



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

Judgment No. 2023-UNAT-1395

**Abdurrahman Turk
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Gao Xiaoli, Presiding Judge Kanwaldeep Sandhu Judge Leslie F. Forbang
Case No.:	2023-1770
Date of Decision:	27 October 2023
Date of Publication:	4 December 2023
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Noam Wiener

JUDGE GAO XIAOLI, PRESIDING.

1. Mr. Abdurrahman Turk (Appellant) appeals Judgment No. UNDT/2022/118 (impugned Judgment) to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
2. In the impugned Judgment, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed his application, which had challenged a decision not to renew his Fixed-Term Appointment (FTA) beyond its expiration date (contested decision).
3. For the reasons set forth herein, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. Prior to separating from the Organization, Mr. Turk was a Political Affairs Officer (PAO) at the P-4 level serving in the United Nations Assistance Mission for Iraq (UNAMI).
5. In May 2021, the Secretary-General submitted to the General Assembly a proposed program budget for UNAMI that included, as part of an overall cost cutting initiative, the “[r]eclassification of one position of Political Affairs Officer (P-4) to Political Affairs Officer (P-3) in the Office of Political Affairs”.¹
6. In anticipation of the General Assembly’s approval of the new budget, UNAMI, in consultation with staff representatives, drew up the Terms of Reference (ToR) for a Comparative Review Panel (CRP or Panel). Because there were 10 PAOs at the P-4 level in the Office of Political Affairs (OPA), and one of the posts would be downgraded to level P-3, the 10 PAOs would be subject to a comparative review to assess which PAO post would be downgraded. The CRP was comprised of members nominated by management and the Field Staff Union and did not include staff from OPA.
7. Each staff member subject to the comparative review process would be assessed a certain number of points for each criterion: relevant work experience, e-performance reports, demonstration of core values in the e-performance report, seniority, and point deductions for any disciplinary measures.²

¹ Secretary-General’s Annex 2, A/76/6 (Sect. 3) Add.6, Proposed programme budget for 2022, para. 40.

² Secretary-General’s Annex 3, Terms of Reference for UNAMI’s Comparative Review Panel, para. 11.

8. On 28 October 2021, the UNAMI Chief Human Resources Officer (CHRO) told Mr. Turk that he would be subject to the comparative review, and that he needed to upload his Personal History Profile (PHP) and e-performance documents for the previous two performance cycles.

9. On 31 October 2021, UNAMI sent its request for reclassification to the Department of Management Strategy, Policy and Compliance (DMSPC), and identified the post occupied by Mr. Turk, No. 30048407, as the one to be downgraded.

10. On 24 November 2021, the CRP completed its evaluation, and among the six PAOs who participated in the comparative review, Mr. Turk ranked last, with a total of 69 points, as compared to the highest score of 114 points. The staff member who ranked fifth had a total of 80 points, or 11 points more than Mr. Turk.³ The Panel made an unanimous decision on the comparative review, concluding that Mr. Turk could not be retained due to the unavailability of one P-4 PAO post.

11. On 30 November 2021, the Chief Mission Support for UNAMI sent Mr. Turk a formal notice of the non-extension of his FTA in line with Staff Rule 9.4.⁴ The letter advised that as a result of the comparative review process, he had been identified for retrenchment given that there were now more civilian staff than the number of available posts in the new OPA structure.

12. The proposed budget for UNAMI was adopted by the General Assembly on 24 December 2021.⁵

13. Mr. Turk filed a request for management evaluation concerning the decision not to renew his FTA. On 28 December 2021, the Management Evaluation Unit (MEU) decided to uphold the decision. The MEU concluded that the non-renewal decision was supported by the facts presented in the CRP's Comprehensive Evaluation Matrix, that there was no procedural irregularity, and that there was no evidence of any discriminatory motive in the reclassification of his post and the non-renewal of his FTA. Mr. Turk subsequently filed an application challenging the decision before the Dispute Tribunal.

³ Secretary-General's Annex 6, Comparative Review Process, Comprehensive Evaluation Matrix.

⁴ Secretary-General's bulletin ST/SGB/2018/1/Rev. 2 (Staff Regulations and Rules of the United Nations).

⁵ Secretary-General's Annex 9, General Assembly resolution 76/246, part X, Estimates in respect of political missions, good offices and other political initiatives authorized by the General Assembly and/or the Security Council.

14. On 19 June 2022, UNAMI advertised a P-4 PAO post as well as a P-3 PAO post.

The UNDT Judgment

15. The Dispute Tribunal framed the following issues for consideration: (a) the lawfulness and reasonableness of the downgrading of one of the P-4 PAO posts in OPA; (b) whether the downgrading was a genuine exercise or merely a scheme to readvertise it; (c) whether the comparative review process was procedurally fair; (d) whether the substantive outcome of the comparative review process was correct; and (e) whether there was any evidence of discriminatory treatment of Mr. Turk.⁶

16. With regard to the downgrading of one of the P-4 PAO posts, the UNDT found that the Secretary-General's decision was lawful. The UNDT observed that cutting expenses is a legitimate goal and that when the General Assembly determines that outputs can be achieved through staffing at a lower level, it is legitimate to pursue downgrading of posts. The UNDT noted that similar downgrading exercises had taken place in prior years, indicating that this was "an established *modus operandi* and not an *ad hoc* solution devised to target [Mr. Turk]".⁷

17. The UNDT also found that there was no rational basis for Mr. Turk's allegation that his post was subsequently readvertised at the P-4 level. The record showed that the later advertisement of the P-4 PAO post, No. 30050635, was not the post held by Mr. Turk. The UNDT found that this vacancy was occasioned by the selection of the staff member in that post for a P-5 position in another mission, which was finalized in April 2022. All of these events occurred after Mr. Turk's separation. Accordingly, the UNDT was satisfied that the downgrading of Mr. Turk's post (No. 30048407) was a genuine reorganization exercise.⁸

18. Regarding the procedural fairness of the comparative review process, the UNDT endorsed the Secretary-General's position that (i) the CRP was independent and claims of abuse of process by Mr. Turk were unfounded as no one from OPA was on the Panel; (ii) the Panel correctly calculated the scores of each staff member participating in the comparative review process and that Mr. Turk had the lowest score; and (ii) the data reviewed by the Panel was based on the information provided by Mr. Turk himself.

⁶ Impugned Judgment, para. 21.

⁷ *Ibid.*, para. 24.

⁸ *Ibid.*, paras. 25-27.

19. The UNDT also rejected as baseless Mr. Turk's allegations concerning two other comparators. The UNDT found that Mr. Turk's allegation that another comparator should not have enjoyed a retention preference was incorrect, because Mr. NN had a continuing appointment. The UNDT also found that the Secretary-General rebutted Mr. Turk's allegation that another comparator was assigned to the United Nations Interim Force in Lebanon (UNIFIL). Overall, the UNDT found that "the criteria employed for the exercise in question were rational and mirrored what is routinely applied in similar comparative processes in the Organization".⁹ The UNDT also observed that the fact that UNAMI Human Resources furnished the Panel with Mr. Turk's updated PHP, which was more complete than the one that Mr. Turk had uploaded, showed that the Human Resources office had acted with objectivity and accuracy.

20. The only point where the UNDT was "not entirely satisfied" by the Secretary-General's response was why the post No. associated with Mr. Turk (No. 30048407) was recommended for downgrade approximately one month before the CRP had finished their evaluation and made their recommendation. The Administration explained that the post No. identified for downgrading was based on the Entry-on-Duty date in the United Nations system. The UNDT was not persuaded but was prepared to accept that UNAMI Human Resources had conducted a "dry run" of the comparative review in advance of the Panel and had made their own estimation of the result before the Panel's work. Although the UNDT opined that this practice should be discouraged, it found that there was no impact on the comparative review process.¹⁰

21. As to the substantive outcome of the comparative review process, the UNDT noted that the information provided about Mr. Turk's professional experience came from Mr. Turk himself, as he uploaded the two PHPs, one in the old *Galaxy* system and the other in the currently used *Inspira* system. The UNDT found the credibility of both documents to be "low" given the discrepancies between the two. Indeed, the UNDT noted that if Mr. Turk had been retained by the Organization "the matter of truthfulness and relevance of the alleged employments would most likely mandate an inquiry". However, even if all the declared employment had been counted from both PHPs, the UNDT noted that this would have increased Mr. Turk's score by five points, and he would still have been the last ranked candidate.¹¹

⁹ *Ibid.*, paras. 28-29.

¹⁰ *Ibid.*, para. 31.

¹¹ *Ibid.*, paras. 33-34.

22. Finally, with regard to the allegations of discriminatory purpose, the UNDT found that even if the various incidents cited by Mr. Turk were accepted as true, they were unrelated to and incapable of showing discriminatory intent by the decision-maker. The UNDT concluded that the “mere fact that there were workplace disagreements do not amount to proof of improper motives” nor do they establish a “causal link” to the challenged administrative decision. The UNDT also endorsed the Secretary-General’s position that it was under no legal obligation to secure an alternative post for Mr. Turk.¹²

23. For the foregoing reasons, the UNDT found that the Secretary-General’s decision was lawful and dismissed the application on 2 November 2022 in the impugned Judgment.

24. Mr. Turk filed an appeal of the impugned Judgment on 9 January 2023. He did not file a complete appeal brief but did submit an appeal form and numerous annexes.

25. The Secretary-General filed his answer on 17 April 2023.

26. Mr. Turk filed a motion to submit additional pleadings with the Appeals Tribunal, which was denied by Order No. 516 (2023).¹³

Submissions

Mr. Turk’s Appeal

27. Mr. Turk submits that the UNDT erred on rules and law by refusing to refer his documents in support of his claim to an impartial unit, namely the Job Classification Unit (JCU) in Human Resources at United Nations Headquarters.

28. Mr. Turk complains that the UNDT Judge erred by failing to honor his medical documents which showed the consequences to him of the ending of his career. Mr. Turk claims that the UNDT Judge should have sent his medical documents to the Clinic at the United Nations to seek a physician’s opinion on his health issues.

¹² *Ibid.*, paras. 35-36.

¹³ *Abdurrahman Turk v. Secretary-General of the United Nations*, Order No. 516 (2023).

29. Mr. Turk alleges that the impugned Judgment was “just a repetitive copy” of the position of the Secretary-General, which raises questions in his mind of the implementation of justice at the United Nations.

30. Mr. Turk submits that the UNDT Judge was “too extreme” in “accusing [him]” of providing false qualifications about his work experience. He requests that the UNAT “contact each employer” and verify his experience, that the UNDT Judge should apologize to him, and that the UNAT should consider the UNDT Judge’s “extreme accusations” when reviewing his appeal.

31. Mr. Turk submits that the UNDT erred in ignoring his multiple requests for a copy of the JCU’s approval and the General Assembly’s Fifth Committee vote on the downgrading of his position. Mr. Turk avers that UNAMI only provided a copy of the approval for upgrading the position from P-3 to P-4 in 2015.

32. Mr. Turk questions how he could have been the lowest-ranked staff member in the comparative review process given that he is 50 years old, has been working since he was 22 years old, and has a PhD in politics from the United Kingdom, and 18 years of experience as a diplomat having joined the Jordanian Foreign Service when he was 32 years old. Mr. Turk cannot conceive how colleagues in their 20s or 30s scored higher than him. Mr. Turk submits that UNAMI decided to promote junior officers. He also refers to the annual generous British and Turkish contributions to the United Nations budget.

33. Mr. Turk says that the most visible example of discrimination is that the other staff members in the comparative review process were given “As” for the United Nations core value “diversity”, whereas he received a “B”. He points out that he is “diversity itself” given his heritage.

34. Mr. Turk raises issues related to what he terms “the first attempt to end his UN career” in 2015-2016. He also states that there has been ongoing hostility towards him because the majority of UNAMI international officers are Arab and they feel ashamed of Mr. Turk, a Jordanian-born Arabic speaker due to his sexual orientation. Mr. Turk also alleges that UNAMI classified him as non-essential worker during Covid, whereas junior officers were classified as essential, and that this was a preparation for downgrading his position to P-3.

35. Mr. Turk states that “[his] case is not challenging the downgrading [of his] position” but what he is “challenging is the immorality, selfishness, hatred and using the gaps in the system to achieve persona['] gains”.

36. Mr. Turk submits that if UNAMI was “telling the truth”, then the advertisement in June 2022 would have been only for one P-3 vacancy, not PAO vacancies at both the P-3 and P-4 levels.

37. Mr. Turk objects to the fact that the UNDT Judge asked him to stop downloading documents, and that the UNDT Judge used the word “occupying” his post rather than “incubating”.

38. Mr. Turk points out that the UNDT Judge recognized that it was unusual that the request for downgrading his specific post No. was sent to the JCU on 30 October 2021, only two days after he had been advised to upload his data for the CRP. Mr. Turk submits that this proves that he was “the target” of this reclassification and it had been “decided already to expel me from the system even before the CRP”.

39. Mr. Turk submits that the decision to separate him after seven years in service was not in accordance with the United Nations document on Job Classification, and that he should have been offered an alternative job. Moreover, he objects to receiving notice of the non-renewal of his FTA on 2 December 2021, which was 28 days before the end of his annual contract.

40. Mr. Turk gives his consent to the UNAT to seek the truth from the JCU. He is convinced that his position was not downgraded but was exported from OPA to the Front Office.

41. Mr. Turk requests to be reinstated and offered a similar position in New York or Geneva, because he cannot work in hardship locations due to his health. Mr. Turk also suggests reinstatement followed by a mutual agreed termination between him and the Organization. Alternatively, he seeks any form of relief available under Article 9 of the Statute of the Appeals Tribunal (Statute).

42. Mr. Turk requests an oral hearing before the UNAT “[b]ecause it is always better to answer [the UNAT’s] questions and express the injustice [he] was subjected to”.

The Secretary-General’s Answer

43. The Secretary-General submits that the UNDT correctly found that the reorganization of UNAMI, pursuant to the approval by the General Assembly of the 2022 budget, was the reason for the downgrading of the Appellant’s post. The Secretary-General avers that the additional documents that the Appellant wished to admit into evidence, namely the voting record of the

Fifth Committee of the General Assembly, would not change this fact, nor would a “document of undisclosed nature allegedly produced by the Job Classification Unit”.

44. The Secretary-General submits that the UNDT correctly found that the comparative review process was lawfully conducted. The Secretary-General submits that the UNDT was right to find that the CRP was independent and that the Panel applied the criteria in a fair manner. He argues that the Appellant’s “mere disagreement” with the scores is not sufficient to render the process unfair, or to render the UNDT’s Judgment erroneous.

45. The Secretary-General submits that the Appellant failed to provide any support for his conclusory argument that the Panel reviewed the wrong PHP, and that the UNDT was correct to find that it was the Appellant’s responsibility to provide the most current PHP. The Secretary-General points out that the Appellant never explained the inconsistencies identified by the UNDT in his PHPs.

46. The Secretary-General submits that the UNDT correctly found that there was no ground to believe that the Appellant had been individually targeted. The Secretary-General states that contrary to the Appellant’s allegation, the UNDT *did* consider the facts concerning the notification of the downgrading of the post No. associated with Mr. Turk to DMSPC before the CRP had even concluded its review. The Secretary-General submits that the reason for using the post No. associated with Mr. Turk’s position was because his post was the last to have been encumbered.

47. In any event, the UNDT reviewed all of the evidence contained in the budget proposal to the General Assembly, the General Assembly’s resolution, the ToR for the CRP, the notes of the Panel and the communications between UNAMI Human Resources and Mr. Turk, and rightly concluded that there was no indication of a conspiracy to target him.

48. The Secretary-General submits that the single fact that the number of the post he had encumbered was transmitted from UNAMI Human Resources to DMSPC at the beginning of the process, rather than the end, cannot cast doubt on the UNDT’s conclusion that the contested decision was lawfully made at the end of a lengthy, fair and transparent process.

49. The Secretary-General requests that the UNAT deny the appeal in its entirety.

Considerations

50. The Appeals Tribunal is presented with an appeal arising from the non-renewal of Mr. Turk's contract. Before addressing the substantive aspects of his appeal, we first review several procedural issues concerning his request for an oral hearing and his claim of error regarding the UNDT's denial of his requests to produce additional evidence. Subsequently, we turn to the merits of Mr. Turk's arguments concerning the non-renewal, chiefly, that eliminating his post was unlawful, that the review of his qualifications by the CRP was unfair and erroneous, and that he was subject to discrimination. Finally, we address Mr. Turk's request that the Appeals Tribunal investigate certain claims on its own.

Should the UNAT grant an oral hearing?

51. Mr. Turk requested an oral hearing, noting in his appeal form that this was so he could "better [] answer [] questions and express the injustice [he] was subjected to".

52. The Appeals Tribunal's disposition of requests for oral hearings is guided by its Statute and the Appeals Tribunal Rules of Procedure (Rules). Article 8(3) of Statute provides:

The judges assigned to a case will determine whether to hold oral proceedings.

53. Article 18(1) of the Rules further provides:

The judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.

54. According to the foregoing rules, the UNAT has discretion to determine whether to hold an oral hearing or not with the aim of dealing with the case efficiently and fairly.

55. We have applied these standards in many cases. For example, in *Guenfoudi*, we denied a request for an oral hearing, explaining that:¹⁴

... (...) Mr. Guenfoudi has offered no additional evidence and argument beyond his pleadings before the UNDT. Accordingly, we do not see that an oral hearing would "assist in the expeditious and fair disposal of the case". His request for an oral hearing is therefore denied.

¹⁴ *Mustapha Guenfoudi v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1364, para. 63.

56. In *Matadi*, we mentioned:¹⁵

... *Matadi et al.* request an oral hearing on the ground that the Appeals Tribunal may use the opportunity to seek clarification of the record or the parties' legal arguments. Oral hearings are governed by Article 8(3) of the Statute of the Appeals Tribunal (Statute) and Article 18(1) of its Rules of Procedure (Rules). Under Article 18(1) of the Rules, a request for an oral hearing may be granted if it would "assist in the expeditious and fair disposal of the case". We do not find that an oral hearing would be of assistance and therefore deny the request.

57. In the present case, the parties have filed sufficient materials in their submissions and annexes. We do not see that an oral hearing would "assist in the expeditious and fair disposal of the case". Therefore, Mr. Turk's request for an oral hearing is denied.

Did the UNDT err in declining to order the production of additional documents requested by Mr. Turk? Did the UNDT err in "ignoring" his medical evidence?

58. Mr. Turk submits that the UNDT erred in ignoring his multiple requests for a copy of the JCU's approval and the General Assembly's Fifth Committee vote on the downgrading of his position. Mr. Turk also complains that the UNDT Judge erred by failing to honor his medical documents which showed the consequences to him of the ending of his career.

59. Concerning the determination of the admissibility of evidence, Article 18 of UNDT Rules of Procedure (UNDT Rules) provides:

1. The Dispute Tribunal shall determine the admissibility of any evidence.
2. The Dispute Tribunal may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings.
3. A party wishing to submit evidence that is in the possession of the opposing party or of any other entity may, in the initial application or at any stage of the proceedings, request the Dispute Tribunal to order the production of the evidence.
4. The Dispute Tribunal may, at the request of either party, impose measures to preserve the confidentiality of evidence, where warranted by security interests or other exceptional circumstances.
5. The Dispute Tribunal may exclude evidence which it considers irrelevant, frivolous, or lacking in probative value. The Dispute Tribunal may also limit oral testimony as it deems appropriate.

¹⁵ *Matadi et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-592, para. 15.

60. In our jurisprudence, we insist on adhering to these standards. In *Abbassi*, we said:¹⁶

... There is a difference between admissibility of evidence and the weight attached to the admitted evidence. Evidence is admissible if it is relevant to the facts in issue. The Dispute Tribunal has a broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules of Procedure. The UNDT exercised its discretion not to admit the evidence because it lacked probative value. This Tribunal is mindful that the Judge hearing the case has an appreciation of all of the issues for determination and the evidence before the UNDT. In order to establish that the Judge erred, it is necessary to establish that the evidence, if admitted, would have led to different findings of fact and changed the outcome of the case.

61. Further, we reiterated in *Pacheco* as below:¹⁷

... The UNDT exercised its discretion, for example, in reducing the number of written questions in order not to admit evidence, which lacked probative value. Ms. Pacheco has failed to demonstrate, in light of the foregoing, that the UNDT erred in declining to hear the proffered evidence.

62. As we have held, the Dispute Tribunal has a broad discretion to determine the admissibility of any evidence under Article 18(1) of the UNDT Rules. In order to establish that the UNDT erred, it is necessary to establish that the evidence, if admitted, would lead to different findings of fact and change the outcome of the case. By requesting a copy of the JCU's approval and the General Assembly's Fifth Committee vote on the downgrading of his position, Mr. Turk aims at questioning the lawfulness and reasonableness of the decision to reclassify one of the P-4 PAO posts to P-3; however, even if produced, this would not change the outcome of this case. As to Mr. Turk's claim that his medical evidence was ignored by the UNDT, the UNDT found that there was no causal link between the contested decision and his medical condition. Accordingly, Mr. Turk failed to show that these documents would lead to different findings. Hence, we do not see that the UNDT erred in declining to order the production of the additional documents requested by Mr. Turk and in "ignoring" his medical evidence.

¹⁶ *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 20.

¹⁷ *Pacheco v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-281, para. 25.

Did the UNDT err in upholding the non-renewal decision?

63. Before we turn to the merits of Mr. Turk’s appeal regarding the non-renewal of his FTA, it is useful to review the Organization’s legal framework for “Fixed-term appointment” as set out in Staff Rule 4.13:

(a) A fixed-term appointment may be granted for a period of one year or more, up to five years at a time, to persons recruited for service of a prescribed duration, including persons temporarily seconded by national Governments or institutions for service with the United Nations, having an expiration date specified in the letter of appointment.

(b) A fixed-term appointment may be renewed for any period up to five years at a time, under conditions established by the Secretary-General.

(c) A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14 (b).

64. Concerning “Expiration of Appointments”, Staff Rule 9.4 provides:

A temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment.

65. At the outset, we have to assert that staff members have no legitimate expectation of any renewal of their FTAs. Our jurisprudence has reiterated the principle that an FTA carries no expectancy of renewal or conversion to another type of appointment.¹⁸

66. However, our jurisprudence has further set forth that an administrative decision not to renew an FTA can be challenged on the grounds that 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 to prove such factors played a role in the administrative decision.¹⁹

¹⁸ *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 44 (internal citations omitted).

¹⁹ *Ibid.*, para. 47 (internal citations omitted).

67. In reviewing Mr. Turk's dissatisfaction regarding the non-renewal of his FTA, we must also bear in mind that the Appeals Tribunal's jurisdiction is limited. We appreciate that Mr. Turk is not represented, and in this context, we recall what we have said in *Kanbar*:²⁰

... (...) Possibly because of her unrepresented status and hence her unfamiliarity with the requirements of pleading and the procedural rules, Ms. Kanbar might not have been fully able to figure out how to limit her grounds of appeal to any of the five ones set out in Article 2(1) of the Statute. From the considerable number of arguments she raises with this Tribunal, many of which concern immaterial issues falling outside the competence of the present jurisdiction, we glean only those which can be construed as demonstrating that the UNDT has committed an error of fact or law warranting intervention by the Appeals Tribunal.

... The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the lower court. The function of the Appeals Tribunal is to determine if the Dispute Tribunal made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that an appellant must identify the alleged defects in the impugned judgment and state the grounds relied upon in asserting that the judgment is defective.

68. Bearing in mind the foregoing guidance and the limits of Article 2(1) of the Statute, in this Judgment we address only those arguments of Mr. Turk that can be construed as demonstrating that the UNDT committed an error of fact or law warranting intervention by the Appeals Tribunal. As discussed in greater detail below, these are (a) whether the UNDT erred in confirming that the elimination of a P-4 PAO post was lawful; (b) whether the UNDT erred in its determination that the CRP outcome was fair in procedure and on the merits; and (c) whether the UNDT erred in dismissing Mr. Turk's allegations of discriminatory treatment.

(a) *Did the UNDT err in finding that the decision to eliminate one P-4 PAO post in UNAMI's OPA was lawful?*

69. We confirm the well-accepted principle in previous analogous cases of this Tribunal that the Organization is accorded broad discretion to restructure some or all of its departments or units, including abolition of posts, the creation of new posts, and the redeployment of staff. The Tribunals

²⁰ *Yolla Kamel Kanbar v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1082, paras. 24-25.

will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment.²¹

70. As an undisputed fact, the General Assembly approved the budget proposal of UNAMI which included the “reclassification of one position of Political Affairs Officer (P-4) to Political Affairs Officer (P-3) in the Office of Political Affairs”.²²

71. In *Kagizi*, we confirmed:²³

... The General Assembly is the ultimate decision-making organ in the Organization and its decisions are not subject to challenge in the internal justice system. The Appeals Tribunal notes the procedure of the United Nations which allows for the Secretary-General to make recommendations to the General Assembly, and for the Secretary-General to adopt and implement these recommendations when approved.

72. It is a well-established principle that the decisions made by the General Assembly are not subject to challenge in the internal justice system. In particular, the General Assembly has repeatedly asserted that the Tribunals have no authority to review decisions of the General Assembly related to administrative and budgetary matters.²⁴

73. In the United Nations system, the Secretary-General is both the proposer and the implementer of programs and budgets, in keeping with the structure of the Organization. Due to the reduction of the 2022 budget, the Secretary-General was vested with the discretion to propose recommendations on adjustments to staffing to the General Assembly, including the reclassification of the post at issue, for meeting the budget of UNAMI. The Administration duly exercised its power. Therefore, the UNDT did not err in finding that the decision to eliminate one P-4 PAO post in OPA, UNAMI was lawful.

²¹ *Obah Yusuf Barud v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1204, para. 33 (internal citation omitted).

²² Secretary-General’s Annex 2, A/76/6 (Sect. 3)/Add.6, Proposed programme budget for 2022.

²³ *Kagizi et al. v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-750, para. 19.

²⁴ General Assembly resolution 73/276, para. 44; General Assembly resolution 71/266, para. 29; General Assembly resolution 67/241, para. 6.

(b) *Did the UNDT err in finding that the CRP's recommendation was procedurally fair and substantively correct?*

74. Concerning the standard of judicial review of the recommendation by the CRP, we defined the Tribunals' role in *Bali*:²⁵

... Under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. The jurisprudence of this Tribunal has clarified that, in reviewing such decisions, it is the role of the UNDT or the Appeals Tribunal to assess whether the applicable Regulations and Rules have been applied and whether they have been applied in a fair, transparent and non-discriminatory manner. The Tribunals' role is not to substitute their decision for that of the Administration.

75. Further, we emphasized the importance of fairness and transparency in *Barud*:²⁶

... In reviewing the validity of the Secretary-General's exercise of discretion in administrative matters, such as a non-renewal decision, the Dispute Tribunal determines if the decision can be challenged on the grounds that the Administration has not acted fairly, justly or transparently. In particular, the Dispute Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered and whether the decision is absurd or perverse.
(...)

Indeed, in *Barud* we addressed and confirmed the ability of UNAMID specifically, to restructure and eliminate posts, so long as affected staff members are treated justly. We held therein:²⁷

... There is no dispute that the Administration and UNAMID have the power to restructure some or all its departments or units, including the abolition of posts, the creation of new posts, and the redeployment of staff. Pursuant to this authority, UNAMID determined that only one FMA would be needed at the Engineering Section following the downsizing. We find that UNAMID conducted the Comparative Review Process pursuant to the terms and guidelines of its TOR, and the relevant rules and regulations. If so, the Administration acted fairly, justly, and transparently in dealing with Ms. Barud.

²⁵ *Bali v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-450, para. 29.

²⁶ *Obah Yusuf Barud* Judgment, *op. cit.*, para. 43.

²⁷ *Ibid.*, para. 48.

76. Mr. Turk questioned how he could have been the lowest-ranked staff member in the comparative review process. According to the aforementioned jurisprudence, the Tribunals' role is not to substitute its decision for that of the Administration, but to assess whether or not the Administration acted fairly, justly, and transparently in dealing with Mr. Turk's situation.

77. Staff Rule 9.6(e) provides:

Except as otherwise expressly provided in paragraph (f) below and staff rule 13.1, if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service (...)

78. In conducting a comparative review with the aim to reclassify a post, UNAMI could devise its own ToR as long as due regard had been given to key criteria. The relevant factors included competence, integrity and length of service. In the present case, the ToR for the CRP set out criteria, namely relevant work experience, e-performance reports, demonstration of core values in the e-performance report, seniority, and point deductions for any disciplinary measures, which culminated in a total number of points for each staff member subject to the comparative review. We find that in designing the scoring criteria, UNAMI fully took account of the requirements in the Staff Regulations and Rules and there was no unreasonableness and unlawfulness in the ToR.

79. We notice that on 28 October 2021, when informed of the launch of the comparative review process, Mr. Turk was provided with the ToR and was requested to submit his personal e-performance documents. It seems implausible that UNAMI designed the ToR with the aim to expel Mr. Turk from OPA before it had even collected relevant personal e-performance documents. Mr. Turk particularly objected to receiving a "B" on the core value of "diversity". But Mr. Turk was not alone. Other staff members who were subject to the comparative review were rated "B" for the core values as well. Even the staff member who received the highest score from the CRP also had a "B" for his "2019-2020 respect for diversity". This demonstrates that the scoring was not intended to target Mr. Turk.

80. Concerning the PHP utilized in the process, Mr. Turk alleged that the UNDT erred in finding it lawful that UNAMI used his *Inspira* PHP to calculate his scores on relevant work experience. However, in comparing the *Inspira* PHP provided by UNAMI Human Resources and

the *Galaxy* PHP submitted by Mr. Turk, we consider it was more suitable to resort to the information in the *Inspira* PHP for the comparative review.

81. First of all, we agree with the UNDT that Mr. Turk was ultimately responsible for uploading an accurate PHP into the system. There are many discrepancies in his employment experience between the two PHPs. For example, he omitted his working experience in UNAMI in the *Galaxy* PHP that he uploaded. Due to Mr. Turk's negligence in providing a well-established and updated PHP (the mistakes being to such a degree that the accuracy of the *Galaxy* PHP was rendered doubtful), it was reasonable and appropriate for the CRP to rely on the relevant information from the *Inspira* PHP, which was more current. Mr. Turk alleged that his more than four years' working experience as a news editor and development officer (1994-1997 and 2002-2004), was not included in his *Inspira* PHP and was therefore overlooked by the CRP. However, since the *Galaxy* PHP did not include his working experience in UNAMI and even in other units, if the CRP had calculated his work experience based on the *Galaxy* PHP, at least six years' employment experience would have been excluded from consideration. Therefore, if the CRP had referred to the *Galaxy* PHP, his final score would have been much lower than his actual score that was based on the *Inspira* PHP that was recommended for use by UNAMI Human Resources.

82. Furthermore, this Tribunal must reiterate that it is not the role of the Tribunals to consider the correctness of the choice made by the Secretary-General nor to substitute its own decision for that of the Secretary-General.²⁸ So, the presumption of regularity of process renders it moot to refer this issue to other United Nations organs to review Mr. Turk's score as he requests.

83. The UNDT had noticed that the post number associated with Mr. Turk (No. 30048407) was recommended for downgrade approximately one month before the CRP had finished their evaluation and made their recommendation. The UNDT was not persuaded by the explanation for this anomaly by the Secretary-General but "was prepared to accept that UNAMI Human Resources had conducted a 'dry run' of the comparative review in advance of the Panel and had made their own estimation of the result before the Panel's work".²⁹ The UNDT opined that this practice should be discouraged. However, it found that there was no impact on the comparative review process. We agree with the UNDT's opinion in this regard.

²⁸ *Ibid.*, para. 51 (internal citation omitted).

²⁹ Impugned Judgment, para. 31.

84. Therefore, we conclude that the UNDT did not err in finding that the comparative review process was procedurally fair and substantively correct.

(c) *Did the UNDT err in finding that there was no evidence of discriminatory treatment?*

85. Mr. Turk also suspects that the true reason for the non-renewal of his contract was perceived bias and discrimination by UNAMI. It is Mr. Turk's burden to establish this alleged fact; however, Mr. Turk has not done so.

86. Mr. Turk also submits that the UNDT Judge was "too extreme" in "accusing [him]" of providing false qualifications about his work experience. Mr. Turk also objects to the fact that the UNDT Judge used the word "occupying" his post rather than "incubating". We find no merit to Mr. Turk's observations about the UNDT Judge who was thorough and fair in his approach. Mr. Turk also states that there had been ongoing hostility towards him in UNAMI. However, he did not present any evidence to prove it and we do not see any causal link with his allegations about other staff members not liking him in UNAMI and the non-renewal of his appointment.

87. During the whole process, from the CRP review to the delivery of the non-renewal decision, we do not see any bias and discrimination against Mr. Turk.

88. As we mentioned above, Mr. Turk should have no expectation of renewal of his FTA, even if he believed his qualifications were superior. In a similar situation in *Kacan*, the staff member argued:³⁰

... "[m]y total work experience with the UNHCR and the previous renewal of my fixed-term contract demonstrates that I had a reasonable and legitimate expectation because there had been a practice in the workplace of renewal". "The other factors which create reasonable expectations are the nature of my duties and responsibilities as a protection staff who have law background [sic] and of course functions of my duty station as field office to give me reasonable notice that the contract will be renew [sic]."

We nonetheless disagreed, finding that:³¹

... Mr. Kacan's submissions regarding his work experience, duties and responsibilities, functions of his duty station and his interest in a renewal have no merit.

³⁰ *Kacan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-582, para. 14.

³¹ *Ibid.*, para. 19.

There is no legal authority that such considerations are grounds for an expectancy of renewal. Nor are past renewals of an appointment a basis for expectancy of renewal.

So too here, the Appeals Tribunal concludes that Mr. Turk's confidence in his own qualifications is insufficient to undermine the outcome of the comparative review process, or to override the principle that there can be no expectancy of renewal.

Is it the role of the UNAT to verify Mr. Turk's PHP or seek further information from the JCU with respect to his claims?

89. Finally, we turn to Mr. Turk's suggestion that the UNAT should conduct further investigation or inquiry into his various claims. Concerning the role of the UNAT, Article 2 of the Statute provides:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

...

(e) Erred on a question of fact, resulting in a manifestly unreasonable decision

90. Obviously, it is not the role of the UNAT to gather evidence. We have outlined the role of the UNAT in *Fogarty* as follows:³²

... It is clear from all the provisions of the Statute that the UNAT is constituted as an appellate tribunal. Like all appellate bodies, its purpose and function are to hear appeals against decisions rendered by lower, first instance tribunals. An appeal is based on the record of evidence that served before the lower tribunal. Only in the rarest of exceptional cases (as contemplated in Article 2(5) of the Statute of the Appeals Tribunal) will the UNAT admit additional evidence that was not before the first instance tribunal.

... The essential idea is that all the evidence and argument will be presented before the first instance tribunal which will then render a decision or judgment. The role of the appellate body is then normally not to re-hear the evidence, admit additional evidence or, without more, to provide an opportunity for the case simply to be argued again. Rather, the appellate body has to determine on the record of evidence that served before the first instance tribunal whether the decision of the first instance body was tainted or

³² *Margaret Mary Fogarty et al. v. Secretary-General of the International Maritime Organization*, Judgment No. 2021-UNAT-1148, paras. 7-8.

vitiating by: i) a jurisdictional error; ii) a procedural error; iii) an error of law; or iv) an error of fact, resulting in a manifestly unreasonable decision. (...)

91. As demonstrated by the foregoing, the UNAT relies on the evidentiary record developed before the UNDT in rendering its decision. Therefore, this Tribunal cannot help Mr. Turk to gather evidence anew with respect to his claims, as we previously stated in Order No. 516 (2023).

92. As there has been no illegality, Mr. Turk's claim for remedies cannot be granted.

Judgment

93. The appeal is dismissed, and Judgment No. UNDT/2022/118 is hereby affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Gao, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 4th day of December 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar