbitrary.

16. The Appellant further submits that the following uncontested facts suggest bias on the side of the Administration: (i) her post was the only post among those extended between January and June 2018, which was not incorporated into the new project in June 2018; (ii) the limited need for her post was raised shortly after the renewal of the Appellant's FTA had been confirmed in December 2017; (iii) the Appellant was the only staff member on maternity leave in the team; (iv) only the Appellant's post was abolished while all the other posts, including the other international post, were maintained, based on no objective criteria; and v) her post was

¹ Impugned Judgment, para. 24.

² *Ibid*, para. 25.

³ *Ibid*, para. 27.

⁴ *Ibid*, para. 30.

also taken from the workplan and already considered redundant since January 2018, six months before the effective abolition of her post.

17. The Appellant asks why the administration extended her appointment if they already knew about the limited funding at that time. Her confirmation about a renewal, which was communicated *prior* to her announcing her pregnancy, reflects the sudden change in the Administration's plans when they learned that she was pregnant. Therefore, the decision that her post was redundant for the new project was made *post facto*, after they learned of her pregnancy. She says that the inconsistencies and contradictions by Management in this case provide a strong indication that the maternity status of the Appellant played a significant part in the Administration's actions.

18. The Appellant submits she received less favourable treatment (i.e., the non-renewal of her contract) compared to other persons without the characteristics of the Appellant (i.e., she was the only woman in the core team with managerial responsibilities who was on maternity leave). She argues that the Administration has not adequately and objectively explained the reasons for their decision and that therefore, it was arbitrary and biased. Because the decision to abolish her post was not based on objective factors, it was based on discrimination against her for her pregnancy status.

19. Finally, the Appellant submits the UNDT erred on questions of law. She states that the Administration violated Staff Rule 1.2 and Staff Regulation 4.3, and the UNDT failed to assess such violations, constituting an error of law. Principles of non-discrimination are enshrined in these norms and the UNDT erred in law by ignoring the Appellant's arguments pertaining to violations of the norms protecting her from discrimination. She argues that international treaties, at a minimum, provide sources of interpretation for United Nations rules and regulations.

20. The Appellant requests rescission of the contested administrative decision and compensation for harm.

Secretary-General's Answer

21. The Respondent submits that the UNDT was correct in finding that the abolition of post was lawful. The evidence supported the finding that the Appellant's FTA was extended for six months pending the creation and implementation of a new project and the Administration had provided reasons for the non-renewal which showed no arbitrariness. The evidence is clear that the non-renewal took place amidst funding uncertainty. This is evidenced by the Administration's statement made at the time it renewed her FTA on 12 December 2017 that they "still [had] not heard from the Finnish Embassy about their funding commitment. Two days later, the Finnish Embassy declined further funding. The work plan adopted on 8 January 2018 reflected this loss of funding. In early 2018, it became clear that the level of funding would be substantially reduced. The Appellant's post was removed to ensure that the reduced budget would remain within the diminished available funding. In short, the Appellant has failed to show any improper motive or bias.

22. The UNDT correctly found that the Appellant's views of how to structure the new project team are not warranted and the UNDT was correct not to disrupt the Administration's discretion. UNDP had the authority to restructure and structure a new project as it saw fit and did so in line with its reduced budget. The costs of the Appellant's post amounted to more than the combined cost of all the local posts in the new project team and the Administration determined the new project team had to include an Access to Justice Specialist given the focus of the new project. In addition, UNDP considered that the gender aspects of the new project would be covered by the Gender Equality and Social Inclusion Officer, a local post, and the UNDP Nepal gender team. This rendered the Appellant's expertise redundant. In light of these aspects, the UNDP made a logical and reasonable decision to abolish her post. Abolition of a post due to lack of funds is a valid decision and the non-extension of her appointment, as a result, is lawful.

23. The Appellant contends that the UNDT erred in not addressing her arguments that the Administration violated Staff Rule 1.2 and Staff Regulation 4.3 prohibiting discrimination, however the Respondent says that the UNDT need not address every argument and, furthermore, it was not reasonable to do so as there was no improper treatment found. UNDP policies regarding maternity leave protect pregnant women from their pregnancy being a consideration for renewal. The policy also requires extension of an appointment to cover

maternity leave should the expiry be during the maternity leave. This was applied to her benefit.

24. The Respondent requests the United Nations Appeals Tribunal (the Appeals Tribunal) to uphold the impugned Judgment and dismiss the appeal.

Considerations

25. The Appellant submits the UNDT made errors of fact that resulted in a manifestly unreasonable decision and erred on questions of law in dismissing her challenge to the decision not to renew her FTA beyond the date of its expiration. The Appellant has the burden of satisfying the Appeals Tribunal that the impugned judgment is defective on the grounds outlined in Article 2(1) of the Appeals Tribunal Statute (see *Ilic*⁵). For reasons that follow, we disagree and find the Appellant has not met the burden of showing the UNDT Judgment is defective in the manner required.

26. The starting point for judicial review of non-renewal cases is the well-established principle that that FTAs carry no expectation of renewal or conversion, and that separation as a result of expiration of the appointment takes place automatically and without prior notice on the expiration date specified in the letter of appointment.⁶

27. Nevertheless, the administrative decision to not renew the fixed term appointment can be reviewed if the Administration has not acted fairly, justly, or transparently with the staff member or was motivated by bias, prejudice or improper motive. The staff member has the burden of proving such factors played a role in the administrative decision.⁷

⁵ *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

⁶ *Agha v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-916, paras 16-17 (footnotes omitted).

⁷ See *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960; *Agha v. Secretary General of the United Nations*, Judgment No. 2019-UNAT-916; *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311; and others.

28. The Appeals Tribunal has consistently held that:⁸

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, as in the case of a non-renewal decision, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.

29. We find that the UNDT fully and fairly considered the Appellant's allegations, and we find no error of law or fact in the Judgment. The UNDT properly reviewed the contested administrative decision in accordance with the applicable law and correctly denied the Appellant's application.

30. The Appellant says the UNDT erred in fact when it found that the Appellant's post was abolished when the project ended in December 2017, when in actual fact her contract was extended for an additional six months pending the creation and implementation of a new project. She says the UNDT ignored inconsistencies in the Administration's evidence on this question.

31. The evidence is clear that the Programme, including the Appellant's post, was to conclude December 2017. In the December 2017 e-mail from the UNDP Deputy Country Director, the Appellant was informed of uncertainty regarding funding but that the contracts of the core team would be extended for six months to ensure continuity for the next phase. The UNDT did not err when it held that the Appellant's post was abolished when the Programme ended, and her contract was extended for an additional period of six months. The Appellant says the UNDT found the date of the abolishment of the post was December 2017, but the Administration stated in the 8 August 2018 letter notifying the Appellant of the end of her contract was 12 August 2018. However, the UNDT finding that the Appellant's "post was abolished when the project to which it was attached ended in December 2017"⁹ is confirmed in

⁸ *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, citing *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 48, citing *He v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-825, para. 44 (internal footnote omitted), in turn citing *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 28, in turn citing *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 40 and cites therein.

⁹ Impugned Judgment, para. 24.

the evidence that the Programme's end date was December 2017. The UNDT's finding that the Appellant's "contract was extended for an additional period of six months to cover the limited extension of the project pending the creation and implementation of a new project"¹⁰ is similarly confirmed in the evidence, in particular the December 2017 e-mail from the UNDP Deputy Country Director. There is no inconsistency. The Organization was acting during a time of uncertainty in the Programme and the posts attached to it. In any event, any possible inconsistency is not fatal to the exercise of discretion of the Administration.

32. The Appellant alleges that the non-renewal decision was based on ulterior motives or bias by the Administration, namely that she was the only woman on the team and on maternity leave. However, there is no evidence to support this was the Administration's motive or reason. Rather, the evidence shows that the Programme had a limited duration with a conclusion date of December 2017 and that to ensure a transition to the next phase, UNDP extended the contracts of the core team, including the Appellant, despite uncertainty as to funding. By early 2018, it was clear that the level of funding was significantly lower as indicated by the RoLHR work plan dated 8 January 2018. The UNDT also had evidence that the new Access to Justice project made decisions based on factors such as budget, costs, and gender aspects of the new project was incorporated into a local post. There was no indication that the Appellant's gender or status of being on maternity leave factored into these decisions. The UNDT also had evidence that UNDP relies entirely on voluntary contributions to fund its activities and project; when a post is funded by a specific project (such as the Programme), UNDP is bound by the project framework and funding availability when deciding on whether to renew appointments.

33. Therefore, the renewal or extension of the Appellant's contract was, *inter alia*, subject to availability of project funding and the continuing need for the Appellant's position, which are valid reasons for not renewing the Appellant's FTA. As a result, we do not find merit in the Appellant's contention that the Administration did not provide sufficient reasons to explain the non-renewal of the FTA.

34. The Appellant disputes how the new Access to Justice project was structured and why she was not given a role in that project. It is well settled jurisprudence that an international organisation necessarily has the power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts, and the redeployment of staff. The

¹⁰ Impugned Judgment, para. 24.

Appeals Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, even in a restructuring exercise, like any other administrative decision, the Administration has the duty to act fairly, justly, and transparently in dealing with staff members.¹¹

35. The Respondent says that the Appellant's post was abolished because of lack of funds and, as a result, her FTA was not renewed; the reorganisation was reasonable and based on valid reasons which have been established by evidence. We agree. The reasons proffered by the Administration for not renewing the Appellant's FTA, namely the lack of funding and the resulting restructuring, are valid reasons.

36. As a result, we find the Appellant has failed to establish that the contested administrative decision discriminated against her or was tainted by improper motives, unfairness or lack of transparency, with no evidence to support these allegations. The fact that she was the only pregnant woman on the team alone was not sufficient to support a finding, on a balance of probabilities, that the Administration made the contested decision based on discrimination, improper motives or unfairness, or that she received less favourable treatment.

37. Finally, the Appellant states that UNDT erred in law by ignoring her argument that the Administration had violated Staff Regulation 4.3 which provides that selection of staff members shall be made without distinction as to race, sex or religion, and Rule 1.2 which provides that any form of discrimination or harassment, including sexual or gender harassment, as well as abuse in any form in the workplace or in connection with work is prohibited. She also says that the international treaties, including International Labour Organization (ILO) conventions, that set out the principle of non-discrimination, are part of the international legal regime and a source of interpretation for United Nations rules and regulations.

38. We find no merit in these submissions. The UNDT did not err in law by not referencing the Appellant's submissions on Staff Regulation 4.3 and Staff Rule 1.2 in its reasons for Judgment. The UNDT does not have to provide reasons for dismissing every submission, especially if the argument is not accepted or irrelevant. Having found that there was no

¹¹ *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 34 (footnote omitted), citing *Loeber v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-844, para. 18.

discriminatory, unfair or biased treatment or improper motive, the UNDT did not need to expressly reference the Staff Rules or Regulations that prohibit this type of conduct.

39. As for the UNDT's finding that the conventions of the ILO are not applicable to the United Nations, we acknowledge our jurisprudence that jurisdiction of the Appeals Tribunal and UNDT is circumscribed by our Statutes. For example, the UNDT Statute provides that it is competent to hear applications against an "administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment (see Article 2(1)(a)). The terms include all pertinent regulations and rules and administrative issuances in force in the Organisation. International conventions are not explicitly included. However, international conventions are an important source of internationally accepted standards of employment. This was the foundation of the reasoning in *Mashhour*¹² where the Appeals Tribunal relied on the ILO Discrimination (Employment and Occupation) Convention, which entered into force in 1960, to aid in the interpretation of "discrimination" in the legal framework of UNICEF where "discrimination" was not defined. That illustrates the application of the international conventions in practice: they do not provide substantive rights for, or impose obligations on, employers and employees. Rather, they guide lawmakers as to the content of legislation and assist courts and tribunals in the interpretation of it. Therefore, although these conventions and other human rights and labour law instruments do not directly apply as a source of law or remedial power to tribunals, they provide minimum standards of employment and general principles of law that are or should be embodied in the Organisation's rules, regulations and policies. Nevertheless, this is of no assistance to the Appellant in this case such as to render the contested decision unlawful. As indicated above, there is no evidence of discrimination against the Appellant or violation of her convention rights in these circumstances.

40. Our conclusion that the UNDT did not make errors of law or fact in dismissing the Appellant's challenge of the decision not to renew her contract precludes the Appeals Tribunal from awarding compensation. Since no illegality was found, there is no justification for the award of any compensation. As this Tribunal has stated before, "compensation cannot be

¹² *Masshour v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-483.

awarded when no illegality has been established; it cannot be granted when there is no breach of the staff member's rights or administrative wrongdoing in need of repair".¹³

41. Accordingly, the appeal fails.

Judgment

42. Judgment No. UNDT/2020/187 is upheld. The appeal is dismissed.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Sandhu, Presiding
Vancouver, Canada

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 21st day of December 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar

¹³ *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960, para. 39, citing *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 34, citing *Kucherov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-669, para. 33, in turn citing *Wishah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-537, para. 40 and citations therein