



Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

MAZZEI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Ana Giulia Stella, OSLA

Counsel for Respondent:

Lucienne Pierre, AS/ALD/OHR, UN Secretariat
Tamal Mandal, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a Planning Officer at P.4 level at the United Nations Assistance Mission in Somalia (“UNSOM”), based in Nairobi. He contests a decision of 2 February 2024 of the Assistant Secretary-General for Human Resources (“ASG/OHR”) not to grant him a continuing appointment during the 2016-2021 Continuing Appointment Review Exercise.

Factual background

2. The Applicant joined the United Nations International Children’s Emergency Fund (“UNICEF”) on 16 March 2009 as an Executive Officer at the P-2 level, based in New York.

3. Between 24 March 2014 and 14 January 2015, the Applicant served on secondment from UNICEF to the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”) as a P-3 Special Assistant. The secondment was supposed to be for a year, but the Applicant left MONUSCO early when he secured another secondment.

4. From 14 January 2015 to 14 January 2018, the Applicant served on the other secondment from UNICEF to the United Nations Environment Programme (“UNEP”) as a P-3 Special Assistant, based in Nairobi.¹

5. On 14 January 2018, the Applicant was officially transferred to UNEP when his secondment ended.

6. At UNEP, the Applicant also served a temporary assignment with UNSOM in Mogadishu, Somalia from 6 January 2020 to 12 March 2020.

7. On 18 March 2020, the Applicant joined the United Nations Development Coordination Office, Resident Coordinator Office (“UNDCO/RCO”) in Bangui,

¹ In this case it is important to be aware of the distinction between the United Nations Secretariat and other funds and programmes in the United Nations System. UNEP is part of the Secretariat and UNICEF is a non-Secretariat programme. This distinction underlies the contested decision and is crucial to the analysis of that decision.

Central African Republic as a P-4 Development Coordination Officer. However, due to travel restrictions during the COVID-19 pandemic, the Applicant telecommuted from Nairobi.

8. On 15 March 2021, the Applicant rejoined UNSOM as a P-4 Planning Officer based in Nairobi, a position he still occupies to date.

9. On 15 February 2023, the Administration launched the 2016-2021 Continuing Appointment Review Exercise. The Applicant participated in the exercise by applying to be considered for a continuing appointment.

10. On 2 February 2024, the Applicant was informed that the Assistant Secretary General in the Office of Human Resources (“ASG/OHR”) did not grant him a continuing appointment during the 2016-2021 Continuing Appointment Review Exercise (the contested decision). Specifically, the Applicant was informed that:

The 2016-2021 Continuing Appointment Review Exercise is complete. Regrettably, the Assistant Secretary-General for Human Resources has determined not to grant you a continuing appointment. This decision is taken based on the maximum number of continuing appointments that can be granted for the 2016-2021 Continuing Appointment Review Exercise in the post envelope for your staff member category in accordance with ST/SGB/2011/9.

11. In response to a question from the Applicant, the Continuing Appointment Review Team advised that “We note that you served on secondment to the UN Secretariat from UNICEF from 24/03/2014 with official transfer to become a UN Secretariat staff member on 14/1/2018, therefore putting you in the eligibility year of 2018.”

12. The Applicant requested management evaluation of the contested decision on 28 March 2024. On 18 April 2024, the Management Advice and Evaluation Section upheld the contested decision.

13. On 15 July 2024, the Applicant filed the present application in which he specifically focuses on his eligibility for a continuing appointment in 2016 and

2017. A reply, rejoinder and closing submissions have since been filed, so the case is ripe for ruling.

Submissions

Applicant's submissions

14. The Applicant's position is that he met all the requirements to be eligible in 2016 and 2017 for the granting of a continuing appointment because, while on secondment from 2014 to 2018, he was in active service with the Secretariat under a fixed-term appointment and subject to the Secretariat staff rules. He asserts that his letters of appointment as of 2014 confirm that he was a staff "in the Secretariat of the United Nations, [...] subject to the provisions of the staff regulations and staff rules." As a Secretariat staff, the Applicant maintains that he was eligible for a continuing appointment.

15. The Applicant seeks to draw a distinction between a staff member on a loan and on secondment. Relying on section 10 of the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the UN Common System of Salaries and Allowances ("the Inter-Organization Agreement"), he asserts that, contrary to a loan, during his secondment the Applicant's contractual relationship with UNICEF (the releasing organization) was suspended. Therefore, the Applicant was effectively serving with UNEP, the receiving organization, and subject to the Secretariat staff rules.

16. The Applicant further argues that UNICEF secondments differ from UN Secretariat secondments. Contrary to UNICEF's rules on secondments, when seconded to another entity, UN Secretariat staff keep a lien to their position and have stronger return rights. A secondment from UNICEF does not entail a lien to a specific post at UNICEF. UNICEF merely offers a return right upon application to UNICEF positions. The Applicant, who was a P-2 when leaving UNICEF, would have needed to apply for a position to return to UNICEF as he had no lien to any position or affiliation to UNICEF. Moreover, the Applicant had no intention to return to UNICEF.

17. During the secondment, the receiving organization (UNEP) stepped in to assume the role of the Applicant's exclusive employer. He could not simultaneously hold a contractual status with both UNEP and UNICEF. This is confirmed by his letters of appointment mentioning that he was a Secretariat staff and by staff rule 4.1 providing that letters of appointment contain expressly or by reference all the terms and conditions of employment.

18. The Applicant also submits that, contrary to the Administration's position, there is no rule precluding staff members on secondment at "the eligibility date" from being considered eligible for a continuing appointment. This is especially true if a staff member's letters of appointment indicate that he or she is a Secretariat staff subject to the provisions of the Staff Regulations and Staff Rules. None of the Applicant's rights under his letter of appointment could be diminished as per staff rule 4.9 (b). Moreover, it is clear from the applicable rules that the legislator always intended to consider as equal staff in other entities (such as UNICEF) governed by the Secretariat rules.

19. In proving that he was a Secretariat staff member, the Applicant emphasizes that:

from 2014 to 2017, he was granted full access to benefits and trainings exclusively available to UN Secretariat staff members and unavailable to UNICEF staff, including a license for Lydia (providing access to the LinkedIn online training course platform), various trainings (including the Prince2 certification, at no cost for UN Secretariat staff) and UN language classes also at no cost for UN Secretariat staff. Additionally, the Applicant was credited as UNEP author in a 2017 publication, which gained popularity on Iseek and was uploaded in the UN Secretariat Policy Repository. Under the section "about the author" of this publication, the Applicant is described as the Special Assistant to the Director of Ecosystems Division at UNEP and it further mentions that "earlier in his career, Cristian worked in several other UN agencies such as UNICEF, FAO, UNICRI and ICTR", reflecting his role as a Secretariat staff member.

20. The Applicant, thus maintains that, at the time of the consideration, he met all other requirements to be granted a continuing appointment (reviewed by a Central Review Board, completed 5 years of continuing service under a fixed-term

appointment under the staff rules, received good performance ratings, has at least 7 years of remaining service before retirement, and has not been subject of a disciplinary process).

21. Relying on the UN Broadcast Message dated 27 February 2024, (Completion of the 2016 to 2021 Continuing Appointment Review Exercise)", the Applicant posts that a sufficient number of continuing appointments were available for staff members meeting the eligibility criteria by 1 July 2016 and 1 July 2017. Therefore, for the exercise 2016-2017, there was no point allocation requirement and the envelope of continuing appointments was enough for candidates meeting the eligibility criteria by 1 July 2016 and 1 July 2017.

22. In view of the foregoing, the Applicant opines that he was eligible in years 2016 and 2017 for the granting of a continuing appointment. If the Applicant had been considered for 2016 and 2017 and granted a continuing appointment, he would now benefit from priority retention or consideration for selection under the ST/AI/2023/1 administrative instruction on Downsizing or restructuring resulting in termination of appointments, following the announcement of the end of UNSOM's mandate.

23. As a way of remedies, the Applicant requests:

- a. The rescission of the decision of 2 February 2024, denying him a continuing appointment in the review exercise for the years 2016 and 2017.
- b. The retroactive granting of a continuing appointment in the frame of the 2016 and 2017 review exercises, effective as of February 2024.
- c. Alternatively, in case of technical impossibility, the Applicant requests the granting of a 5 years fixed-term appointment in his next renewal of appointment (current appointment ends in December 2025) and the automatic granting of a continuing appointment in the next review exercise.

Respondent's submissions

24. The Respondent's case is that the Applicant had no right to a continuing appointment for the years 2016-2017 because he did not meet the eligibility requirement of being a staff member of the United Nations Secretariat.²

25. The eligibility requirements are set out in paragraph 53(a)(i) of the General Assembly Resolution (A/RES/65/247) ("GA Resolution") and section 2.1 of the ST/SGB/2011/9 (Continuing appointments) ("SGB") and specifically require that the applicant be a Secretariat staff member. The Applicant only became eligible to be granted a continuing appointment in 2018, upon his transfer from UNICEF to UNEP, and he was not a United Nations Secretariat staff member when he was on secondment from UNICEF to UNEP.

26. Relying on *Skoda* (2010-UNAT-017, para. 6), the Respondent argues that in 2016 and 2017 the Applicant was a UNICEF staff member serving on secondment at UNEP. As a seconded staff member from UNICEF to UNEP, he did not become a staff member of UNEP. A staff member on secondment does not sever their contractual relationship with the releasing organization and become a staff member of the receiving organization.

27. A fixed-term appointment with the receiving Organization is the normal contractual arrangement envisaged under the Inter-Organization Agreement for secondments. It does not mean that the Applicant severed his contractual relationship with UNICEF, the releasing organization.

28. The Respondent further seeks to rely on *Re Gross (ILOAT Judgment No. 703 (1985), para. 4)* stating that even though a seconded staff member holds a fixed term appointment with the receiving organization, he or she has a right to return to the releasing organization. The receiving organization cannot grant an appointment that exceeds the tenure of the secondment under the inter-organization agreement, as

² The Respondent also argues that the Applicant was not entitled to a continuing appointment for the other years covered in the exercise because: (a) for 2018 and 2020 there were no continuing appointments for staff members in the Professional and above and Field Service categories; and (b) in 2019 and 2021, the Applicant did not have enough points to qualify for a continuing appointment. The Applicant does not dispute this and only focusses on 2016 and 2017.

this would, in substance, alter the contractual relationship between the seconded staff member and the releasing organization, an authority the receiving organization does not enjoy under the agreement.

29. In relation to the remedies sought, the Respondent submits that the Applicant has shown no procedural or substantive breach of his rights or administrative wrongdoing needing repair. The Applicant has no right to rescission of the contested decision. Further, under Article 10.5(a) of the Dispute Tribunal's Statute, the Tribunal lacks authority to award a continuing appointment retroactively. It may only rescind a contested decision or order specific performance. However, this does not grant the Tribunal jurisdiction to substitute its decision for that of the Administration.

Consideration

30. The issue in this case is a strictly legal one: whether a staff member seconded to the Secretariat, from a fund or programme in the United Nations System, is "serving with the United Nations Secretariat under a fixed-term appointment" for purposes of eligibility for a continuing appointment.

31. The Tribunal bears in mind that it does not seek to replace the decision-maker's role in coming to a determination. Rather, the Tribunal's role is limited to a judicial review of the process by which the decision-maker arrived at the decision that is being challenged (*Sanwidi* 2010-UNAT-084, para. 40).

32. General Assembly Resolution 65/247 ("A/RES/65/247") sets out the eligibility criteria for staff members to be considered for a continuing appointment. Paragraph 53 provides, in pertinent part:

staff members must satisfy the following criteria in order to be eligible for consideration for the granting of continuing contracts:

(a) They must have completed a minimum of five years of continuing service under the Staff Regulations and Rules of the United Nations:

(i) **Staff members of the United Nations Secretariat** who have accrued at least five years of continuous service on fixed-term appointments, including periods of service in an entity that applies

the Staff Regulations and Rules of the United Nations. . . .(emphasis added)

33. In implementing that provision, section 2.1 of the Secretary-General's bulletin, ST/SGB/2011/19, Continuing appointments ("the SGB") provides:

In order to be eligible for consideration for the granting of a continuing appointment, staff members who have been selected for a position through a competitive process which includes a review by a Secretariat review body in accordance with staff rule 4.15, and are serving with the United Nations Secretariat under a fixed-term appointment, must satisfy the following criteria:

- (a) They must have completed five years of continuous service under fixed term appointment(s) under the Staff Regulations and Rules of the United Nations, notwithstanding the provisions of section 2.2 below. (emphasis added)

34. Section 2.6 of ST/AI/2012/3 (Administration of continuing appointments) ("AI") states:

For the granting of a continuing appointment, **eligible staff members must be in active service in the Secretariat under a fixed-term appointment throughout the period of consideration.** (emphasis added)

35. The parties agree that the Applicant must be staff member of the Secretariat to be eligible for consideration for a continuing appointment. Where the sides differ is when the Applicant became a Secretariat staff member. He was undisputedly a staff member of the Secretariat as of 14 January 2018 when he formally transferred from UNICEF to UNEP. However, the Applicant claims that he was in active service with the Secretariat before, particularly in 2016 and 2017 when he was seconded to UNEP from UNICEF.

36. In examining this claim, the Tribunal must look to the Inter-Organization Agreement to which the UNICEF letter of release expressly references.³ Section 2(d) of the Agreement defines secondment as:

the movement of a staff member from one organization to another for a fixed period, normally not exceeding two years, during which the staff member will normally be paid by and, except as otherwise

³ UNICEF has also promulgated a related Procedure on Inter-Organization Staff Mobility, PROCEDURE/DHR/2021/008 which contains similar language.

provided hereafter, be subject to the staff regulations and rules of the receiving organization but will retain his or her rights of employment in the releasing organization....

37. Section 9 (a) and b) of the same Agreement addresses the contractual relationship between the staff member and the Organizations and provides:

- (a) when a staff member is seconded to another organization, his or her contractual relationship with the releasing organization will, except as may be otherwise provided hereafter, be suspended until the expiry of the agreed period of secondment, or until such earlier date as the parties may agree.
- (b) For the agreed duration of the period of secondment, the staff member's contractual relationship with the receiving organization will be that of a staff member with a fixed-term appointment,...

38. Thus, what we may glean from these provisions is that, while seconded to UNEP, the Applicant's contractual relationship with UNEP (the receiving organization) is "that of a staff member with a fixed-term appointment", with certain designated exceptions not applicable here. At the same time his contractual relationship with UNICEF (the releasing organization) was suspended until the expiry of the agreed period of secondment. Since UNEP is part of the Secretariat, during his secondment the Applicant held a fixed-term appointment as a staff member of the Secretariat and eligible to be considered for a continuing appointment in 2016 and 2017. His suspended status with UNICEF could not change that.

39. This analysis is consistent with the letters of appointment issued to the Applicant upon his secondment which indicate that he is offered "a FIXED-TERM APPOINTMENT in the Secretariat of the United Nations."⁴ The same language

⁴ The Applicant also relies on language in the letters of appointment that he was "subject to the provisions of the Staff Regulations and Staff Rules" as additional evidence that he was a Secretariat staff member. However, he was subject to the Staff Regulations and Rules even as a UNICEF staff member, so that language is irrelevant. Similarly, he points to language in the Personnel Action forms as proof that he was a Secretariate staff member during his secondments. However, those forms on their face caution that "Personnel actions referring to the United Nations Secretariat or the Secretariat or using the United Nations emblem shall not be construed to grant staff members of non-Secretariat entities,... the status of a staff member of the United Nations Secretariat. Any such reference or use of emblem is incidental to the provision of administrative services by the United Nations Secretariat to the non-Secretariat entities."

was used in appointment letters upon his transfer to UNEP, at which time the Respondent agrees that the Applicant was a staff member of the Secretariat.

40. The Respondent reiterates that the secondment does not sever the Applicant's contractual relationship with UNICEF. Thus, he argues that "the receiving organization cannot grant an appointment that exceeds the tenure of the secondment under the inter-organization agreement, as this would, in substance, alter the contractual relationship between the seconded staff member and the releasing organization, an authority the receiving organization does not enjoy under the agreement", citing to para. 1(b) of the Inter-Organization Agreement. However, the cited provision does not stand for that proposition.⁵

41. Paragraph 9(e) of the Agreement expressly addresses this issue and negates the Respondent's argument. That provision states:

[t]he releasing organization will be under no obligation to recognize any change of official status of the staff member which may occur in the receiving organization, except in calculating payments under paragraphs 18(b) and 20 below [relating to compensation in the event of service-incurred illness, injury or death, or calculation of final entitlements upon separation].

42. This language clearly contemplates the receiving organization (UNEP) changing the official status of the staff member, but confirms that any such changes are not binding on the releasing organization (UNICEF) upon the staff member's return.

43. As for the jurisprudence Respondent relies on, those cases are distinguishable because they do not address the issue of a staff member's status during the secondment as it relates to eligibility for a continuing appointment. Instead, they dealt with issues like a staff member's right of return to the releasing organization upon completion of the secondment (*Gross, supra.* and *Tran Nguyen, UNDT/2015/002*) and the requirements for contributions to the United Nations

⁵ Paragraph 1(b) of the Inter-organization Agreement says, inter alia, that it "does not of itself give the staff member rights which are enforceable against an organization. I merely set out what the organizations will normally do." The Tribunal's ruling does not rely solely on the Agreement, but also on the letters of appointment issued by the Secretariat regarding the Applicant's secondment to UNEP. These letters reflect what the Secretariat "normally" and actually did.

Joint Staff Pension Fund (“UNJSPF”) when seconded to the World Bank (*Skoda, supra.*). As such, they shed no light on the topic under examination in this case.

44. In sum, it is clear that under the Inter-Organization Agreement and the letters of appointment issued by the Secretariat to effectuate the secondment, the Applicant was a staff member of the Secretariat during his secondment. Thus, he was eligible to be considered for a continuing appointment in 2016 and 2017 and the contested decision was unlawful in that regard. When the Organization determined he was not eligible, that was a failure of the process and must be rescinded.

45. Regarding the remedies, art. 10.5 of the Tribunal’s statute provides that it may only order rescission of the contested administrative decision, specific performance, and/or compensation for harm.

46. In his application, the Applicant sought rescission of the decision and “retroactive granting of a continuing appointment...effective as of February 2024.” In his rejoinder and closing submissions, he adds “Alternatively, in case of technical impossibility, the Applicant respectfully requests the granting of a 5 years fixed-term appointment in his next renewal of appointment (current appointment ends in December 2025) and the automatic granting of a continuing appointment in the next review exercise.”

47. The Respondent correctly points out that the Dispute Tribunal lacks authority to award a continuing appointment. Thus, rescission of the contested decision is the only remedy that is both requested and within the Tribunal’s purview.

Conclusion

48. In view of the foregoing, the Tribunal DECIDES to:

- a. grant the application; and
- b. rescind the decision denying the Applicant a continuing appointment in the review exercise for 2016 and 2017.

Case No. UNDT/NBI/2024/048

Judgment No. UNDT/2025/041

(Signed)

Judge Sean Wallace

Dated this 27th day of June 2025

Entered in the Register on this 27th day of June 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi