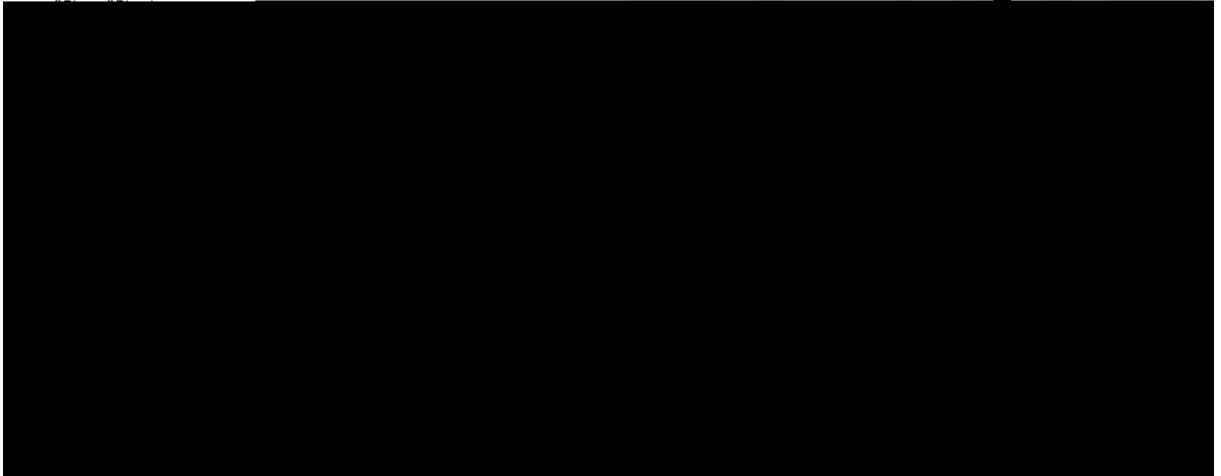


Judgment No. 2014-UNAT-429



# THE UNITED NATIONS APPEALS T



... On 1 December 2011, the Applicant filed a formal complaint with the Executive Director of ITC for harassment and abuse of authority by his first appraising officer.

... On 16 December 2011, the Applicant was placed on sick leave until 16 January 2012.

... On 20 December 2011, he filed a request for management evaluation of the decision not to renew his contract.

...

... On 19 January 2012, the Executive Director of ITC informed the Applicant that she had found no prima facie evidence of harassment or abuse of authority in his allegations and that the case was dismissed.

... The Applicant's contract was then renewed several times until 30 June 2012, solely to cover the period that he was on sick leave.

...

... On 26 March 2012, the Applicant was informed that his management evaluation request had been rejected and he filed [the UNDT] application on  
c21 21 June 2012. ...

3. The Dispute Tribunal concluded that the reason given for the non-renewal of Mr. Leclercq's fixed-term contract, namely the lack of project funding, was not supported by

## **Submissions**

### **The Secretary-General's Appeal**

5. The Secretary-General submits that the Dispute Tribunal erred in fact and in law in awarding material damages in the amount of one year's salary.
6. He argues that the UNDT erred in assuming Mr. Leclercq would have otherwise been extended for one year and also that it erred in neglecting to offset the salaries and entitlements Mr. Leclercq received following the date on which he was intended to separate from service. The Secretary-General points out that Mr. Leclercq's contract was ultimately extended until 28 October 2012 "as part of his entitlement to sick leave".
7. Moreover, the Secretary-General asserts that the UNDT erred when it failed to consider Mr. Leclercq's duty to mitigate his losses<sup>2</sup> and failed to deduct salaries received by Mr. Leclercq following his separation from service.
8. The Secretary-General requests the Appeals Tribunal to vacate or reduce the material damages awarded by the UNDT.

### **Mr. Leclercq's Answer**

9. Mr. Leclercq submits that the Secretary-General is attempting to enter new evidence before the Appeals Tribunal.
10. He argues that the UNDT did not err with respect to the extension of his contract, because the evidence before that Tribunal indicated only an extension until 16 January 2012. As the Secretary-General failed to introduce evidence at first instance concerning the total extent of the extensions of Mr. Leclercq's contract, he cannot now argue that the UNDT erred in relying on the information with which it was presented.
11. Similarly, Mr. Leclercq argues that as the UNDT was presented with no evidence that he was employed following his separation (nor, for that matter, is the Appeals Tribunal), the Secretary-General cannot properly sustain an argument that the UNDT erred in not considering such "facts".

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<sup>2</sup> The Secretary-General makes reference to *Mmata v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-092.

12. Rather, Mr. Leclercq submits, the UNDT properly considered he would have been extended for a one-year period, but for the illegality, and compensated him appropriately.

13. He requests that the Appeals Tribunal dismiss the Secretary-General's appeal in its entirety.

**Considerations**

14. The Secretary-General does not challenge the UNDT's finding that the impugned decision was unlawful, nor the award of moral damages. His appeal is limited to the award of material damages.

15. He submits that Mr. Leclercq's appointment was extended for nearly ten months beyond expiration due to his sick leave and that he had a duty to mitigate the losses.

16.

21. Having regard to the facts, we find substantial differences between the present case and the Mmata case<sup>3</sup> quoted by the Secretary-General at paragraph 16 of his appeal.

22. The UNDT thoroughly examined the governing principles in awarding damages and followed the jurisprudence of the Appeals Tribunal. The Appeals Tribunal gives deference to the UNDT in the exercise of its discretion and will not lightly disturb the quantum of damages.<sup>4</sup>

### **Judgment**

23. The appeal is dismissed and the UNDT Judgment is affirmed.

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<sup>3</sup> Mmata v. Secretary-General of the United Nations , Judgment No. 2010-UNAT-092.

<sup>4</sup> See Sprauten v. Secretary-General of the United Nations , Judgment No. 2012-UNAT-219.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of June 2014 in Vienna, Austria.

(Signed)

Judge Weinberg de Roca,  
Presiding

(Signed)

Judge Simón

(Signed)

Judge Chapman

Entered in the Register on 29<sup>th</sup> day of August 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar