



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2024/038

Judgment No.: UNDT/2025/026

Date: 29 May 2025

Original: English

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**Before:** Judge Francesco Buffa

**Registry:** Geneva

**Registrar:** Liliana López Bello

PHOGAT

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Jan Schrankel, UNHCR

Louis-Philippe Lapicerella, UNHCR

## **Introduction**

1. The Applicant, a Senior Resettlement Assistant at the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in New Delhi, filed an application contesting the decision not to renew his contract beyond 30 June 2024.
2. For the reasons set out below, the Tribunal decides to reject the application.

## **Facts**

3. On 31 July 2023, the Applicant was recruited with a three-month temporary appointment, which was first extended to 31 December 2024, and then until 30 June 2024.
4. On 6 May 2024, the Applicant was orally informed that his temporary appointment would not be renewed beyond 30 June 2024 due to budgetary and operational reasons, which was formally confirmed via email dated 8 May 2024.
5. On 16 June 2024, the Applicant requested management evaluation of the decision not to renew his temporary appointment, which was upheld by the Deputy High Commissioner (“DHC”) on 27 June 2024.
6. On 26 June 2024, the Applicant filed an application for suspension of action in relation to the decision not to renew his temporary appointment beyond 30 June 2024. His application was dismissed as not receivable by Order No. 77 (GVA/2024), due to the completion of the management evaluation.
7. On 24 September 2024, the Applicant filed the instant application .
8. On 28 October 2024, the Respondent filed his reply.
9. On 23 December 2024, the Tribunal instructed the Applicant to file a rejoinder and encouraged the parties to explore resolving this matter amicably.
10. On 6 January 2025, the Applicant filed his rejoinder.

11. On 20 January 2025, the parties informed the Tribunal that they did not see a possibility of resolving this dispute amicably and requested the Tribunal to proceed with the litigation.

12. On 1 February 2025, this case was assigned to the undersigned Judge.

13. By Order No. 7 (GVA/2025) of 14 February 2025, the Tribunal instructed the Applicant and the Respondent to file their respective closing submissions, which they did on 28 February 2025.

### **Submissions by the Parties.**

#### *The Applicant's case.*

14. The Applicant contests the Administration's decision not to renew his temporary appointment with UNHCR beyond 30 June 2024.

15. He argues that the decision was arbitrary, unreasonable, and an improper exercise of administrative discretion.

16. The Applicant further claims that his supervisor had assured him that his role was under no threat until at least the end of 2024, and that the abrupt decision not to renew his contract caught him by surprise.

17. According to him, the contested decision violates the principle of procedural fairness as mandated by staff regulation 1.2(c) and staff rule 9.6. The Administration's failure to provide clear and justifiable reasoning for the non-renewal, despite consistent assurances of contract stability and organizational need, raises significant doubt about the decision's legality.

18. In particular, the Applicant stresses that the 2024 performance evaluation set a target of 1,741 individuals, contradicting the Respondent's claim of a reduced resettlement quota of 1,300, which served as a key justification for non-renewal.

19. The Applicant adds that he is the only staff member in the entire UNHCR India operation whose contract was not renewed, further proving the selective and unjust treatment he received; instead, at least two other temporary appointments

were extended beyond 1 January 2025 under different contractual arrangements; this directly contradicts the Respondent's position and raises serious concerns about inconsistent application of employment policies and the arbitrary nature of the decision not to renew the Applicant's contract.

20. The Applicant claims he faced systemic procedural irregularities, from the sudden non-renewal of his contract to the denial of necessary documentation post-separation. He argues that the refusal to complete the Applicant's 2023 performance evaluation and provide a comprehensive certification of service constitutes an unfair administrative practice and reinforces the retaliatory nature of the actions taken against him.

21. He finally adds that the Senior Programme Officer also informed him that it would be challenging for him to be reconsidered for the UNHCR India operation and suggested seeking opportunities in other missions due to the perceived severity of his actions. This statement, documented and reported to the Chief of Mission in India, underscores the retaliatory and damaging impact on the Applicant's professional prospects.

*The Respondent's case.*

22. The Respondent contends that the decision was proper, reasonable, and lawful. In May 2024, the Applicant was informed that his contract would not be renewed beyond 30 June 2024 due to budgetary and operational reasons.

23. The Respondent notes that UNHCR is experiencing a funding crisis globally. According to him, the India Operation was also working within strict financial constraints at the time it took the decision not to renew the Applicant's temporary appointment, and it continues to do so; the 2024 funding update for India (as at 30 September 2024) attached as Annex R-1 indicates a projected funding gap of USD21.7 million for 2024, which is equivalent to 62 per cent of UNHCR India's financial requirements for that year. UNHCR, including its India operation, is also notably undergoing staff realignment. This is in part driven by the difficult financial situation, as well as the need to maximize the impact of its limited financial

resources, and to prioritize delivery of assistance to the people it serves: refugees, asylum seekers, internally displaced people, and stateless people.

24. The Respondent adds that the India operation was working within strict financial constraints when it decided not to renew the Applicant's temporary appointment due to an unforeseen drop in the resettlement quota. Given that the Applicant's core work was to manage and prepare resettlement cases, the reduction in quota directly affected his work within the Durable Solutions Unit.

25. The Respondent stressed that a temporary appointment has a contractual status that carries no expectancy of renewal, which can only be challenged if the Organization created a legitimate expectation of a renewal or if improper motives existed in the decision not to renew the appointment.

26. However, the Applicant had no legitimate expectations of a renewal; the meeting with the Applicant's supervisor that is used as evidence was nothing more than an informal conversation speculating on the budgetary situation, and the Applicant was aware at the time that an official decision was yet to be made. The Respondent further submits that the Applicant's account of his discussions with his supervisor overstates any expectations that may have been given to him and that, indeed, the uncertainty related to the renewal of his temporary appointment was specifically communicated to him.

27. The Respondent concludes that the non-renewal of the Applicant's temporary appointment was objectively justified and that there were no improper motives behind the contested decision.

## **Consideration**

### *Scope of judicial review*

28. The Tribunal preliminarily notes that the case concerns only the failure to renew the Applicant's employment contract.

29. Indeed, the Applicant didn't challenge the negative assessment of his performance, nor the failure to answer his requests for the release of an employment

certification or a reference letter, or his request to have the final entitlements paid; these facts are not directly challenged but are only indicated as evidence of the illegitimacy of the failure to renew.

30. The only legal issue before the Tribunal is whether the decision not to renew the Applicant's temporary appointment beyond 30 June 2024 was (or not) lawful.

31. Staff rule 4.12 on temporary appointments provides the following:

(a) A temporary appointment shall be granted for a period of less than one year to meet seasonal or peak workloads and specific short-term requirements, having an expiration date specified in the letter of appointment.

(b) The appointment of a staff member who has served for the maximum period as described in paragraph (a) above may be renewed for up to one additional year when warranted by surge requirements and operational needs related to field operations and special projects with finite mandates under circumstances and conditions established by the Secretary-General.

(c) A temporary appointment does not carry any expectancy, legal or otherwise, of renewal. A temporary appointment shall not be converted to any other type of appointment.

32. In light of the foregoing, and having reviewed the parties' submissions, the Tribunal defines the issues to be examined in the present case as follows:

- a. Whether the reason provided for the non-renewal decision was lawful and supported by the facts;
- b. Whether the Applicant had a legitimate expectation of renewal; and
- c. Whether the non-renewal decision was tainted by any improper motive.

*Whether the reason provided for the non-renewal decision was lawful and supported by the facts*

33. The Tribunal preliminarily notes that, at the time of his non-renewal, the Applicant had served on a temporary appointment for 11 months, that is, one month less than the normal maximum for temporary appointments, as per staff rule 4.12 (a).

34. It adds that the contractual status does not carry any expectation of renewal due to its objective nature.

35. Furthermore, there are objective reasons that justify the non-renewal of the Applicant's contract. Indeed, for most of the period, the Applicant was in Spain to solve some family issues and not in India, where he had to do interviews with face-to-face contact; the Administration showed flexibility and comprehension for the Applicant's personal needs, and for part of the period, it allowed him flexibility via the requested smart working.

36. However, the Organization expected that the Applicant would be working from the office in India, as he was notably called to conduct face-to-face resettlement interviews, and only a portion of his work could be done remotely.

37. The Tribunal is aware that, starting in December 2023, the Applicant periodically returned to Spain to take care of his parents. He took some sick leave for family reasons and was then allowed to telework from Spain between 2 January and 6 February 2024, and again from 11 to 22 March 2024; for a total of 7 weeks. Between 3 April 2024 and 10 May 2024 (more than 5 weeks), the Applicant was also allowed to take Special Leave without Pay ("SLWOP") for family reasons.

38. In this context, while the India Operation was supportive of the Applicant, it cannot be denied that the Applicant's teleworking and his placement on SLWOP had a negative impact on the Durable Solutions Unit.

39. In the legal system, nothing prevents the Administration from assessing how effectively the employee contributes to the Organization's needs to decide whether to renew (or not) a contract.

40. In addition, the Respondent submits that there were several budgetary constraints that required a restructuring and downsizing exercise in the Durable Solutions Unit. The said restructuring reasonably affected the Applicant's temporary appointment, as the Administration's need for a Senior Resettlement Assistant was reduced.

41. In support, the Respondent provided that, as of 30 September 2024, there was a projected funding gap of USD21.7 million for 2024 in the India Operation, which is equivalent to 62 per cent of UNHCR's India financial requirements for that year. As a result, the Organization underwent a staff realignment, which is in part driven by the difficult financial situation, as well as the need to maximize the impact of its limited financial resources and to prioritize delivery of assistance to the people it serves.

42. Moreover, the India Operation's resettlement quota also markedly dropped in 2024, lower than initially expected. As resettlement quotas are linked to host countries' commitments to welcome resettled refugees, the Organization could do little to address this decrease.

43. The Tribunal notes that the drop in the resettlement quota is supported by the evidence on record (see reply, paragraphs 5 to 7, and its annex 2).

44. In this situation, the Administration enjoys broad discretion and power to restructure and reorganize its units and departments. This is particularly the case when it comes to managing temporary appointments, which are contingent on the need for a temporary assistance workforce and bound by financial constraints.

45. The approval of the budget until the end of the year, instead, is irrelevant. The needs for the Applicant position was only foreseen until June 2024.

*Whether the Applicant had a legitimate expectation of a renewal.*

46. It is well-settled case law that a temporary appointment can only be challenged if the Administration created a legitimate expectation of renewal, if the Administration did not act fairly, justly, or transparently with the staff member, or, if the non-renewal decision is tainted by bias, prejudice or improper motive (*He* 2018-UNAT-825, para. 41; *Igbinedion* 2014-UNAT-411, para. 26). It is incumbent on the staff member to prove that such factors played a role in the non-renewal decision (*Porras* 2020-UNAT-1068, para. 24; *Nouinou* 2019-UNAT-902 para. 47; *Said* 2015-UNAT-500, para. 34).



47. The Applicant alleges that he was given a legitimate expectancy of renewal by his supervisor, who allegedly assured him that budgetary constraints would not impact the Applicant's position until at least the end of 2024. In his request for management evaluation, the Applicant specifically stated:

During our discussion [of 1 March 2024], my supervisor assured me that budgetary constraints were not expected to affect our unit's positions at least until the end of the year, given our funding through the US budget. Moreover, it was stressed that our unit would heavily rely on the team's support during the anticipated surge in caseloads in the latter half of the year, similar to the significant demands we faced last year. However, the official decision on contract renewal will only be shared in April.

48. The Respondent contends, however, that the foregoing discussion between the Applicant and his supervisor was merely a speculation on the budgetary situation with the caveat that an official decision would not be made before April 2024. As such, there is no evidentiary basis for the Applicant's allegation of legitimate expectation of contract renewal.

49. The Tribunal finds that the *alleged reassurance* of the Applicant's supervisor on the possibility of his temporary appointment being renewed/extended does not sufficiently support a finding of legitimate expectancy of renewal. As per the Applicant's own account, his supervisor told him that "the official decision on contract renewal will only be shared in April".

50. In the Tribunal's view, the foregoing is implicitly a postponement of any reassurance to the moment the formal decision is made. The *alleged reassurance* is nothing more than speculation based on unofficial information.

51. The recalled assertion has no other meaning than that the budgetary and operational imperatives underlying the need for the Applicant's temporary appointment were necessarily fluid, and a decision could only be made closer to the expiration date of the Applicant's appointment.

52. In other words, the Tribunal finds that the Applicant has no legitimate expectation of renewal based on the *alleged reassurance* by his supervisor.

*Whether the non-renewal decision was tainted by any improper motive*

53. The Tribunal recalls that, in cases of non-renewal of contracts, the burden of proving improper motives, such as bias, abuse of authority, discrimination, retaliation or harassment rests with the person making the allegation (*Hepworth* 2015-UNAT-503, para. 44; *Nwuke* 2015-UNAT-506, para. 49).

54. The Applicant claims that the Administration's claim of budgetary constraints and quota reductions is unsubstantiated and inconsistent with the facts. The Applicant further asserts that two other Senior Resettlement Assistants on similar temporary appointments had their contracts extended. This would further suggest that the decision not to renew his contract was not based on valid organizational needs and that he had instead been selectively targeted.

55. Lastly, the Applicant claims that he has been the subject of retaliation. Allegedly, the Senior Programme Officer for UNHCR India informed him on 10 July 2024 that due to the perceived severity of his actions, he would not be reconsidered for the India operation.

56. In contrast, the Respondent contends that the Applicant's grievances vis-à-vis a request for a reference letter and a performance evaluation for 2023 were timely dealt with by the Chief of Mission in India in an email dated 31 July 2024.

57. With respect to the other two Senior Resettlement Assistants whose contracts were extended, the Respondent submits that the fact that only one Senior Resettlement Assistant was initially not renewed simply reflects the need for the staffing to match the operational realities, and for the budget to be used judiciously. Finally, the Respondent refutes any retaliation against the Applicant.

58. The Tribunal is of the view that in the present case, the Administration instead demonstrated flexibility in relation to the personal needs of the Applicant, and this contradicts his accusations of retaliation. Moreover, the non-renewal of the Applicant's temporary appointment is objectively justified, as determined above.

59. In this situation, the Applicant has not credibly supported that improper motives were at play. The non-renewal of his temporary appointment was nothing

else than an unfortunate consequence of a well-supported realignment exercise and a proper exercise of the Administration's discretion. There were no procedural irregularities, and no discriminatory treatment based on bias.

### **Conclusion**

60. In view of the foregoing, the Tribunal DECIDES to reject the application.

*(Signed)*

Judge Francesco Buffa

Dated this 29<sup>th</sup> day of May 2025

Entered in the Register on this 29<sup>th</sup> day of May 2025

*(Signed)*

Liliana López Bello, Registrar, Geneva