



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

Judgment No. 2020-UNAT-994

**Rodriguez
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Graeme Colgan Judge Jean-François Neven
Case No.:	2019-1305
Date:	27 March 2020
Registrar:	Weicheng Lin

Counsel for Ms. Rodriguez: Self-represented

Counsel for Secretary-General: Noam Wiener

JUDGES

7. On 28 August 2017, IDS informed Ms. Rodriguez that she was not eligible to enroll in ASHI. IDS noted that Ms. Rodriguez' latest reappointment was on 22 November 2010 and that as a staff member appointed on or after 1 July 2007, in order to be eligible for ASHI, she was required to have a minimum of 10 years' participation in the Organization's activities to participate in ASHI.

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any period of former service. Turning to the calculation of the number of years that Ms. Rodriguez participated in the Organization's health insurance, the UNDT noted that only participation while serving on a former 100- or 200-series appointment or current fixed-term, continuing or permanent appointment was to be counted and that participation after retirement under a spouse's insurance plan could not count towards the ten-year participation requirement. The UNDT held that in addition to her participation in the Organization's insurance plan while on 100-series or fixed-term appointments (15 September 2005 to 30 April 2009 and 22 November 2010 to 30 September 2015), her participation under her spouse's insurance plan while she was on an ALD and he was on a fixed-term appointment (1 July 2009 to 21 November 2010) also counted towards the ten-year participation requirement. The UNDT concluded that the cumulative eligible participation in the Organization's health insurance plan amounted to a total of nine years and ten months and accordingly she did not meet the ten-year eligibility requirement for ASHI. The UNDT therefore dismissed the application.

11. Ms. Rodriguez filed an appeal on 6 August 2019 and the Secretary-General filed his answer on 7 October 2019. On 9 December 2019, Ms. Rodriguez filed a motion seeking leave to file additional pleadings and on 12 December 2019, the Secretary-General filed his response to the motion.

Submissions

Ms. Rodriguez' Appeal

12. The UNDT erred in concluding that Ms. Rodriguez did not meet the ten-year participation requirement. The UNDT erred in discounting the period of 1 May to 30 June 2009, equivalent to 0.16 years from the 10.05 years of qualifying service. Nevertheless, the result still yields a round-up figure of ten years.

13. Moreover, her participation in the health insurance while on an ALD should also be counted towards the ten-year participation requirement. The position of RMA she held while on the Reimbursable Loan Agreement on a 100-series appointment was a regular post and the ALD offer she received for that same post close to the end of her Reimbursable Loan Agreement and without the standard recruitment process was biased and not in accord with the ALD legal framework. The RMA position under the ALD was in fact a continuation of the RMA 100-series appointment.

14. Ms. Rodriguez asks the Appeals Tribunal to find that she had 10.05 years of participation in the Organization's health insurance plans and hence was eligible for ASHI.

The Secretary-General's Answer

15. The UNDT correctly found that Ms. Rodriguez had not participated in the Organization's health insurance plans for the required ten-year period while on a fixed-term appointment under the former 100-series of the Staff Rules or the subsequently consolidated Staff Rules to be eligible for ASHI. Mindful of the general rule developed in the jurisprudence that a party in whose favour an appeal has been decided is not permitted to appeal against a judgment on legal or academic grounds, the Secretary-General nevertheless points out that the UNDT erred in holding that the days between 1 July 2009 and 21 November 2010 should count towards the ten-year requirement. The fact that Ms. Rodriguez's spouse served on a 100-series fixed-term appointment does not change the fact that Ms. Rodriguez did not at the time serve on a fixed-term appointment and she herself had acknowledged in her correspondence and in her application before the UNDT that this period should not count towards the ten-year requirement. In any event, even if that period was counted towards the ten-year requirement, it would not count towards the ten-year requirement. In any event, even if that period was counted towards the ten-year requirement, it would not count towards the ten-year requirement.

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24. The UNDT's calculation (nine years, ten months) is not correct. However, even a correct calculation of the three time periods accepted by the UNDT (15 September 2005 to 30 April 2009; 1 July 2009 to 21 November 2010; 22 November 2010 to 30 September 2015) does not result in the required ten years of separation but

30. As to Ms. Rodriguez' argument that her ALD should count because the RMA position she held under the ALD was in fact a continuation of her former RMA 100-series appointment and because the ALD offer she received for that same post close to the end of her Reimbursable Loan Agreement and without the standard recruitment process was biased and not in accord with the ALD legal framework, we find that it is without merit for the present appeal. Though her duties might have been the same, the fact remains that Ms. Rodriguez, starting from 11 May 2009, was no longer under a 100-series appointment but under a 300-series appointment which is not within the scope of Sections 2.1(a)(ii) and 2.2(b) of ST/AI/2007/03. Further, Ms. Rodriguez is estopped from challenging the legality of her former ALD in the present appeal. This appointment went into legal force in 2009 and Ms. Rodriguez did not request management evaluation, nor did she file an application to the UNDT within the prescribed time limits under Staff Rule 11.2(b) and Article 8 of the UNDT Statute.

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31. Although this issue is not on appeal, to give guidance to the parties and the UNDT, we note that the UNDT committed an error of law and exceeded its competence in accepting the time period between 1 July 2009 and 21 November 2010 for the calculation of Ms. Rodrigt Rodrit JelTJ/TT.1

Judgment

32. The appeal is dismissed and Judgment No. UNDT/2019/105 is affirmed.

Original and Authoritative Version: English

Dated this 27th day of March 2020.



Judge Knierim, Presiding
Hamburg, Germany



Judge Colgan
Auckland, New Zealand



Judge Neven
New York, United States

Entered in the Register on this 19th day of June 2020 in New York, United States.



Weicheng Lin, Registrar