



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**



**Khalaf
(Appellant)**

v.

Secretary-General of the United Nations

THE UNITED NATIONS A

As the current incumbent of the post you are given priority to express your interest to be reappointed at your current level in Baghdad. Please note that any expenses against the movement/reappointment will be borne by you.

In the event that you are not interested in the reappointment in Baghdad, the posts will be advertised for Baghdad duty location on 1 February 2013 and suitable candidates willing to work in Baghdad will be selected.

Please let me know your decision by 6 of February if you are interested.

5. On 14 January 2013, Mr. Khalaf sent an e-mail to the Director, in which he sought clarification of certain issues before he responded to the Director's invitation to apply. He sent follow up e-mails on 21 and 22 January 2013. Mr. Khalaf also sent an e-mail to the Deputy Special Representative of the Secretary-General requesting his assistance.

6. On 28 January 2013, a Political Affairs Officer, on behalf of the Director, wrote to Mr. Khalaf explaining the decision. On 29 January 2013, Mr. Khalaf sent an e-mail to the Director in which he alleged that the e-mail

12. On 14 November 2013, the Director of OPA advised Mr. Khalaf and the three other APAOs in Kirkuk that one APAO post would rema

Submissions

Mr. Khalaf's Appeal

18. Mr. Khalaf alleges that the UNDT made several errors of fact. He argues that the UNDT ignored many documented facts and failed to discuss certain issues. One alleged error of fact is the UNDT's finding that on 2 April 2013, Mr. Khalaf did not attend a meeting organized by the Head of Office in Kirkuk. Mr. Khalaf asserts that he did attend that meeting.

engaged in extensive correspondence with the Administration about the relocation of his post in Baghdad and the potential non-renewal of his appointment.

24. Mr. Khalaf did not challenge the decision to restructure OPA or the decision to return his post to Baghdad, where it was originally located under UNAMI's budget. He challenged the decision not to renew his fixed-term appointment. A fixed-term appointment does not carry any expectancy of renewal. Separation can occur without prior notice on the expiration date specified in the letter of appointment. There is no obligation to consult a staff member regarding the non-renewal of his or her fixed term appointment.

25. UNAMI's efforts to maintain the APAO posts in Kirkuk in the draft budget for 2014 and the Head of Office in Kirkuk's support of the proposal to maintain the APAO posts in Kirkuk cannot be construed as an express promise to renew Mr. Khalaf's fixed-term appointment.

26. Mr. Khalaf's claim that UNAMI's decision not to renew his appointment was ill-motivated and was based on alleged events which pre-dated the contested decision by a considerable period of time. The alleged events have no nexus to the contested decision. In relation to whether Mr. Khalaf was "on loan" to Kirkuk, the documents show that while his "actual location" was Kirkuk, his "budget location" for the purposes of the budget templates from 2009-2013 was Baghdad. The UNDT correctly found that the post encumbered by Mr. Khalaf had been temporarily transferred from Baghdad to Kirkuk. In any case, Mr. Khalaf did not show any connection between this fact and any possible ill-motivation or bad faith on the part of the UNAMI Administration.

27. Mr. Khalaf's claims on appeal are a reiteration of his claims before the UNDT. He has failed to identify any excess or failure of jurisdiction, errors of law, material errors of fact, or errors of procedure on the part of the UNDT.

28. The Secretary-General requests that the Appeals Tribunal affirm the UNDT's Judgment and dismiss the appeal in its entirety.

Considerations

29. As a preliminary matter, Mr. Khalaf requests that the Appeals Tribunal hold an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). We find that the factual

and legal issues which arise from this appeal have been clearly defined by the parties and there is no need for further clarification. We do not find that an oral hearing would assist in the expeditious and fair disposal of the case, as required by Article 18(1) of the Rules. The request for an oral hearing is therefore denied.

30. The Appeals Tribunal holds that the requirements of Article 2(1) of its Statute are not

34. On the contrary, the evidence on record shows that the Administration was involved in a process of revision of activities in Iraq, rationalizing of staff, realignment of functions, and reduction of budget. These administrative activities led to the redeployment of the post encumbered by Mr. Khalaf from Kirkuk to Baghdad. UNAMI invited Mr. Khalaf and two other staff members in a similar situation to express their interest in being reappointed at the same level to positions in Baghdad from January 2013.

35. As a consequence of the Administration's restructuring process, only one APAO post like the one encumbered by Mr. Khalaf would remain in Kirkuk. Mr. Khalaf was invited to participate in a written assessment for the purposes of establishing which APAO would remain in Kirkuk.

36. As the Dispute Tribunal rightly concluded from the record, Mr. Khalaf never expressed his willingness to accept a similar appointment in Baghdad and he did not participate in the written assessment to remain in Kirkuk. Additionally, UNAMI advertised three job openings for APAO positions at the NPO-A level in Bem02.8(ma)6(t)1(r)-5mooat abut(Ki)-7.(a)-5.3(k).

39. This Tribunal affirms the conclusions of the UNDT Judgment. There was no evidence that the 2014 budget proposal or communications with UNAMI management throughout 2012 and 2013 gave rise to a legitimate expectation of renewal in Mr. Khalaf's case. This Tribunal also shares the UNDT's view that the contested decision was not ill-motivated or taken in bad faith. We find no fault with the decision of the UNDT.

Judgment

40. The appeal is dismissed in its entirety and Judgment No. UNDT/2015/123 is affirmed.

Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Faherty

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar