



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2017-UNAT-751

Wanza et al.
(Appellants)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:

Counsel for Appellants:	Nicole Washienko, OSLA Michael Brazao, OSLA
Counsel for Respondent	Stéphanie Cartier

Reissued for technical reasons on 2 October 2017

JUDGE RICHARD LUSSICK , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it individual appeals

Facts and Procedure

4. The Appellants all served at the GS-3 or GS-4 levels as Language Assistants (LA) for MONUSCO. All of the Appellants were stationed in Bukavu on one-year fixed-term appointments, with an effective date of 1 July 2014 and an expiration date of 30 June 2015⁴. When their appointments ended on 30 June 2015, they were not renewed on grounds of the abolition of posts. Their letters of appointment provided, *inter alia*, that “the normal expiration of the appointment at its term does not require the payment of any indemnity” and that “[a] Fixed-Term Appointment, irrespective of the length of service, does not carry any expectancy, legal or otherwise, of renewal or conversion to any other type of appointment in the Secretariat of the United Nations”.

5. The following facts are uncontested,

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Submissions

Appellants' Submissions

8. The UNDT erred in law and in fact and failed to exercise its discretion by concluding that their applications were not receivable. The Appellants challenged the Secretary-General's non-renewal of their fixed-term appointments, not the General Assembly's decision. The UNDT

12. The Appellants respectfully request that the Appeals Tribunal vacate the impugned Judgments and award compensation or, at the very least, remand their cases for a determination on the merits.

The Secretary-General's Answer

13. The Appellants fail to establish any reversible error by the UNDT. The UNDT correctly concluded that it was not competent to review the decision by the General Assembly to abolish the Appellants' posts. It also correctly determined that the Appellants had no standing to challenge their respective non-renewal decisions in so far as they were properly implemented as a consequence of the General Assembly's decision to abolish their posts.

14. Contrary to the Appellants' assertions, the UNDT in reaching its conclusion in the decision of 02.01.2017, did not use the division of 02.01.2017.

Considerations

17. The panel, having reviewed the record before the Dispute Tribunal and the parties' briefs on appeal, find the Appellants have raised neither factual differences nor legal issues different from those canvassed in companion cases and disposed of by the whole Appeals Tribunal in *Kagizi et al. v. Secretary-General of the United Nations*.⁸ Accordingly, we adopt the reasoning of *Kagizi et al.*, as set forth below:

... The administrative decision, which the Appellants contest in their applications before the UNDT, is the decision "not to renew [their] fixed-term appointment[s] and to separate [them] from service on the grounds of purported abolition of [their] post[s]".^[9]

... The General Assembly is the ultimate decision-making organ in the Organization and its decisions are not subject to challenge in the internal justice system.^[10] The Appeals Tribunal notes the procedure of the United Nations which allows for the Secretary-General to make recommendations to the General Assembly, and for the Secretary-General to adopt and implement these recommendations when approved.

... The evidence shows that the Secretary-General, due to both budgetary constraints and changes in strategic direction of the Organization, made recommendations to the General Assembly for the abolition of 80 GS LA posts. The General Assembly approved these recommendations.^[11]

... The Appeals Tribunal agrees with the UNDT's finding of non-receivability of challenges to the abolition of posts made pursuant to decisions of the General Assembly. Neither of the parties takes issue with this ruling.

... The Appeals Tribunal upholds the UNDT's findings that the Appellants lacked the capacity to challenge the non-renewal of their appointments, in so far as their non-renewals were properly implemented, in consequence of the General Assembly's decision to abolish their posts.^[12] Generally speaking, applications against non-renewal decisions are receivable. However, in the present case, the Appellants have intertwined their challenge of the non-renewal of their appointments with the decision of the General Assembly to abolish their posts.^[13]

⁸ *Kagizi et al. v. Secretary-General of the United Nations*

... The Appellants specifically contended that the General Assembly lacked information about the IC contracts when it reached its decision to abolish the LA posts. The Appellants have argued that the submission by the Secretary-General to the General Assembly proposing the abolishment of their posts omitted mention of the Administration's intent to rehire LAs on IC contracts in contravention of ST/AI/2013/4. The Appeals Tribunal finds that, in so doing, the Appellants are seeking a review of the General Assembly's decision through the back door. What in effect the Appellants are asking is for the Appeals Tribunal to review and assess the quality of the Secretary-General's submissions presented to the General Assembly. This cannot be done.

... The fact that the Secretary-General is both the proposer and the implementer is in keeping with the structure of the Organization; in any event, the fact remains that the Secretary-General's proposal is an act prefatory to the General Assembly's decision and to the administrative decision at issue.^[14]

... We note, further, that, in accordance with the above mentioned principles, the UNDT only denied receivability of the Appellants' application against their non-renewal in so far as it was deemed to be a direct challenge against the General Assembly's decision to abolish 80 LA posts. In other aspects, the UNDT regarded the application as receivable and dealt with the merits of the case in stating that: (i) following *Ovcharenko et al.* an administrative decision taken as a result of the General Assembly is lawful and the Secretary-General cannot be held accountable for executing such a decision; (ii) the provisions of Section 3.7(b) of ST/AI/2013/4 were not contravened by the hiring of the Appellants under IC contracts; and, (iii) no unequal treatment occurred in the implementation of the Mission's restructuring which led to the abolition of 80 LA posts in Bukavu and Kinshasa. These findings were not substantially challenged on appeal.

... In order to give guidance to the UNDT and the parties, the Appeals Tribunal points out that the UNDT had no authority to review the decision to offer IC contracts by UNOPS as this is not an administrative decision subject to judicial review. The only administrative decision at issue in the present case is the non-renewal of the Appellants' fixed-term appointments; the rehiring on IC contracts is neither part of this decision nor is its lawfulness of any legal relevance thereto.

... For the reasons above, the Appeals Tribunal dismisses the appeals and upholds the decisions of the UNDT.

[14] *Ibid.*

Judgment

18. The appeals are dismissed and Judgment Nos. UNDT/2016/158, UNDT/2016/159, UNDT/2016/160, UNDT/2016/161, UNDT/2016/162, UNDT/2016/132 and UNDT/2016/157 are hereby affirmed.

