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THE UNITED NATIONS APPEALS TRIBUNAL

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The UNDT also rejected Ms. Pacheco's contention that her appointment had not expired, but in fact had been terminated. Similarly, the UNDT rejected Ms. Pacheco's contentions that OCHA had breached its obligations to make a good faith effort to find an alternative suitable post for her and to consider her for a permanent appointment.

12. Ms. Pacheco appeals the UNDT Judgment.

Submissions

Ms. Pacheco's Appeal

13. Ms. Pacheco submits that the UNDT failed to provide her with a meaningful opportunity to present relevant evidence. Her right to cross-examine the Head of OCHA-OPT was unfairly curtailed to one hour of cross-examination and five written interrogatories. It was unreasonable to limit the cross-examination to less than two hours on a vital issue. The UNDT erred in law and in fact in striking out twenty-five of her thirty written questions. These questions were pivotal to proof of extraneous factors in the decision targeting her post for abolition, and proof of unfair implementation of the abolition decision.

14. The 1 October 2009 e-mail was the only document produced by the Secretary-General to demonstrate that all procedures had been followed in the consideration of the abolition of her post. The UNDT erred in law in finding that an e-mail was sufficient evidence to justify a decision to abolish a post.

15. Ms. Pacheco submits that the UNDT erred in admitting testimony that was not in accordance with Article 17(3) of the UNDT Rules of Procedure. The testimony of the Head of OCHA-OPT on 11 May 2011 was not given under oath. The UNDT therefore erred in admitting this evidence. Similarly, this witness' written statement of 3 June 2011 was not provided under oath and should therefore have been deemed inadmissible. The UNDT also erred in admitting an e-mail by that witness by which he amended one of his earlier answers. Ms. Pacheco was only informed of the e-mail at a later stage and was not allowed to make submissions on this document. The UNDT also abused its discretion in excluding Ms. Pacheco's 14 December 2011

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Considerations

22. Both the Appeals Tribunal and the Administrative Tribunal of the International Labour Organization (ILOAT) have held that it is well settled jurisprudence that “an international organization necessarily has power to restructure some or all of its departments or units,

been sworn in prior to giving testimony. A review of the trial record reveals that Ms. Pacheco did not raise any of these issues prior to the witness giving testimony. During the oral hearing of 11 May 2011, the UNDT Judge noticed at the end of the hearing that he had failed to swear in the witness. He acknowledged that this constituted a procedural error, which he sought to correct by swearing in the witness retroactively. The trial record further reflects that Ms. Pacheco did not object, given the lack of time, to submit the questions she wished to put to the witness in writing and to receive his response in writing.

27. We find that the Dispute Tribunal erred in law in allowing testimony to be given at its hearing that was neither sworn, affirmed, nor made under a promise to tell the truth. The UNDT

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