



JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2014/108/Corr.1, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 4 August 2014 in the case of Hajdari v. Secretary-General of the United Nations . The Secretary-General appealed on 3 October 2014 and Mr. Besnik Hajdari, represented by counsel, answered on 5 December 2014.

Facts and Procedure

2. On 1 January 2000, Mr. Hajdari joined the United Nations Interim Administration Mission in Kosovo (UNMIK) as a Security Guard/Radio Operator on an Appointment of Limited Duration under the former 300 series of the Staff Rules at the GL-3 level.

3. On 1 January 2004, Mr. Hajdari's appointment was converted into a fixed-term appointment (FTA) under the former 100 series of the Staff Rules.

4. On 1 June 2005, Mr. Hajdari resigned from his position with UNMIK, with effect from 3 June 2005. He resigned in order to take up a new position as locally recruited staff with the Department of Safety and Security (DSS) in New York as3(h)89.4(1.6(Ju4(0 sn)5.k as3o92.5(n/19 -2.8197 TD.031

his request with arguments that noted, inter alia, that “the Secretary-General has the power to reinstate staff members for administrative purposes” and stated “Mr. Hajdari is willing to return all end-of-service entitlements he might have received with his separation from UNMIK”.

8. By letter dated 12 July 2011, the Management Evaluation Unit (MEU) informed Mr. Hajdari that the Secretary-General affirmed the contested decision, finding that a plain reading of “continuous” means without interruption. The MEU further noted that Mr. Hajdari “did not contest the decision not to reinstate [him] at the relevant time, which would have been incumbent upon [him] to do had [he] been of the view that the Administration had erred on this matter”. It noted that his failure to challenge his June 2005 break in service within the requisite time meant that its legality could not be revisited in the context of his challenge to his non-eligibility for conversion to a permanent appointment.

9. On 17 August 2011, Mr. Hajdari filed an application with the UNDT appealing the contested decision.

10. On 30 July 2014, the UNDT issued its Judgment, granting Mr. Hajdari’s application. The UNDT found that Mr. Hajdari truly believed that in order to be able to report for duty with DSS on 13 June 2005, as required by his new terms of appointment, he had to resign from UNMIK prior to the expiration of his FTA on 30 June 2005, but that his resignation would not affect the continuity of his service; rather, he believed that his resignation was only a procedural formality required to enable him to relocate from UNMIK to United Nations Headquarters in New York. The UNDT, noting that there are no time limits within which a staff member must request reinstatement, also found that Mr. Hajdari expressed his desire to be reinstated on 19 May 2011 as part of his submission of additional part

Mr. Hajdari's Answer

15. The Secretary-General's reliance on Kulawat is misplaced since that matter turned on whether Ms. Kulawat's resignation from the

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(a) Have completed, or complete, five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules; [...]

24. The Secretary-General submits that the UNDT erred in ruling on the lawfulness of the 2005 break in service and remanding the case to the Administration for consideration of his reinstatement request and a reconsideration of the decision that he was not eligible for conversion to permanent appointment based on the decision regarding his reinstatement. The Secretary-General contends the UNDT decision was contrary to our jurisprudence on “break in service” in relation to eligibility for conversion to permanent appointment.

25. We uphold the Secretary-General’s appeal for the following reasons.

26. The Appeals Tribunal has held in Carrabregu,⁶ Kulawat⁷ and Schoon⁸ that resignation by a staff member, whether voluntarily or upon request by the Administration in order to take up a new appointment, results in a break in service, which may in turn disqualify a staff member for consideration for a permanent appointment. If a staff member took issue with the requirement that he or she resign from his or her post to take up another function elsewhere as in the foregoing cases, he or she should have challenged it at the time by requesting management evaluation.

27. The Appeals Tribunal has further held in both Carrabregu and Kulawat that, in the context of reviewing the legality of the Administration’s decision(s) that the staff members were not eligible for permanent appointment, the UNDT exceeded its competence by

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Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Lussick

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar