
UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Munir

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Rosalyn Chapman Judge Deborah Thomas-Felix
Case No:	2014-599
Date:	26 February 2015
Registrar:	Weicheng Lin

JUDGE SOPHIA ADINYIRA , PRESIDING .

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/2014/020, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 17 February 2014 in the case of *Munir v. Secretary-General of the United Nations*. The Secretary-General appealed on 21 April 2014 and Mr. Badar Munir answered on 5 June 2014.

Facts and Procedure

2. The following facts are uncontested:¹

... [Mr. Munir] was employed by [the United Nations Children's Fund (UNICEF)] from April 1997 until June 2009.

... [On] 14 May 2009, UNICEF agreed to release him on secondment basis to [the United Nations Development Programme (UNDP)] effective 1 July 2009 [to take up the position of Operations Manager [...] with the UNDP Country Office (CO) in Sudan].

... On 18 May 2009, [...] Human Resources at UNICEF [...] informed [Mr. Munir] that staff members on secondment or loan to other United Nations Agencies [...] were required to apply for suitable vacancies at least six months prior to the expiration of their secondment or loan should they intend to resume service with UNICEF.

... [Mr. Munir] began his secondment at UNDP on 1 July 2009 [and] was

... [Mr. Munir's] term at UNDP came to an end on 30 June 2012. On the same date, he filed a complaint against [the Resident Representative] for harassment, discrimination and abuse of authority.

... On 17 July 2012, a vacancy announcement (VA) was prepared and approved for [Mr. Munir's] former post. The VA li

formerly encumbered by Mr. Munir, was also done in bad faith and sought to prevent Mr. Munir from competing for the said post. It noted that Mr. Munir was placed on administrative leave with “unnecessary force and drama” and found that Mr. Munir incurred harm by being placed

erred in finding that an express promise based on a firm commitment to renew had been made to extend Mr. Munir's secondment, as required by the Appeals Tribunal in *Ahmed*² and *Abdalla*.³

11. The UNDT also erred in finding that the decision not to seek a one-year extension of Mr. Munir's secondment was an unlawful exercise of discretion. The Resident Representative acted wholly within his discretionary authority in considering UNDP's funding difficulties and need to downsize some of its operations, including its DDR programme, when he concluded that Mr. Munir's post could be covered by the Operations Manager in the UNDP Country Office. The restructuring of departments or units was wholly within his responsibility. Insofar as the UNDT found that the Resident Representative acted in bad faith in adding the language requirement of Arabic to the post, such requirement was reasonable given that Arabic is the official language in Sudan and, citing the former Administrative Tribunal,⁴ it is not for the UNDT to establish whether the criteria for the selection of a candidate should have been different. Further, given that the Inter-Organization Agreement shows that extension of a secondment requires the "agreement of all the parties concerned", Mr. Munir could not be said to have a right to have his secondment extended.

12. The UNDT also erred in finding that the interests of UNDP staff members could not take priority over those of Mr. Munir "who could be shown the door whenever other staff [...] were displaced or needed career progression". Staff Rule 13.1(d) clearly provides that preference is to be given to staff members with permanent appointments over those on all other types of appointments, including seconded staff on fixed-appointments, as was the case with Mr. Munir. Mr. Munir's post was ultimately filled by a long-standing UNDP staff member whose position had been abolished as a result of the reductions in the DDR Programme.

13. The UNDT exceeded its jurisdiction in reviewing and ordering remedies with regard to matters that had not been the subject of Mr. Munir's request for management evaluation, which was limited to contesting the decision of the Resident Representative to only seek a three-month extension rather than a one-year extension. The UNDT made findings as to the manner in which Mr. Munir was placed on administrative leave and awarded "moral damages occasioned by humiliation caused [...] in the workplace and the burden [...] of a two-year old investigation",

Appeals Tribunal's jurisprudence, and were consequently not before the UNDT for its review. Further, not only did the UNDT have no jurisdiction to order the issuance of the OAI Investigation Report, but its finding that Mr. Munir had been subjected to an "unending" investigation was factually erroneous, insofar as the OAI Investigation Report had been completed eight months prior to the UNDT Judgment.

14. The UNDT also exceeded its jurisdiction and erred in referring the Resident Representative to the Administrator of UNDP by reason of his conduct in the lead up to the non-renewal of Mr. Munir's appointment. Given that the UNDT had no jurisdiction to consider the placement of Mr. Munir on administrative leave, it also had no basis to refer the matter pursuant to Article 10(8) of the UNDT Statute. Insofar as the UNDT also found that the Resident Representative acted unlawfully in overturning the decision of the Core Management Group, the decision was a reasonable and lawful exercise of his discretion. Thus, the UNDT also erred in fact in referring the Resident Representative to the Administrator of UNDP for accountability.

15. As the decision of the Resident Representative not to extend Mr. Munir's appointment constituted a reasonable and lawful exercise of his discretion, there is no legal basis for the award of pecuniary damages. Accordingly, the Secretary-General requests this Tribunal to annul the UNDT Judgment in its entirety.

Mr. Munir's Answer

16. Mr. Munir contends that the Secretary-General's appeal is an abuse of process as he is merely rearguing the merits of the case on appeal.

17. The Secretary-General's contention that the decision of the Core Management Group depended on funding is false and misrepresents evidence on the record. The issue was addressed before the UNDT and the evidence showed that funding for the CO staff, including Mr. Munir's post, was stable; the conditional issue of funding only concerned project staff. The Core Management Group routinely decided matters of contract renewal and the minutes of the February 2012 meeting recorded its decisions to support contract renewal. The subsequent review conducted by the new Resident Representative resulted in the renewal of all the contracts of the CO staff, with the exception of Mr. Munir. The review by the Resident Representative only targeted Mr. Munir and the record evidences that the Resident Representative told the country director that he did not want Pakistanis and that Mr. Munir would not be renewed regardless of

the outcome of the recently initiated investigation. Contrary to the claim that the non-renewal decision was justified by programmatic necessity, the post held by the other Operations Manager was not abolished, and Mr. Munir's replacement was not a permanent UNDP staff member, but project staff with a contract of limited duration. Consequently, he had no priority over Mr. Munir as the Secretary-General contends.

18. The Secretary-General's argument that the Resident Representative had discretionary authority to arrange his office as he saw fit was already considered by the Dispute Tribunal and assessed against the facts. The UNDT nevertheless found that the actions of the Resident Representative were unfair and discriminatory and not founded on any programmatic reasons.

19. The issue of Mr. Munir's secondment was also irrelevant to his continuation with UNDP; it was only relevant for the purpose of reserving to Mr. Munir the right to return to UNICEF. The renewal of Mr. Munir's contract was not contingent upon renewal of his secondment as, even if

24. It is well established that a party to a fixed-term appointment has no expectation of renewal of that contract.⁵ In order for a staff member's claim of legitimate expectation of a renewal of appointment to be sustained, it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case⁶

25. The Secretary-General submits that the UNDT erred in concluding that Mr. Munir had a legitimate expectation of a one-year extension of his secondment and renewal of his appointment with UNDP. The Secretary-General also submits that the decision that was taken to extend Mr. Munir's appointment at the February 20 12 Core Management Group meeting did not constitute an "official" or "firm commitment" to Mr. Munir with regards to his contract extension, but a mere recommendation.

26. The Secretary-General submits further that this recommendation was subject to the review and approval of the Resident Representative who, upon taking up his post on 1 March 2012, undertook the necessary review.

27. The UNDT heard five witnesses, including the Resident Representative. With the exception of the Resident Representative, who had not yet taken up his role at the time, all the witnesses agreed that a CO Core Management Group meeting took place in the Sudan CO on

35. The discretion of the Administration is not unfettered and the justification given by the Administration for the exercise of its discretion in the non-extension was not borne out by the facts, as the jurisprudence of the Appeals Tribunal prescribes.¹¹

36. We note that it was not the case of the Secretary-General that the Core Management Group

42. The Secretary-General appeals further on the ground that the UNDT exceeded its jurisdiction in reviewing and ordering remedies with regard to matters that had not been the subject of any management evaluation. The Secretary-General submits that the placement of Mr. Munir on administrative leave and the investigation into allegations against him were never the subject of a request for management evaluation and, thus, were not properly before the UNDT for adjudication.

43. The Appeals Tribunal has repeatedly held that requesting management evaluation is a mandatory first step in the appeal process.¹³ We note that Mr. Munir's request for management evaluation in May 2012 principally related to the decision not to extend his appointment for one year. While he alleged therein that "the actions by the [Resident Representative in not extending him] form[ed] a pattern of harassing, humiliating, discriminating behavior", his request did not touch on the manner in which he was treated when he was placed on administrative leave in March 2012, the ongoing nature of the OAI investigation, which at the time of his request for management evaluation in May 2012 had been underway for four months, or the allegedly discriminatory nature of the additional language requirement in the VA for his own post, which only arose subsequently. Consequently, the contested decision before the UNDT was limited to the Resident Representative's non-extension decision.

44. The UNDT therefore erred in law and exceeded its jurisdiction in reviewing the additional complaints concerning the conduct of the Resident Representative and making findings reaching the merits in connection with these matters.

45. Consequently, the UNDT erred by awarding moral damages and in referring the conduct of the Resident Representative in relation to these matters to the UNDP Administrator.

46. We hereby set aside the award for moral damages, and the referral of the case to the Administrator of UNDP under Article 10(8) of the Statute of the Dispute Tribunal.

47. Furthermore, the UNDT has no jurisdiction to order the issuance of the OAI Investigation Report.¹⁴

48. The appeal succeeds on this ground.

¹³ *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, paras. 25-26, 28; *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035.

¹⁴ *Koda v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-130, para. 41.

49. From the foregoing, the appeal succeeds, in part.

Judgment

50. The appeal succeeds, in part. We affirm the UNDT Judgment insofar as it relates to the issue of non-renewal of Mr. Munir's appointment and the award of nine months' base pay.

51. We set aside part of the UNDT Judgment in respect of the placement of Mr. Munir on administrative leave and the ensuing investigation, as well as the award in the sum of USD 16,000 as compensation for moral damages. We also set aside the order of referral.

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2015-UNAT-522