

Judgment No. 2023-UNAT-1395



THE UNITED NATIONS APPEALS TRIBUNAL

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14. On 19 June 2022, UNAMI advertised a P-4 PAO post as well as a P3 PAO post.

The UNDT Judgment

15. The Dispute Tribunal framed the following issues for consideration: (a) the lawfulness and reasonableness of the downgrading of one of the P4 PAO posts in OPA; (b) whether the downgrading was a genuine exercise or merely a scheme to readvertise it; (c) whether the comparative review process was procedurally fair; (d) whether the substantive outcome of the comparative review process was correct; and (e) whether there was any evidence of discriminatory treatment of Mr. Turk. ⁶

16. With regard to the downgrading of one of the P-4 PAO posts, the UNDT found that the Secretary-General's decision was lawful. The UNDT observed that cutting expenses is a legitimate goal and that when the General Assembly determines that outputs can be achieved through staffing at a lower level, it is legitimate to pursue downgrading of posts. The UNDT noted that similar downgrading exercises had taken place in prior years, ind (i)-4.-7.1 (h)akw l i2hearCyha-11.1 (pr)Cyh (h)-2

19. The UNDT also rejected as baseless Mr. Turk's allegations concerning two other comparators. The UNDT found that Mr. Turk's allegation that another comparator should not have enjoyed a retention preference was incorrect, because Mr. NN had a continuing appointment. The UNDT also found that the Secretary-General rebutted Mr. Turk's allegation that another comparator was assigned to the United Nations Interim Force in Lebanon (UNIFIL). Overall, the UNDT found that "the criteria employed for the exercise in question were rational and mirrored what is routinely applied in similar comparative processes in the Organization".⁹ The UNDT also observed that the fact that UNAMI Human Resources furnished the Panel with Mr. Turk's updated PHP, which was more complete than the one that Mr. Turk had uploaded, showed that the Human Resources office had acted with objectivity and accuracy.

20. The only point where the UNDT was "not entirely satisfied" by the Secretary-General's response was why the post No. associated with Mr. Turk (No. 30048407) was recommended for downgrade approximately one month before the CRP had finished their evaluation and made their recommendation. The Administration explained that the post No. identified for downgrading was based on the Entry-on-Duty date in the United Nations system. The UNDT was not persuaded but was prepared to accept that UNAMI Human Resources had conducted a "dry run" of the comparative review in advance of the Panel and had made their own estimation of the result before

22. Finally, with regard to the allegations of discriminatory purpose, the UNDT found that even if the various incidents cited by Mr. Turk were accepted as true, they were unrelated to and

29. Mr. Turk alleges that the impugned Judgment was “just a repetitive copy” of the position of the Secretary-General, which raises questions in his mind of the implementation of justice at the United Nations.

30. Mr. Turk submits that the UNDT Judge was “too extreme” in “accusing [him]” of providing false qualifications about his work experience. He requests that the UNAT “contact each employer” and verify his experience, that the UNDT Judge should apologize to him, and that the UNAT should consider the UNDT Judge’s “extreme accusations” when reviewing his appeal.

31. Mr. Turk submits that the UNDT erred in ignoring his multiple requests for a copy of the JCU’s approval and the General Assembly’s Fifth Committee vote on the downgrading of his position. Mr. Turk avers that UNAMI only provided a copy of the approval for upgrading the position from P-3 to P-4 in 2015.

32. Mr. Turk questions how he could have been the lowestranked staff member in the comparative review process given that he is 50 years old, has been working since he was 22 years old, and has a PhD in politics from the United Kingdom, and 18 years of experience as a diplomat having joined the Jordanian Foreign Service when he was 32 years old. Mr. Turk cannot conceive how colleagues in their 20s or 30s scored higher than him. Mr. Turk submits that UNAMI decided to promote junior officers. He also refers to the annual generous British and Turkish contributions to the United Nations bud get.

33. Mr. Turk says that the most visible example of discrimination is that the other staff members in the comparative review process were given “As” for the United Nations core value “diversity”, whereas he received a “B”. He points out that he is “diversity itself” given his heritage.

34. Mr. Turk raises issues related to what he terms “the first attempt to end his UN career” in 2015-2016. He also states that he has been working on still in (see 2-3 (b) 2, (b) 3 and (c) 3 (w) 14) F3 (c) 3.7 (c) 3.7

36. Mr. Turk submits that if UNAMI was “telling the truth”, then the advertisement in June 2022 would have been only for one P3 vacancy, not PAO vacancies at both the P3 and P-4 levels.

37. Mr. Turk objects to the fact that the UNDT Judge asked him to stop downloading documents, and that the UNDT Judge used the word “occupying” his post rather than “incubating”.

38. Mr. Turk points out that the UNDT Judge recognized that it was unusual that the request for downgrading his specific post No. was sent to the JCU on 30 October 2021, only two days after he had been advised to upload his data for the CRP. Mr. Turk submits that this proves that he was “the target” of this reclassification and it had been “decided already to expel me from the system even before the CRP”.

39. Mr. Turk submits that the decision to separate him after seven years in service was not in accordance with the United Nations document on Job Classification, and that he should have been offered an alternative job. Moreover, he objects to receiving notice of the non-renewal of his FTA on 2 December 2021, which was 28 days before the end of his annual contract.

40. Mr. Turk gives his consent to the UNAT to seek the truth from the JCU. He is convinced that his position was not downgraded but was exported from OPA to the Front Office.

41. Mr. Turk requests to be reinstated and offered a similar position in New York or Geneva, because he cannot work in hardship locations due to his health. Mr. Turk also suggests reinstatement followed by a mutual agreed termination between him and the Organization. Alternatively, he seeks any form of relief available under Article 9 of the Statute of the Appeals Tribunal (Statute).

42. Mr. Turk requests an oral hearing before the UNAT “[b]ecause it is always better to answer

Fifth Committee of the General Assembly, would not change this fact, nor would a “document of undisclosed nature allegedly produced by the Job Classification Unit”.

44. The Secretary-General submits that the UNDT correctly found that the comparative review process was lawfully conducted. The Secretary-General submits that the UNDT was right to find that the CRP was independent and that the Panel applied the criteria in a fair manner. He argues that the Appellant’s “mere disagreement” with the scores is not sufficient to render the process unfair, or to render the UNDT’s Judgment erroneous.

45. The Secretary-General submits that the Appellant failed to provide any support for his

Considerations

50. The Appeals Tribunal is presented with an appeal arising from the non-renewal of Mr. Turk's contract. Before addressing the substantive aspects of his appeal, we first review several procedural issues concerning his request for an oral hearing and his claim of error regarding the UNDT's denial of his requests to produce d ftps hf Bedencect.dt.dS (s)5(d)0.7 (ub6.8 (p)0.7 (ons-3.4 (q)-2.5 (u)1.7 (

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56. In *Matadi*, we mentioned:¹⁵

... *Matadi et al*

60. In our jurisprudence, we insist on adhering to these standards. In *Abbassi*, we said:¹⁶

... There is a difference between admissibility of evidence and the weight attached to the admitted evidence. Evidence is admissible if it is relevant to the facts in issue. The Dispute Tribunal has a broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules of Procedure. The UNDT exercised its discretion not to admit the evidence because it lacked probative value. This Tribunal is mindful that the Judge hearing the case has an appreciation of all of the issues for determination and the evidence before the UNDT. In order to establish that the Judge erred, it is necessary to establish that the evidence, if admitted, would have led to different findings of fact and changed the outcome of the case.

61. Further, we reiterated in *Pacheco* as below:¹⁷

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67. In reviewing Mr. Turk's dissatisfaction regarding the non-renewal of his FTA, we must also bear in mind that the Appeals Tribunal's jurisdiction is limited. We appreciate that Mr. Turk is not represented, and in this context, we recall what we have said in *Kanbar*:²⁰

... (...) Possibly because of her unrepresented status and hence her unfamiliarity with the requirements of pleading and the procedural rules, Ms. Kanbar might not have been fully able to figure out how to limit her grounds of appeal to any of the five ones set out in Article 2(1) of the Statute. From the considerable number of arguments she raises with this Tribunal, many of which concern immaterial issues falling outside the

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(b) Did the UNDT err in finding that the CRP's recommendation was procedurally fair and substantively correct?

74. Concerning the standard of judicial review of the recommendation by the CRP, we defined the Tribunals' role

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84. Therefore, we conclude that the UNDT did not err in finding that the comparative review process was procedurally fair and substantively correct.

(c) Did the UNDT err in finding that there was no evidence of discriminatory treatment?

85. Mr. Turk also suspects that the true reason for the non-renewal of his contract was perceived bias and discrimination by UNAMI. It is Mr. Turk's burden to establish this alleged fact; however, Mr. Turk has not done so.

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vitiated by: i) a jurisdictional error; ii) a procedural error; iii) an error of law; or iv) an error of fact, resulting in a manifestly unreasonable decision. (...)

91. As demonstrated by the foregoing, the UNAT relies on the evidentiary record developed before the UNDT in rendering its decision. Therefore, this Tribunal cannot help Mr. Turk to gather evidence anew with respect to his claims, as we previously stated in Order No. 516 (2023).

92. As there has been no illegality, Mr. Turk's claim for remedies cannot be granted.

