



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

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Judgment No. 2023-UNAT-1377

**Mohammad Saeed Almasri**  
**(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Nassib G. Ziadé, Presiding Judge Graeme Colgan Judge Leslie F. Forbang
Case No.:	2022-1748
Date of Decision:	27 October 2023
Date of Publication:	2 November 2023
Registrar:	Juliet E. Johnson

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Counsel for Appellant: Self-represented

Counsel for Respondent: Noam Wiener and Sylvia Schaefer

**JUDGE NASSIB G. ZIADÉ, PRESIDING.**

1. Mr. Mohammad Almasri (Appellant) has lodged an appeal of Judgment No. UNDT/2022/072 (impugned Judgment) that was rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on 29 July 2022.
2. In the impugned Judgment, the Dispute Tribunal rejected the entirety of Mr. Almasri's application, in which he challenged the decision of the United Nations High Commissioner for Refugees (UNHCR) not to renew his Fixed-Term Appointment (FTA) on the basis of unsatisfactory performance (contested decision).
3. For the reasons set forth herein, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) grants the appeal in part with respect to remedy and modifies the impugned Judgment.

**Facts and Procedure**

4. Mr. Almasri was first hired by UNHCR as a Senior Supply Assistant at grade G-5 in Amman, Jordan in May 2014 for a period of seven months. In July 2016, he was rehired at the same grade in the Regional Office of UNHCR based in Amman.
5. In his electronic performance assessment document (ePAD) for 2016, his manager rated him as “successfully meets performance expectations”. The narrative comments noted positive attributes of his performance, such as writing well and being a team player, but also remarked that he lacked initiative, needed frequent coaching, and was often late to the office and spending working time on the phone for personal matters.<sup>1</sup> In the “Employee Comments” section, Mr. Almasri stated that he had “no problem with the overall rating and the mentioned corrective notes”.<sup>2</sup>
6. For 2017, Mr. Almasri again received a “successfully meets performance expectations” rating in his ePAD. The narrative noted that “[w]hen fully dedicated to tasks, he performs very well”, that he had “backed up his supervisor (...) with good success”, and that his “particular strength lies in relations with authorities and negotiations”. However, it was also mentioned that

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<sup>1</sup> Secretary-General's Annex 2, UNHCR Summary Fact Sheet for Mr. Mohammad Almasri, p. 5.

<sup>2</sup> *Ibid.*, p. 6.

he could benefit from “reacting to situations with more calm” and “always be concentrated and dedicated to work while at work”.<sup>3</sup> Mr. Almasri did not submit any employee comments.

7. In 2018, Mr. Almasri had a new manager, who also assessed him in his ePAD for the year as “successfully meets performance expectations”. His manager listed as “plus points” Mr. Almasri’s “expertise and meticulous work to review (...) invoices”. Feedback from another associate was that he “demonstrate[d] excellent written communications skills” and that his ability to analyze financial information was “valued and a great asset”. At the same time, it was also noted that he “did not show much interest and commitment to perform [his] duties” which “adversely affected the workload” of others, and that he “failed to provide support when it was absolutely vital during the year-end activities”. It was further mentioned that he “need[ed] to limit person[a]l phone calls during the working hours and timely attend to office in the mornings”.<sup>4</sup> Mr. Almasri did not make any employee comments.

8. In 2019, Mr. Almasri’s manager changed again, but this manager also assessed him from 1 January 2019 to 15 October 2019 as “successfully meets performance expectations”. Unlike the preceding ePADs however, the narrative comments were very positive, with no mention of being late to the office, making personal phone calls or any of the other deficiencies noted in past years. The ePAD concluded with: “[Mr. Almasri] successfully meets expectations in all areas of responsibility with high-quality work”.<sup>5</sup>

9. On 16 October 2019, Mr. Almasri was promoted to Supply Associate, at grade G-6, in the UNHCR Country Office for Jordan.

10. As of January 2020, Mr. Almasri’s new manager/supervisor was Ms. Al-Momani, Assistant Supply Officer, and his reviewing officer was Ms. Anesin, Supply Officer.

11. Mr. Almasri was on annual leave for the entire month of February 2020.

12. Mr. Almasri requested and was granted Special Leave Without Pay (SLWOP) from 1 March 2020 to 31 May 2020 in order to address family issues.

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<sup>3</sup> *Ibid.*, p. 5.

<sup>4</sup> *Ibid.*, p. 4.

<sup>5</sup> *Ibid.*, p. 3.

13. When Mr. Almasri returned to the office in June, Ms. Al-Momani asked that he create a new performance document including setting his objectives with her as his new supervisor. On 26 June 2020, he consulted with the Talent Development and Performance Management Section (TDPS) about how to prepare his performance documents. Before receiving a response, he created an annual performance document from 16 October 2019 to 14 October 2020. However, on 2 July 2020, TDPS advised that, pursuant to UNHCR's Revised Administrative Instruction Introducing Procedures on Performance Management (UNHCR1A1/2015/3/Rev. 1), because of the break in the performance year created by his leave, he would need to cancel the initial ePAD that he had created and create two Short-Term ePADs instead. The first Short-Term ePAD would be from 16 October 2019 to 29 February 2020, and the second Short-Term ePAD would be from 1 June 2020 to 31 December 2020.<sup>6</sup> The first Short-Term ePAD needed to be finalized and only then the second one could be opened.

14. On 7 July 2020, at Mr. Almasri's request, he met with the UNHCR Representative in Jordan to discuss his concerns, including internal conflicts with his supervisor and reviewing officer, his belief that he should not be reporting to Ms. Al-Momani, his perception of bias against national staff, and the lack of flexibility towards him during a period of health crisis, which ultimately led him to go on SLWOP. A minute was made of this meeting, which noted Mr. Almasri's distress and confirmed that past decisions may have complicated the situation around reporting lines but that Mr. Almasri could not express a preference as to whom he wanted to report.<sup>7</sup>

15. On 16 August 2020, the first Short-Term ePAD was finalized. Ms. Al-Momani evaluated Mr. Almasri as "partially meets expectations". She noted some delays and errors in his work and advised that he should "work on his time management skills, respect the office working hours as per [Human Resources (HR)] rules and policies and focus on his assigned tasks (both daily tasks and long term plans) in order to deliver a better quality outcome".<sup>8</sup>

16. On 18 August 2020, Ms. Al-Momani e-mailed Mr. Almasri about setting his work objectives for the second Short-Term ePAD (from 1 June 2020 to the end of the year). After several exchanges, on 23 August 2020, Mr. Almasri responded that "we need to discuss the previous

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<sup>6</sup> Secretary-General's Annex 8, 2 July 2020 e-mail from O. Bertok to M. Almasri, Subject: INCo271685 – Epad 2019-2020.

<sup>7</sup> Secretary-General's Annex 7, 7 July 2020, Minutes of meeting between D. Bartsch and M. Almasri.

<sup>8</sup> Secretary-General's Annex 9, Mohammad Almasri, Short-term ePAD, 16/10/2019 – 29/02/2020.

evaluation and the level of collaboration during the previous reporting period. Once the environment is clear and healthy we can discuss the new e-PAD”.<sup>9</sup>

17. On 7 September 2020, Mr. Almasri filed a rebuttal of the first Short-Term ePAD.<sup>10</sup>

18. On 13 September 2020, Mr. Almasri met with Ms. Al-Momani as well as his new reviewing officer, Mr. Elgadhafi. According to Ms. Al-Momani’s summary of the meeting, Mr. Almasri “aggressively insisted” that he would not setup the second Short-Term ePAD until the rebuttal of the first Short-Term ePAD was finalized.<sup>11</sup>

19. Mr. Almasri was on sick leave due to Covid-19 for the last three weeks of October 2020.

20. In late November and early December 2020, internal discussions were underway about receiving the decision of the Rebuttal Board on Mr. Almasri’s challenge prior to the end of his FTA. On 23 November 2020, Ms. Sikoeva-Shelow wrote to the Project Management Unit (PMU) for the Rebuttal Board and stated: “In the absence of the 2020 ePAD the decision of the Rebuttal Board is essential for the contract extension consideration”. In response, the PMU representative queried “Out of curiosity, is there a reason why the staff member did not have a [Performance Improvement Plan] in 2019? Let me know”.<sup>12</sup>

21. On 25 November 2020, an HR representative sent an e-mail to the UNHCR Representative asking for his assistance with Mr. Almasri, who was refusing to meet with him about the second Short-Term ePAD.<sup>13</sup>

22. On 8 December 2020, Ms. Sikoeva-Shelow asked TDPS about what the cut-off date was for Mr. Almasri to create the second Short-Term ePAD for the period June – December 2020. TDPS advised that he could create the second Short-Term ePAD “til August 2021”.<sup>14</sup>

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<sup>9</sup> Secretary-General’s Annex 11, 23 August 2020 e-mail from M. Almasri to T. Al-Momani, Subject: RE: INC0271685 – Epad 2019-2020.

<sup>10</sup> Secretary-General’s Annex 15, M. Almasri’s revised rebuttal statement.

<sup>11</sup> Secretary-General’s Annex 13, Summary of meeting held on 13 September 2020.

<sup>12</sup> Appellant’s Annex 3, 24 November 2020 e-mail from A. Ray to T. Sikoeva-Shelow, Subject: RE: Mr. Mohammad Almasri.

<sup>13</sup> Secretary-General’s Annex 14, 25 November 2020 e-mail from F. Ngarambe to D. Bartsch, Subject: Mr. Mohammad Almasri.

<sup>14</sup> Appellant’s Annex 4, 9 December 2020 e-mail from S. Singh to T. Sikoeva-Shelow, Subject: FW INC0281508 – Epad 2019 – 2020 (ID 10032391).

23. On 11 December 2020, TDPS responded to several questions from Ms. Sikoeva-Shelow in which they agreed that in line with the rules on Administrative Actions in Case of Unsatisfactory Service, the first Short-Term ePAD pending rebuttal could not be used as a basis for administrative action. TDPS responded: “[i]n line with this, we need to wait for the rebuttal process to be completed”.<sup>15</sup>

24. On 20 December 2020, the UNHCR Representative met with Mr. Almasri where he was provided a letter notifying him that his FTA, which was expiring on 31 December 2020, would “not be renewed due to performance reasons”.<sup>16</sup> The Representative further stated:

I recall that you have not initiated an ePAD for the period 1 June 2020 until 31 December 2020 despite several requests to do so. For that reason, your manager was not able to formally record the performance shortcomings in MSRP. However, these shortcomings have been documented and discussed with you at various instances, including 7 July 2020 meeting with me. (...) I have requested your reviewing officer to complete an offline performance evaluation before the expiry date of your fixed-term appointment.

25. On 30 December 2020, Mr. Almasri submitted a request for management evaluation contesting the non-renewal of his FTA. He contended that no discussion had been held about non-renewal prior to the decision and he had not been informed as to what conditions might lead to non-renewal. He pointed out that the non-renewal was related to performance, yet his first Short-Term ePAD was under rebuttal. He noted that the UNHCR Representative had not discussed shortcomings with him at the referenced meeting in the separation letter. He also stated that the separation with nine days’ notice created a hardship for his family particularly as regards medical insurance.<sup>17</sup>

26. On 10 February 2021, after the expiry of his FTA and his separation, he received the offline performance document for the period June – December 2020 with the evaluation of his supervisor. This evaluation noted that he “did not deliver a single output/task on time” and was “always seeking guidance from his supervisor, even for minor actions”.

27. On 26 March 2021, the Deputy High Commissioner for UNHCR responded to Mr. Almasri’s management evaluation request. She advised that Mr. Almasri was not entitled to

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<sup>15</sup> Secretary-General’s Annex 16, 11 December 2020 e-mail from S. Singh to T. Sikoeva-Shelow, Subject: RE: Mr. Mohammad Almasri.

<sup>16</sup> Secretary-General’s Annex 18, 20 December 2020 letter from D. Bartsch to M. Almasri, Ref: PER/IND/Mohammad ALMASRI.

<sup>17</sup> Secretary-General’s Annex 20, Request for Management Evaluation Form.

any notice with respect to the expiry of his FTA under the relevant UNHCR regulations. She stated that the non-renewal of his FTA was not based on the first Short-Term ePAD that was under rebuttal. She also stated that the non-completion of the second Short-Term ePAD for the June – December 2020 period was “mainly attributable” to Mr. Almasri and that this constituted “obstruction” of the performance management process.<sup>18</sup>

28. Nonetheless, the Deputy High Commissioner acknowledged that Mr. Almasri’s contract should have been extended on a monthly basis until the rebuttal process concerning the first Short-Term ePAD had been completed. In recognition of this “procedural shortcoming”, Mr. Almasri was awarded compensation in the amount of three months’ net base salary. She took into account (i) a policy that an FTA may only exceptionally be extended for six months when a staff member’s rating does not meet the required level, and (ii) Mr. Almasri’s “own non-compliance”.<sup>19</sup>

29. On 10 November 2021, fourteen months after filing his request, the Rebuttal Board issued its decision rejecting Mr. Almasri’s challenge to his first Short-Term ePAD.<sup>20</sup>

*Dispute Tribunal proceedings*

30. On 28 June 2021, Mr. Almasri filed an application with the Dispute Tribunal challenging the contested decision not to renew his FTA.

31. Following receipt of closing submissions in June 2022, the Dispute Tribunal rendered the impugned Judgment.

32. In the impugned Judgment, the Dispute Tribunal acknowledged the established principle that there is no expectancy of renewal of an FTA, and that a staff member who is rated “partially meets expectations” has no legitimate expectations of renewal. Where the non-renewal is based on poor performance, the UNDT noted that “the deficiency must be sufficiently serious to render the continuation of the employment relationship untenable”.<sup>21</sup>

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<sup>18</sup> Secretary-General’s Annex 24, 26 March 2021 letter of Ms. Clements to Mr. Almasri, Re: Management Evaluation), p. 2.

<sup>19</sup> *Ibid.*, p. 3.

<sup>20</sup> Secretary-General’s Annex 17, Memorandum from Ms. Kakkar, Global Learning and Development Center to Mr. Almasri, Subject: Outcome of Rebuttal case review (ePAD – 16/10/2019 to 29/02/2020).

<sup>21</sup> Impugned Judgment, para. 19.

33. The Dispute Tribunal reviewed the performance shortcomings in Mr. Almasri's ePADs from 2016-2019 and observed that Mr. Almasri had not submitted employee comments in 2017-2019 and that it was "therefore fair to conclude that he agreed with those evaluations".<sup>22</sup> The UNDT also considered that he failed to cooperate in creating the second Short-Term ePAD for 2020. Accordingly, it found that Mr. Almasri had performance shortcomings and that he was aware of them through all of these ePADs.<sup>23</sup>

34. The Dispute Tribunal also found that performance shortcomings were discussed with Mr. Almasri at the 7 July 2020 meeting with the UNHCR Representative, as the minute of the meeting noted, for example, that he had "[s]tated his performance was affected due to lack of involvement, lack of clarity and lack of availability to communicate properly".<sup>24</sup>

35. The Dispute Tribunal rejected Mr. Almasri's contention that he should have been placed on a Performance Improvement Plan (PIP), observing that under the relevant UNHCR policy, a PIP to address underperformance is optional, not mandatory. Moreover, the UNDT held that the "fact that [Mr. Almasri] was retained and even promoted, rather than being viewed as having been based on his good performance, must be taken as having been an opportunity for him to improve".<sup>25</sup>

36. The Dispute Tribunal concluded that Mr. Almasri's argument that his contract should have been extended until after the finalization of his ePADs, pursuant to paragraph 4.6.3 of UNHCR/AI/2015/3/Rev. 1 (Revised Administrative Instruction Introducing Procedures on Performance Management)<sup>26</sup> and paragraph 4.6.13 of UNHCR/HCP/2014/12/Rev. 1 (Revised Policy on Performance Management), was valid. Since the expiry of his contract, the UNDT noted that his ePADs were now final and that Mr. Almasri did not receive the required rating for renewal pursuant to paragraph 14 of UNHCR/HCP/2015/9 (Policy on the Administration of Fixed-Term Appointments), which is "successfully meets performance expectations" or higher.<sup>27</sup>

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<sup>22</sup> *Ibid.*, para. 28.

<sup>23</sup> *Ibid.*, para. 30.

<sup>24</sup> *Ibid.*, para. 32.

<sup>25</sup> *Ibid.*, para. 38.

<sup>26</sup> Paragraph 4.7.4 of this Administrative Instruction also provides: "Until the rebuttal process is concluded, the ePAD shall be considered as pending and cannot be used as a basis for an administrative action under paragraph 4.6 above."

<sup>27</sup> Impugned Judgment, paras. 40-43.



37. The Dispute Tribunal recognized that the non-renewal decision was “irregular” but that Mr. Almasri’s failure to initiate the second Short-Term ePAD could not be ignored, and the reasons for the non-renewal (poor performance) had since been upheld. Accordingly, given that Mr. Almasri “was compensated in the management evaluation for the procedural irregularities”, the UNDT stated it was “constrain[ed]” to conclude with a “finding that the non-renewal decision was irregularly made” but that a “rescission order, reinstatement (...) and compensation are not tenable under the circumstances of this case”.<sup>28</sup> The UNDT rejected Mr. Almasri’s arguments that it was erroneous or illegal to have considered his failure to initiate the second Short-Term ePAD when awarding compensation, and noted that allowing Mr. Almasri to “benefit from his actions in a substantial manner would have offended the principles of equity and the doctrine of ‘clean hands’”.<sup>29</sup>

38. Relying on the “totality of the circumstances as now known” including Mr. Almasri’s performance as stated in the offline performance document completed in February 2021, the UNDT concluded that the termination of his appointment was an appropriate action. The UNDT held that Mr. Almasri failed to show that the contested decision was motivated by prejudice towards him. Accordingly, the UNDT rejected his application in its entirety.<sup>30</sup>

39. The impugned Judgment was issued on 29 July 2022, but Mr. Almasri alleged that he did not receive it until 7 September 2022 because the Judgment was sent to his counsel at the Office of Staff Legal Assistance (OSLA), which is no longer representing Mr. Almasri. Having missed the deadline for filing an appeal with the UNAT, Mr. Almasri requested and was granted an extension of time by Order No. 491 (2022).<sup>31</sup> He filed his appeal on 3 December 2022, and the Respondent submitted his answer on 3 February 2023.

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<sup>28</sup> *Ibid.*, para. 44.

<sup>29</sup> *Ibid.*, para. 47.

<sup>30</sup> *Ibid.*, para. 50.

<sup>31</sup> *Mohammad Saeed Almasri v. Secretary-General of the United Nations*, Order No. 491 (2022), para. 7.

## Submissions

### Mr. Almasri's Appeal

40. Mr. Almasri submits that the UNDT erred by relying on “selected few negative sentences” from earlier performance evaluations where he was rated as “successfully met objectives”. He also states that the UNDT skipped over his positive evaluation given right before his promotion.

41. Mr. Almasri submits that the UNDT failed to take into consideration the bias and maltreatment by Ms. Anesin, who served both as his manager and reviewing officer at different times, and Ms. Al-Momani who was his manager in the final year.

42. Mr. Almasri submits that review of internal HR e-mails, in which the possibility of a PIP is mentioned and it is noted that he could have created the second Short-Term ePAD until August 2021, shows that the Administration was “push[ing] towards contract termination”.

43. Mr. Almasri submits that the UNDT erred in paragraph 20 of the impugned Judgment when it found that his meeting with the UNHCR Representative was to discuss performance shortcomings. Mr. Almasri states that this meeting was held at his request, at the recommendation of the Ombudsman, to address difficulties he was facing. Mr. Almasri says that there is an audio-recording of this meeting, and he requests a hearing of this evidence if possible.

44. Mr. Almasri submits that the UNDT erred in paragraphs 23 and 24 of the impugned Judgment when it linked his separation to performance documents from 2016. He contends that these documents are irrelevant to the ePADs in 2020.

45. Mr. Almasri also objects to the UNDT relying on Mr. Almasri not submitting “employee comments” to prior years’ ePADs as indicating agreement with the managers’ narrative. He states that it is “well known that staff members avoid arguing about such comments [by the manager] when the overall rating [is] meets expectations”. He avers that when the overall rating is “successfully meets objectives” he, like others in the UNHCR Jordan office, avoid creating unnecessary arguments over the narrative.

46. Mr. Almasri requests that the UNAT check on the history and number and types of reports filed by other staff members against his reviewing officer, Ms. Anesin.

47. In regard to paragraph 29 of the impugned Judgment concerning his failure to initiate the second Short-Term ePAD, Mr. Almasri submits it should be noted that he was worried about the future of his career, and he felt he was being targeted by his supervisor who would rate him unsatisfactory. Mr. Almasri says that he brought this to the attention of the UNHCR Representative, but his e-mail was ignored.<sup>32</sup>

48. Mr. Almasri submits that the UNDT failed to “validate” the supervisor’s comments in the February 2021 offline performance document that was quoted in paragraph 50 of the impugned Judgment. Mr. Almasri disputes the negative comments therein.

49. Mr. Almasri states that the UNDT erred in paragraph 52 of the impugned Judgment when it found that he had failed to show that the contested decision was motivated by prejudice. Mr. Almasri says that he had very little time to defend himself because he was suddenly out of the office without access to office files. He also submits that he was overwhelmed with only having 10 days’ notice, and his wife was pregnant at the time, and he suddenly had no income or medical insurance.

50. Mr. Almasri seeks justice and requests an investigation of bias against him in the UNHCR Jordan office and to look into whether there were preformed intentions to dismiss him in order to appoint a particular person to replace him.

51. Mr. Almasri submits that the UNDT erred in ignoring several “unfair facts”, including that it was never conveyed to him by any UNHCR official that if he did not create the second Short-Term ePAD his contract would not be renewed.

52. Mr. Almasri submits that his supervisor and head of unit were sending reminders to him about the second Short-Term ePAD, but that they (i) delayed in approving the first Short-Term ePAD by one month and (ii) failed to engage with his concerns about creating the second Short-Term ePAD.

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<sup>32</sup> Appellant refers to Appellant’s Annex 5, an e-mail from him to Mr. Bartsch on 16 August 2020, in which he stated that “the 2 core issues that we agreed on were unfortunately not met”, including (1) that Ms. Anesin would not be part of his evaluation and (2) that trust and collaboration amongst all parties would be monitored, and that [Ms. Al-Momani’s] “negative attitude and communications are still the same”.

53. Mr. Almasri submits that his rebuttal interview was unfairly delayed for more than six months due to his supervisor's maternity leave. He argues that the interviews could have been pushed to prior to her leave given the importance of his case to his employment and career.

54. Mr. Almasri submits that the UNDT erred in considering that 5,917 in Jordanian dollars was fair compensation. Mr. Almasri argues that the UNDT ignored the fact that his wife was pregnant and that they were then left without medical coverage. He further states that his wife had a miscarriage 20 days after the non-renewal of his contract which he then had to cover himself out of pocket.

55. Mr. Almasri submits that the award of three months' net base salary as compensation for the procedural irregularity was unfair because he did not receive pension fund contributions for this period, and in order to vest in the pension plan and receive a withdrawal settlement, he only needed three more months.

56. Lastly, Mr. Almasri says that the comments in the UNHCR Fact Sheet make it almost impossible for him to get rehired.

57. Mr. Almasri requests an oral hearing to discuss the real background of what was happening in the Jordan office in terms of bias against him. He also wishes to validate that the 7 July 2020 meeting with the UNHCR Representative did not include discussion on his performance shortcomings.<sup>33</sup>

58. For relief, Mr. Almasri requests that the UNAT order the Administration to cover the United Nations Joint Staff Pension Fund (UNJSPF) contributions for the three months that he was already granted and "make them 6".<sup>34</sup> He also requests USD 2,000 to cover the costs of his wife's miscarriage. Finally, he requests that the comments in his UNHCR Fact Sheet be "neutralize[d]" or deleted so that he can apply to other job openings.

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<sup>33</sup> Appellant's Appeal Form, Part VI.

<sup>34</sup> Appellant's Appeal Form, Part IV (Relief Claimed).

**The Secretary-General's Answer**

59. The Secretary-General submits that the Dispute Tribunal was correct to hold that the non-renewal of Mr. Almasri's FTA was lawful and that UNHCR adequately compensated him for the procedural error of making the contested decision before the required process was complete.

60. The Secretary-General asserts that Mr. Almasri is incorrect in stating that the UNDT relied on previous ePADs to conclude that his "performance in 2019 and 2020 did not meet expectations". The Secretary-General avers that the UNDT relied on the prior ePADs solely for the proposition that Mr. Almasri had been made aware that certain aspects of his performance needed improvement.

61. The Secretary-General submits that the UNDT properly held that Mr. Almasri had ample opportunity to improve his performance and that his performance was discussed with him on multiple occasions.

62. The Secretary-General submits that Mr. Almasri did not provide proof that his meetings with the UNHCR Representative, with the Ombudsman representative in attendance, did not address his performance shortcomings. The Secretary-General points out that Mr. Almasri failed to file a motion for the late submission of evidence to the UNAT with respect to the audio-recording of this meeting on 7 July 2020 that he wishes the UNAT to consider now.

63. Relatedly, the Secretary-General opposes Mr. Almasri's request for an oral hearing to hear the audio-recording of the meeting. This audio-recording was available to him prior to the UNDT proceedings when Mr. Almasri was also represented by competent OSLA counsel and attempting to introduce it now is not in accordance with Article 2(5) of the Appeals Tribunal Statute. The Secretary-General requests that the Appeals Tribunal deny this request.

64. The Secretary-General acknowledges that the UNDT held that the contested decision suffered from a procedural error, because the Rebuttal Board had not concluded its review of the first Short-Term ePAD and the second Short-Term ePAD had not been completed, prior to the contested decision. However, the Secretary-General submits that the UNDT correctly held that these errors were "procedural rather than material because at the end of the rebuttal process, the Appellant was found to have only partially met expectations". Accordingly, the

Secretary-General avers that “the substantive decision not to renew his fixed-term appointment was lawful”.

65. The Secretary-General submits that the UNDT was correct to hold that the compensation of three months’ net base salary was sufficient compensation to Mr. Almasri for the procedural error committed by the Administration.

66. The Secretary-General submits that the UNDT correctly found that Mr. Almasri did not provide any evidence supporting his allegations of bias by Ms. Anesin or a hostile environment in the Jordan office.

67. The Secretary-General points out that Mr. Almasri has not filed a formal complaint about his allegations of bias against Ms. Anesin, and the UNAT has no competence under Article 2 of its Statute to investigate these allegations as Mr. Almasri has requested.

68. For all of the foregoing reasons, the Secretary-General submits that Mr. Almasri has failed to establish reversible error by the UNDT and requests that the Appeals Tribunal dismiss the appeal in its entirety.

### **Considerations**

69. This Tribunal starts with a review of the nature of Appellant’s FTA. Such an appointment, regardless of its duration and regardless of a staff member’s overall length of service, “does not carry any expectancy, legal or otherwise, of renewal or conversion”.<sup>35</sup> There is no expectancy of renewal of an FTA even if a staff member is rated as “successfully meeting performance expectations”. Such appointment “expires automatically, and without prior notice, on the expiration date specified in the Letter of Appointment. The expiry of a FTA of any duration is not considered as a termination within the meaning of the UN Staff Regulations and Rules”.<sup>36</sup>

70. Although a staff member holding an FTA does not have a right to the extension of his or her FTA, the decision not to extend his or her appointment is nonetheless a discretionary

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<sup>35</sup> Secretary-General’s Annex 23, UNHCR/HCP/2015/9, Policy on the Administration of Fixed-Term Appointments, para. 28.

<sup>36</sup> *Ibid.*

decision which, like any other exercise of discretion by the Secretary-General, must be reached fairly and not in an arbitrary manner. As this Tribunal has held:

[O]ur case law requires the Secretary-General to provide a reasonable explanation when a staff member's fixed-term appointment is not renewed. If the reason not to renew an appointment is related to the staff member's poor performance, the Secretary-General has to present a performance-related justification for the non-renewal decision.<sup>37</sup>

Similarly, the World Bank Administrative Tribunal (WBAT) has held that even where the "circumstances of the case do not warrant any right to a renewal of a fixed-term contract, the Bank's decision not to renew the contract at the expiration of its predetermined term, however discretionary, is not absolute and may not be exercised in an arbitrary manner".<sup>38</sup>

71. Special care must be taken by the United Nations when a staff member's appointment is not renewed based on poor performance, given the implications that such decision might have on the staff member's career. In the review of a non-renewal decision based on poor performance, however, the UNDT

must accord deference to the Administration's appraisal of the performance of staff members, and cannot review *de novo* a staff member's appraisal, or place itself in the role of the decision-maker and determine whether it would have renewed the contract, based on the performance appraisal. Performance standards generally fall within the prerogative of the Secretary-General and, unless the standards are manifestly unfair or irrational, the UNDT should not substitute its judgment for that of the Secretary-General.<sup>39</sup>

And while the UNDT and this Tribunal appropriately review whether staff are provided due process, and that correct procedures are followed, "the ultimate question of procedural fairness is whether the staff member was aware of the required standard and was given a fair opportunity to meet it".<sup>40</sup>

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<sup>37</sup> *Ncube v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-721, para. 17 (internal citations omitted).

<sup>38</sup> *Vincent G. Carter v. International Bank for Reconstruction and Development*, WBAT Decision No. 175 (1997), para. 15.

<sup>39</sup> *Sarwar v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-757, para. 74 (citing *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 40).

<sup>40</sup> *Ibid.*, para. 88.

72. The ePAD process is one method by which the Administration may establish, by following proper procedures, a reasonable performance-related justification for non-renewal decisions. Absent a proper ePAD or analogous formalized evaluation, “an [informal] evaluation can only be upheld if it was not arbitrary and if the Administration proves that it is nonetheless objective, fair and well-based”.<sup>41</sup>

73. Appellant’s FTA in the present case was not renewed “due to performance reasons”. The non-renewal notification letter, dated 20 December 2020, noted that Appellant’s “performance shortcomings” had not been “formally record[ed]” due to Appellant’s delay in initiating an ePAD for the period 1 June 2020-31 December 2020. The same letter observed that “these shortcomings have been documented and discussed with [Appellant] at various instances, including [the] 7 July 2020 meeting”.<sup>42</sup>

74. Under this Tribunal’s case law, the issue is therefore whether that conclusion regarding Appellant’s performance was not arbitrary but instead “objective, fair and well-based”.<sup>43</sup>

75. It appears from the record that the UNDT was correct in finding that this standard was met with regard to Appellant. The ePADs from prior years documented concerns regarding certain aspects of the quality of Appellant’s work, and contemporaneous communications with Appellant contained in the record further confirm concerns over his performance. While the record is inconclusive regarding what was communicated to Appellant during one in-person meeting (on 7 July 2020),<sup>44</sup> there is clearly sufficient evidence to support the overall determination that management had serious concerns with his work performance, which it communicated to Appellant. In addition, Appellant’s persistent refusal to even initiate his second Short-Term ePAD obstructed the performance management process, reflecting both a non-compliant approach to established United Nations procedures and a lack of diligence which must also be taken into account.

76. This Tribunal recalls that at the time when the decision was taken not to renew Appellant’s FTA, Appellant’s first Short-Term ePAD had been rebutted by Appellant and was under review. That ePAD could therefore not be used as a basis for the non-renewal and by all

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<sup>41</sup> *Ncube Judgment, op. cit.*, para. 18.

<sup>42</sup> Secretary-General’s Annex 18, 20 December 2020 letter from D. Bartsch to M. Almasri, Ref: PER/IND/Mohammad ALMASRI.

<sup>43</sup> *Ncube Judgment, op. cit.*, para. 18.

<sup>44</sup> Secretary-General’s Annex 7, 12 July 2020 e-mail exchanges between M. Almasri and D. Bartsch, Subject: RE: our discussion of 7 July.



evidence it was not so used. However, the ultimate resolution by the Rebuttal Board confirmed the conclusion of management that Appellant warranted a rating of “Partially meets expectations”.<sup>45</sup> Likewise, the second Short-Term ePAD further established that Appellant’s performance deficiencies continued. While the *ex-post* nature of these determinations are perhaps not in line with prescribed procedure, it nonetheless confirms the conclusion that the prior informal evaluation of Appellant’s performance was not arbitrary but instead well-based as required by UNAT case law.

77. Accordingly, we conclude that there was an objective and reasonable justification for the non-renewal of Appellant’s FTA.

78. However, we also conclude – as the Management Evaluation found – that there was a significant procedural irregularity with respect to the handling of Appellant’s first Short-Term ePAD in connection with the non-renewal. Appellant timely rebutted that ePAD, at which point it was incumbent upon the United Nations to conduct a timely review under established procedures. For reasons which cannot be attributed to Appellant, the Rebuttal Board did not complete its review until November 2021 – some fourteen months after Appellant had lodged his rebuttal.

79. As a result of the Management Evaluation, which was provided to Appellant in March 2021, the UNHCR Deputy High Commissioner acknowledged that Appellant’s contract should have been renewed on a monthly basis while the rebuttal process was underway. But rather than awarding compensation for the entire period between the expiry of the FTA and the Rebuttal Board decision, which ultimately lasted ten months, the Deputy High Commissioner awarded three months’ net base salary. Furthermore, her award did not include any benefits incidental to working under an extended contract, but only the net base salary.

80. This Tribunal is not empaneled to delve into either employment arrangements or the management evaluation process. It does, however, have a mandate to ensure that correct procedures are followed, and that staff do not suffer unjustly when management fails to live up to its procedural obligations. United Nations procedures exist to facilitate fair and transparent substantive decisions, and the failure to abide by required procedures is no mere “technicality”,

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<sup>45</sup> Secretary-General’s Annex 17, Memorandum from Ms. Kakkar, Global Learning and Development Center to Mr. Almasri, Subject: Outcome of Rebuttal case review (ePAD – 16/10/2019 to 29/02/2020).

but instead undermines substantive fairness. We consider that the UNDT erred in its review of this issue.

81. Here, the Administration conceded that Appellant's contract should have been renewed on a monthly basis. The disputed issue, then, is how long it should have been renewed. The Rebuttal Board decision came over ten months after the FTA expired, but the Secretary-General contends that three months' net base salary is sufficient. While not dispositive, this Tribunal recalls that UNHCR policy provides that, when a staff member's rating does not meet the required level, the manager may recommend, short of letting the FTA expire, that it be "exceptionally extend[ed] for up to six months in order to assess performance improvements".<sup>46</sup> Appellant does not seek in his appeal a full ten months of net base salary, but contends that six months is appropriate. Without deciding whether a longer period up to the time the Rebuttal Board issued its decision could be appropriate in other cases, we conclude that six months of net base salary is appropriate in the overall circumstances of this case.

82. In addition, while the Deputy High Commissioner awarded net base salary, and not any forms of benefit which would have accompanied an actual extension of Appellant's contract, we find it appropriate in these circumstances to award Appellant the sum that is equivalent to what the Organization would have contributed to the United Nations Joint Staff Pension Fund (UNJSPF) on Appellant's behalf for the six-month period following the date of expiry of his FTA.

83. We observe that the seeming conflict between the provisions regarding extension of an FTA pending review of the rebuttal of a performance evaluation, and the six-month extension allowed to assess a staff member's performance improvements as a ceiling period that applies to cases of unsatisfactory performance, creates an ambiguity which the UNHCR may wish to address in its rules for future application, to provide clarity to both staff and management.

84. Appellant has requested an oral hearing, as well as an order to produce the audio-recording of his meeting of 7 July 2020 with the UNHCR Representative. With regard to the recording, the Secretary-General correctly observes that the recording was available to Appellant prior to the UNDT proceedings and that neither he nor his then-counsel sought its inclusion in the record.

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<sup>46</sup> Secretary-General's Annex 23, UNHCR/HCP/2015/9, UNHCR Policy on the Administration of Fixed-Term Appointments, para. 14.

Accordingly, Appellant's request in this regard is barred by Article 2(5) of the UNAT Statute.<sup>47</sup> With regard to an oral hearing, we conclude that the record and submissions of the parties are sufficient and that such a hearing would neither significantly add to the existing record nor assist in the expeditious and fair disposal of the case.<sup>48</sup>

85. The remaining reliefs claimed by Appellant are denied.

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<sup>47</sup> That Article excludes from consideration evidence not in the record which "was known to either party and should have been presented at the level of the Dispute Tribunal".

<sup>48</sup> *Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2016-UNAT-642, para. 27.

**Judgment**

86. The Appellant's appeal is granted in part with respect to the remedy, and Judgment No. UNDT/2022/072 is hereby modified. The Administration is ordered to pay an additional three months' net base salary to Appellant, and the sum that represents what would have been the Organization's contribution on Appellant's behalf to the United Nations Joint Staff Pension Fund for the six-month period following the date of the expiry of Appellant's contract.

Original and Authoritative Version: English

Decision dated this 27<sup>th</sup> day of October 2023 in New York, United States.

*(Signed)*

Judge Ziadé, Presiding

*(Signed)*

Judge Colgan

*(Signed)*

Judge Forbang

Judgment published and entered into the Register on this 2<sup>nd</sup> day of November 2023 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar