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UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Judgment No. 2013-UNAT-332

McCluskey  
(Appellant)

v.

Secretary-General of the United Nations  
(Respondent)

JUDGMENT

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Before: Judge Luis María Simón, Presiding  
Judge Sophia Adinyira  
Judge Rosalyn Chapman

Case No.: 2012-361

Date: 21 June 2013

Registrar: Weicheng Lin

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Counsel for Appellant: Self-represented

Counsel for Respondent: Zarqaa Chohan

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Iain McCluskey against Judgment No. UNDT/2012/060, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 1 May 2012. Mr. McCluskey appealed on 9 August 2012,<sup>1</sup> and the Secretary-General answered on 15 October 2012.

#### Facts and Procedure

2. Mr. McCluskey was a P-4 staff member working for the Office of the United Nations High Commissioner for Refugees (UNHCR) with the Division of Information Systems and Telecommunications (DIST or Division). He joined UNHCR in November 2006 on a three-month fixed-term appointment (FTA). His initial appointment did not go through a competitive selection process, nor was it endorsed by the Appointments, Postings and Promotions Committee (APPC). Mr. McCluskey's appointment was followed by several extensions of less than a year, until 30 September 2011 when he was separated from service.

3. In early 2010, a decision was taken to restructure and reorganize DIST. At the end of April 2010, all DIST staff members were notified of this decision.

4. On 7 July 2010, the Deputy High Commissioner informed UNHCR staff members of the special measures to be taken to mitigate the impact of DIST's restructuring on affected staff, including extending FTAs which were due to expire on or before 31 December 2010, through 30 June 2011. Mr. McCluskey's contract, which was to end on 31 December 2010, was accordingly extended to 30 June 2011.

5. In January 2011, DIST staff members were informed that, due to delays in the restructuring, staff members on FTAs would be extended for another three months through 30 September 2011.

6. On 5 May 2011, Mr. McCluskey wrote to the DIST Director requesting that his contract be extended until 30 September 2011. He subsequently met with the Director of the Division of Human Resources Management (DHRM) to discuss his contractual situation.

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<sup>1</sup> The deadline for Mr. McCluskey to appeal was 31 July 2012. But he encountered technical difficulties when he attempted to file his submissions via the eFiling portal. With the assistance of the IT specialist and the Registry, he managed to file his appeal on 9 August 2013.

7. On 29 May 2011, the Director of DHRM confirmed that Mr. McCluskey's FTA would be extended from 1 July to 30 September 2011 like other holders of FTAs, even though he had been renewed on short-term appointments of less than one year without going through the APPC. He offered Mr. McCluskey two options: i) a three-month extension of his FTA, albeit on special leave with full pay (SLWFP) from 1 July 2011 to 30 September 2011 as no assignment was available for him, or ii) an agreed separation effective 30 June 2011 with indemnities.

8. On 1 June 2011, Mr. McCluskey requested that his contract be extended until 30 September 2011. He also requested that he be treated equally to other DIST staff members in similar situations. He was informed, on 6 June 2011, that his contract would be extended to 30 September 2011 "with no expectation of subsequent renewal or conversion", and that he would be placed on SLWFP, as there was no position against which to charge his salary in DIST or elsewhere. Mr. McCluskey was also informed that his contract would be

Submissions

Mr. McCluskey's Appeal

12. The UNDT was mistaken when it applied the term "short fixed-term contract" to his case when there is no such distinction made in the former or the current staff rules governing appointments or in his letters of appointment. In any event, it is questionable whether Mr. McCluskey can even be considered a short-term employee in practical terms, given the length of his service with UNHCR.

13. Mr. McCluskey maintains that the UNDT failed to give due consideration to the consequences of the administrative error in incorrectly assuming that his contract was temporary in nature and that he did not qualify for the automatic contract renewal afforded to his fellow colleagues. That administrative error resulted in his isolation and non-alignment with similarly situated colleagues.

The Secretary-General's Answer

14. The UNDT correctly concluded that the Organization had the right to distinguish between different categories of staff and to treat them differently depending on their contractual status.

15. Contrary to Mr. McCluskey's assertion, the UNDT considered the issue of UNHCR's alleged erroneous reference to him as a "temporary appointee" in paragraph 6 of the impugned Judgment.

16. The Secretary-General submits that any ambiguity regarding Mr. McCluskey's contractual status was resolved in his favor since his fixed-term appointment was exceptionally extended from 1 July 2011 to 30 September 2011 in recognition of the apparent misunderstanding.

17. The Secretary-General stresses that Mr. McCluskey was treated in the same manner as two other DIST colleagues, who had also not undergone the competitive recruitment process and whose appointments were similarly not renewed after 30 September 2011.

**THE UNITED NATIONS A**

Original and Authoritative Version: English

Done in New York, United States.

*(Signed)*

Judge Simón, Presiding  
28 June 2013

*(Signed)*

Judge Adinyira  
21 June 2013

*(Signed)*

Judge Chapman  
28 June 2013

Entered in the Register on this 26<sup>th</sup> day of August 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar