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1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2012/141, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 24 September 2012 in the case of Cranfield v. Secretary-General of the United Nations. The Secretary-General appealed on 26 November 2012 and Ms. Mary Germaine Cranfield answered on 14 January 2013.

Facts and Procedure

2. Ms. Cranfield joined the Office of the United Nations High Commissioner for Refugees (UNHCR) in January 2002 on a fixed-term contract at the G-4 level, based in Dublin, Ireland. In March 2002, she was granted an indefinite contract and promoted to the G-6 level. Within UNHCR, the granting of indefinite contracts ceased in November 2002, and the practice of recruiting with fixed-term appointments resumed until indefinite appointments were reintroduced through the 2003 Appointment, Postings and Promotions Board (APPB) Procedural Guidelines and the 2

Unfortunately, this administrative requirement meant that I lost my indefinite contract. Since that date I have been on consecutive annual fixed[-]term contracts.

Since I have been on continuous indefinite and fixed[-]term contracts with the organisation since January 2002, with fully effective or higher performance reviews, I believe I should be included in this one-time review .

10. While it appears her ability to satisfy the five years' continuous service criterion was at some time in doubt, Ms. Cranfield was, on 24 February 2011, advised that her service met that requirement.

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to proceed with issuance of such contract, and in fact, the exchange was further shared with Legal Affairs Section [LAS] seeking their legal opinion in that respect.

LAS has now confirmed to us that, from a legal point of view, Ms. Cranfield cannot be considered having met the eligibility requirements for the one-time review, given that she was the holder of an indefinite appointment (rather than a fixed-[] term appointment) at the cut[-]off date of 30 June 2009. Furthermore, she relinquished her indefinite appointment when she left the Dublin office to take up her position in Brussels on 1 November 2009, in accord with the existing requirement applicable upon appointment of national staff to a position in another country as national staff cannot be reassigned between the two countries.

In view of the above, and in view of the new UN Staff Regulations and Rules which do not provide for the granting of [indefinite (IND)] appointment as from 1 July 2009, the letter of appointment (IND without Undertaking) issued in respect of Ms. Cranfield, with effective date 1 November 2009, cannot be considered legally valid and should therefore be cancelled.

We understand that Ms. Cranfield has already signed the above-mentioned letter of appointment, which regrettably puts the administration in a difficult situation having to inform the staff member that the [letter of appointment (LOA)] was erroneously issued.

14. Thus, on the basis of the legal advice as to the invalidity of the letter of appointment issued to Ms. Cranfield on 20 October 2011, the Administration e-mailed Ms. Cranfield on 20 January 2012 as follows:

Dear Mary,

[A]llow me first to apologise again, on behalf of DHRM and PAPS especially, for the wrong handling of the whole matter in relation to the eligibility and the granting of Indefinite appointment (without Undertaking) in your respect. We very much regret the anxiety and inconvenience this has caused to both yourself and the office in Brussels.

In response to ... your request, and as advised in my initial email, this is to confirm that the Letter of Indefinite Appointment issued in October 2011 cannot be considered legally valid and should therefore be cancelled. This means your copy of the letter should be returned to the Administration for formal cancellation, and your previous contractual status – Fixed-Term Appointment – becomes valid again. Should this require that the new letter of fixed-term appointment is issued because the Fixed-Term Appointment you previously held had expired in the meantime, then the office in Brussels would follow the standard procedure for the issuance of its extension.

I hope the above clarifies the situation.

15. In Judgment No. UNDT/2012/141, the Dispute Tribunal rescinded the decision of January 2012 on the basis that it was taken beyond the “prescribed deadline of 90 days”. The UNDT concluded that when the Administration decided that it had taken an unlawful decision which affected a staff member’s rights, it had the right to retract it, provided that it was done within 90 calendar days from the date on which the said decision was communicated to the staff member. The 90-day deadline was determined by the

19. The Secretary-General requests the Appeals Tribunal to affirm the decision of 17 January 2012, or in the alternative, to set an appropriate amount of compensation that the Secretary-General may pay in lieu of the rescission.

20. In the event that the Appeals Tribunal upholds the 90-day time frame as prescribed by the UNDT, the Secretary-General submits that the UNDT erred in failing to specify an amount of compensation as an alternative to the rescission of the decision. Pursuant to Article 10(5)(a) of the UNDT Statute, the Dispute Tribunal “shall also set an amount of compensation that the [Secretary-General] may elect to pay as an alternative to the rescission of the contested administrative decision”, in cases of appointment, promotion or termination. The jurisprudence of the Appeals Tribunal has confirmed the mandatory nature of this provision.

21. The Secretary-General finally submits that the amount of alternative compensation that the UNDT should have fixed, but failed to do, should be commensurate with the negligible chance for Ms. Cranfield to be converted to an indefinite appointment and should reflect the fact that she has already been adequately compensated and satisfied by the UNDT Judgment.

Ms. Cranfield's Answer

22. Ms. Cranfield requests the Appeals Tribunal to dismiss the appeal in its entirety.

23. Ms. Cranfield submits that the UNDT correctly concluded that the 12 October 2011 decision to retroactively convert her appointment to an indefinite one was valid, and that UNHCR could not unilaterally determine that a letter of appointment was null and void. Ms. Cranfield asserts that as soon as this decision was issued, a binding contract was created. She maintains that this decision followed thorough deliberation on the part of the UNHCR

application of its internal rules was reasonable and that its decision to change this position and to deem her ineligible to be considered for a one-time review was wrong in law.

26. Ms. Cranfield maintains that, contrary to the Secretary-General's submissions, as the UNDT did not order specific performance granting an appointment to her, it was not required to specify an amount of compensation payable in lieu thereof.

27. Ms. Cranfield requests that, if the Appeals

be remanded to the UNDT. The Appeals Tribunal, however, does not consider that such a course is warranted as the issue which has to be determined in the case is a matter of law: namely, whether the Administration was entitled to revoke the indefinite appointment granted to Ms. Cranfield on 12 October 2011 and which became effective 1 November 2011.

39. In determining the lawfulness or otherwise of the Administration's decision on 17 January 2012 to retract Ms. Cranfield's indefinite appointment, the Appeals Tribunal must first address the Secretary-General's contention that the 12 October 2011 decision to grant her an indefinite appointment was invalid.

40. The eligibility criteria for conversion to an indefinite appointment are set out in IOM/FOM/75/2003 and IOM/FOM/42/2006. ³ The aforesaid statutory provisions are

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appointment on 30 June 2009, to satisfy the eligibility criterion requiring her to be the holder of a fixed-term contract at the relevant date.

51. In the course of her oral submissions, Ms. Cranfield, in response to the Secretary-General's contention that she did not rely to her detriment on the decision of 12/20 October 2011, countered that if on 12/20 October 2011 she had been denied a contract of indefinite appointment, she would have sought management evaluation of that decision. Ms. Cranfield submitted that this opportunity was now lost to her as she is time-barred.

52. We do not believe this argument to be well-founded since this appeal (notwithstanding our decision in favour of the Secretary-General) has afforded Ms. Cranfield the opportunity to argue her case for a grant in her favour of a contract of indefinite appointment and put forward arguments why the 12/20 October 2011 decision should be let stand.

53. Accordingly, in all the circumstances, we are satisfied that the Administration was entitled to correct its decision of 12 October 2011 and we find that there are no grounds upon which the Administration should be prevented from correcting its mistake. We hereby affirm the decision made by the Administration on 17 January 2012.

54. No doubt, the decision of 17 January 2012 was a disappointment to Ms. Cranfield, who had been advised (erroneously as we have found) that she was eligible for an indefinite appointment. The UNDT awarded EUR 1,000 to

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Original and Authoritative Version: English

Dated this 17th day of October 2013 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Chapman

Entered in the Register on this 2nd day of January 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar