



Judgment No. 2018-UNAT-848



Counsel for Mr. Oguntola: Self-represented

Counsel for Secretary-General: Wambui Mwangi

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal

34. Ms. Toure's RPTC-funded regional advisory position was fully-funded through 2012 and, in fact, was extended through 31 March 2013. Her "post" was abolished effective 1 April 2013 in connection with the restructuring proposed and begun during the last quarter of 2012. Although not necessary for our holding, we note that this restructuring was effectively approved by the COM in March 2013 and, ultimately, by the General Assembly by way of its approval of the RPTC 2014-2015 biennium, which reflected the restructuring and refocusing of priorities.

35. Finally, we find no abuse in the abolition of Ms. Toure's post nor any evidence that the decision was arbitrary or unfair. All 13 Regional Advisors' posts that were encumbered in December 2012 were abolished and the people that encumbered them, including Ms. Toure, were encouraged to apply for posts that would be published. [...]

36. As noted above, Ms. Toure served as a Regional Advisor, in a post funded through the RPTC programme. This programme is for temporary projects and needs, as set forth in the 2012 RPTC Inter-Regional Guidelines and Principles for Effective Delivery of Capacity Development Support (para. 1.4), the 2004 RPTC Report (on "Review of the regular programme of technical cooperation and the Development Account" A/59/397) and the proposed 2012/2013 RPTC Programme Budget (Section 23, para. 34). Ms. Toure did not hold a regular-budget established post but one of a temporary nature that could be discontinued without the need for the ECA Executive Secretary to seek prior approval.

[...]

39. The UNDT erred not only in finding that Regulation 6.2 applied in this case, but also when it decided that the ECA Executive Secretary lacked authority to abolish Ms. Toure's post since only changes requiring additional resources required approval by the General Assembly.

... On 17 October 2016, the [Dispute] Tribunal issued Order No. 455 (NBI/2016) requiring the parties to express their positions in light of [the Appeals Tribunal's] findings in Toure by 26 October 2016.

... A case management discussion took place on 3 November 2016. The Applicant's assertion was that the post he encumbered was either redeployed or reclassified, whereby the case was to be distinguished from Toure.

... On 7 November 2016, the [Dispute] Tribunal issued Order No. 478 (NBI/2016) in which it was decided that the documents relied upon by UNDT and [the Appeals Tribunal] in the case of Toure and contained in the case file were admitted as evidence in the current case. Pursuant to the same Order the Respondent was directed to file written submissions regarding the Applicant's assertions that the post he

encumbered was either redeployed or reclassified. Moreover, the Respondent was directed to produce RPTC Programme Budget of the ECA for the biennium 2012-2013.

... Having been served with the Respondent's submissions on 22 November 2016, the Applicant filed a motion for an extension of time of one week to respond. This motion for an extension was granted through Order No. 492 (NBI/2016) with the Applicant being granted one week period to present his submissions which he did on 2 December 20

in Toure endorsed the abolition (rather than reclassification) of all 13 Regional Advisor posts and the restructuring of RPTC as legitimate exercise of managerial discretion.

4. Moreover, the UNDT considered that to the extent that Mr. Oguntola's argument could be construed as alleging abuse of discretion in the abolition of his post, he had failed to substantiate his claim. Just as in Toure, the UNDT found no abuse, arbitrariness or unfairness in the abolition of his post considering that all 13 Regional Advisors' posts had been abolished which indicated genuine pursuit of reform rather than targeting individuals. As regards the creation of a post with some replicated responsibilities, the UNDT did not find it prima facie unreasonable as the funding modality through GTA was inherently inappropriate for a post of longer duration and the new posts were open for all former Regional Advisors to apply and compete for, an opportunity of which Mr. Oguntola had availed himself.

Submissions

Mr. Oguntola's Appeal

5. Mr. Oguntola submits that the restructuring exercise conducted at ECA was tainted. The UNDT Judgment contained factual errors, namely the omission of the fact that two former Regional Advisors had been laterally moved, without any advertisement or competitive selection process, to the African Climate Policy Centre (ACPC), one of the newly created sections which was funded by bilateral donors and thus constituted an extra-budgetary resource.

6. The UNDT erred in finding that Mr. Oguntola had failed to substantiate unfairness and bias by the ES/ECA. The lateral transfer to ACPC of two other Regional Advisors who had not previously taken part in activities gear

16. Mr. Oguntola's assertion that the UNDT's Judgment contained factual errors, namely the omission of the fact that two former Regional Advisors had been laterally moved to the ACPC, has no bearing on the decision in this appeal because these lateral transfers were proffered as evidence of alleged unfair treatment which the UNDT did not find established.

17. The applicant in the case of Toure³ and Mr. Oguntola were both among the 13 Regional Advisors who experienced identical circumstances of the abolition of their GTA-funded positions. In Toure, the Appeals Tribunal discussed the issues of budgetary constraint and the exercise of managerial discretion as they relate to the issues surrounding the abolished post of Regional Advisor and stated *inter alia* :⁴

... Ms. Toure's RPTC-funded regional advisory position was fully-funded through 2012 and in fact, was extended through 31 March 2013. Her "post" was abolished effective 1 April 2013 in connection with restructuring proposed and begun during the first quarter of 2012. Although not necessary for our holding, we note that this restructuring was effectively approved by the COM in March 2013 and, ultimately, by the General Assembly by way of its approval of the RPTC 2014-2015 biennium, which reflected the restructuring and refocusing of priorities.

... Finally, we find no abuse in abolition of Ms. Toure's post nor any evidence that the decision was arbitrary or unfair. All 13 Regional Advisors' posts that were encumbered in December 2012 were abolished and the people that encumbered them, including Ms. Toure were encouraged to apply for posts that would be published. The record shows that some of them applied and secured other positions within the Organisation. It is not clear from the record before us, nor will it change the outcome of the case, whether Ms. Toure presented her candidacy to any published position.

18. The Appeals Tribunal agrees with the findings of the UNDT which is that due to the identical temporary nature of the positions held by the applicant in the case of Toure and Mr. Oguntola, and the identical circumstances of their abolition, the decision of the Appeals Tribunal in Toure is binding on the UNDT. We therefore find that the UNDT is correct to be guided by, and to rely upon, the Toure decision in the instant case.

19. Mr. Oguntola, in his appeal, has not established that the UNDT erred in law or on the facts or that it exceeded its jurisdiction when it rendered its Judgment. We wish to underscore that Article 2(1) of the Statute provides as follows:

³ *Ibid.*

⁴ *Ibid.*, para. 34-35.

The Appeals Tribunal shall be competent to hear and pass judgment on an appeal filed against a judgment rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

20. As has been repeatedly stated by the Appeals Tribunal, “[i]n the absence of a compelling argument that the UNDT erred on a question of law, or on a question of fact resulting in a manifestly unreasonable decision, we will not lightly interfere with the findings of the Dispute Tribunal”.⁵

21. In accordance with the provisions of the Statute, Mr. Oguntola must proffer arguments on appeal to support his contentions that the UNDT erred on a question of law and/or on a question of fact resulting in a manifestly unreasonable decision. This has not been demonstrated by Mr. Oguntola on appeal.

22. Moreover, we find no merit in any of the g.7811 Tw decisi niig3 Tf-16ae, su

Judgment

23. The appeal is dismissed and Judgment No. UNDT/2017/079 is hereby affirmed.

Original and Authoritative Version: English

Dated this 29th day of June 2018 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Lussick

(Signed)

Judge Halfeld

Entered in the Register on this 10th day of August 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar