at the new duty station; and c) have served for five consecutive years in the United Nations common system of salaries and allowances[1].

4. On 10 October 2015, Mr. Vattapally was informed that although he had never taken a break in service, he was not entitled to be paid a mobility allowance because he had resigned from the Secretariat to join UNHCR, and former Staff Rule 4.17 provides that when a staff member is re-employed, service shall not be considered as continuous between the prior and new appointments. The contested decision to refuse Mr. Vattapally a mobility allowance was upheld in management evaluation on 20 January 2016.

5. On 19 April 2016, Mr. Vattapally filed an application with the UNDT contesting the decision not to pay him mobility allowance.

6. On 30 April 2018, the UNDT issued Judgment No. UNDT/2018/054, dismissing Mr. Vattapally's application. In considering what amounts to qualifying service for the grant of a mobility allowance, the UNDT held that both former Staff Rule 3.13 and Section 2.4 of ST/AI/2011/6 exclude staff members holding temporary appointments from consideration. Former Staff Rule 3.13 provides that the staff member must hold a fixed-term or continuing appointment. From this, the UNDT reasoned, the period when Mr. Vattapally held temporary appointments should not count towards the requirement of five years' prior consecutive service. Mr. Vattapally resigned in 2014 from his appointment in the General Service category, which he had held since 1993, and later received successive temporary appointments for a period of one year before being re-employed on a fixed-term appointment on 1 September 2015. Although

Submissions

Mr. Vattapally's Appeal

7. Mr. Vattapally submits that the UNDT erred in fact and law by conflating "category" of service with "type" of appointment. By fail ing to properly distinguish the two concepts, the UNDT misconstrued the eligibility requirements for receipt of the mobility allowance and

a judgment must not be so deficient in reasoning as to amount to a denial of the right to a fair hearing.

12. Mr. Vattapally further submits that the use of the word "consecutive" instead of "continuous" in former Staff Rule 3.13 demonstrates that a different meaning was intended and the two words do not bear the same meaning in normal usage. Mr. Vattapally's service with the Organization was "consecutive" and, as such, former Staff Rule 4.17, which relates to the issue of whether service was "continuous", is irrelevant to the present case. Mr. Vattapally maintains that "continuous" service is not a requirement for mobility allowance articulated in former Staff Rule 3.13 and ST/AI/2011/6.

13. Mr. Vattapally requests that the Appeals Tribunal a) overturn the UNDT's finding that his service on a temporary appointment could not count towards the requirement of five years' prior consecutive service for the purposes of mobility allowance; and b) grant him a mobility allowance.

The Secretary-General's Answer

14. The Secretary-General submits that Mr. Vattapally has not established any error on questions of law or fact by the UNDT warranting reversal of the Judgment.

15. Mr. Vattapally maintains the same arguments that he made before the UNDT. Specifically, he maintains his argument that the Administration, and subsequently the UNDT, conflated the "category" of service with the "type" of appointment in determining his eligibility for a mobility allowance. Mr. Vattapally also reiterates his arguments concerning the consecutive nature of his service to the Organization. The Appeals Tribunal has consistently held that it is not sufficient for an appellant to merely state that he disagrees with the UNDT's decision and to repeat the arguments that did not succeed in the lower court. Accordingly, consistent with its well settled jurisprudence, the Appeals Tribunal should, on this basis alone, dismiss Mr. Vattapally's appeal.

16. Moreover, the UNDT concluded, upon review of former Staff Rule 3.13(a) and the relevant provisions of ST/AI/2011/6 governing eligibility and qualifying service for the granting of a mobility allowance, that "staff members holding temporary appointments are not eligible to receive mobility allowance" and the period when Mr. Vattapally held temporary appointments was therefore excluded in the count towards the requirement of five years' prior

consecutive service. It is not clear what moreMr. Vattapally expected the UNDT to opine on in order for the Judgment to be considered a “rea

21. The questions for decision are whether: i) Mr. Vattapally fell within the eligibility criteria for mobility allowance; and ii) the UNDT erred in law and fact in interpreting the relevant provisions to exclude him from eligibility.

22. Former Staff Rule 3.13 provides:

> (a) A non-pensionable mobility allowance may be paid under conditions established by the Secretary-General to staff members in the Professional and higher categories, in the Field Service category, and to internationally recruited staff in the General Service category pursuant to staff rule 4.5 (c), provided that they:
>
> (i) Hold a fixed-term or continuing appointment;
>
> (ii) Are on an assignment of one year ormore and are installed at the new duty

25. It may be recalled that Mr. Vattapally has held an appointment with the Organization without any temporal interruption since 1993. He has been employed in different categories (General Service and Professional) and held different types of appointment (fixed-term,

appointments, in its view, did not amount to qualifying service. But, as just intimated, there is no such requirement. The reasoning of the UNDT conflates the eligibility requirement in former Staff Rule 3.13(a)(i), which allows mobility allowances to be granted only to staff members holding fixed-term or continuing appointments, with the eligibility requirement in former Staff Rule 3.13(a)(iii), which requires distinctly that the applicant for mobility allowance have five years' consecutive service. These are different requirements; and there is no legal basis for

legal nature and commencement of the staff member's contractual arrangement with the Organization; it is defined by the fact that the staff member had been in service of the Organization for a relatively lengthy period. The general provisions of former Staff Rule 4.17 do not limit the meaning of the specific provisions governing mobility allowances – *generalia specialibus non derogant*.

31. Additionally, the use of the word "consecutive" instead of "continuous" in former Staff Rule 3.13(a)(iii) demonstrates that a different meaning was intended. The two words do not bear the same meaning in normal usage. Consecutive means proceeding in logical sequence or occurring adjacently. Continuous means uninterrupted in time or sequence. While it is correct that Mr. Vattapally's service arguably may not have been continuous by reason of the interruption of his successive contracts, his service was consecutive in that his service proceeded in sequence without anychronological intermission. To repeat: the requirement under former Staff Rule 3.13 was not five years of continuous service but five years of consecutive service. Mr. Vattapally's service with the Organization was consecutive and, as such, former Staff Rule 4.17, which relates to the continuity of service, is for present purposes irrelevant. Continuous service was not a requirement for mobility allowance under former Staff Rule 3.13 and ST/AI/2011/6.

32. Moreover, the Administration has acknowledged that there is a difference between a requirement of consecutive service and one of continuous service. It has recently amended Staff Rule 3.13 to change the requirements for eligibility and to give effect to its preferred

contributing to the qualifying requirement of five years' consecutive service once he held a fixed-term appointment. The type of appointment (fixed-term, continuing or temporary) is of no relevance to the enquiry under former Staff Rule 3.13(a)(iii). The type of appointment is only relevant under former Staff Rule 3.13(a)(i). As explained, and to repeat, the sole criterion under former Staff Rule 3.13(a)(iii) is that the prior five years' consecutive service should be in the United Nations common system of salaries and allowances. Mr. Vattapally's temporary appointments were indeed such and thus when he applied for a mobility allowance he satisfied all four of the then existing criteria of eligibility.

34. The contested decision is accordingly wrong and invalid. The UNDT hence erred in holding otherwise and by excluding the periods of temporary appointments from the calculation of consecutive service as contemplated in former Staff Rule 3.13(a)(iii). It follows