



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

Judgment No. 2023-UNAT-1336

**Felix Ross
(Appellant)**

v.

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

JUDGMENT

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| Before: | Judge John Raymond Murphy, Presiding Judge Graeme Colgan Judge Sabine Knierim |
| Case No.: | 2022-1697 |
| Date of Decision: | 24 March 2023 |
| Date of Publication: | 2 May 2023 |
| Registrar: | Juliet Johnson |

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| Counsel for Appellant: | Self-represented |
| Counsel for Respondent: | Rupa Mitra |

retaliation for his having challenged the outcome of two processes in relation to positions for which he was not selected. In this appeal, Mr. Ross contests the decision of the IGO, communicated to him on 22 October 2020, declining to investigate any aspects of his complaints, not to pursue the matter further and to consider it closed.

7. In his application to the UNDT dated 14 March 2021, forming the basis of the present appeal, Mr. Ross described the contested administrative decision as “[t]he decision of the Respondent not to provide the Applicant with an effective remedy to a harassment, abuse of authority and retaliation complaint” – being the aforementioned decision of the IGO, communicated to him, on 22 October 2020. Later in his application, he formulated his cause of action as follows:

... The Applicant challenges the fact that UNHCR has until today failed to carry out an investigation into his complaint that his separation from UNHCR was done in retaliation for him having challenged the outcome of two selection processes and that he was subsequently blacklisted by the very same people who had decided to separate him.

... The Respondent has done everything to avoid an investigation into the Applicant’s complaint despite the fact that the blacklisting in two instances is evident to anyone at first glance. Numerous senior UN officials at all levels have ignored the evident blacklisting in a concerted effort to protect the perpetrators in high level positions and the organization from the consequences.

8. In the impugned Judgment, the UNDT sets out the facts in relevant part as follows:¹

... The Applicant joined UNHCR in November 2008. He initially served as a Legal Officer (Human Resources) in Geneva, at the P-3 level. In January 2012, he was reassigned to Sudan as a Senior Protection Officer, and in January 2013 he moved to Nairobi where he worked as a Legal Officer, Private Sector Fundraising. He then went on Special Leave Without Pay (“SLWOP”) from 1 July 2013 to 1 July 2015. Upon his

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... On 14 March 2021, the Applicant filed [an] application ... request[ing] the [Dispute] Tribunal to hear the former and the current Heads of the Investigation Service of UNHCR in determining whether the decision to close his case constitutes abuse of authority.

9. On 29 March 2022, the UNDT issued Judgment No. UNDT/2022/031, dismissing the application. The UNDT held that the application was not receivable *ratione personae* because none of the matters raised in the complaint could be construed as a breach of Mr. Ross' rights as a former staff member, and there was insufficient nexus between his former employment and the

15. The Secretary-General submits on the merits that Mr. Ross has persistently failed to discharge the burden of proving improper motives and failed to present any evidence showing that his separation from service was a result of retaliation. The real reason for Mr. Ross' separation was his refusal of an offer of extension of his fixed-term appointment. Mr. Ross' separation from service arose from the expiry of his fixed-term contract and therefore could not constitute prohibited conduct. Consequently, the refusal by the IGO to investigate further was lawful and reasonable.

16. He accordingly requests the appeal to be dismissed.

Considerations

17. The UNDT erred in finding that the application was not receivable *ratione personae* and *ratione materiae*.

18. In terms of Article 2 of the Statute of the UNDT, the UNDT is competent, and thus has jurisdiction, to hear and pass judgment on an application appealing an administrative decision that is alleged to be in non-compliance with the terms of appointment or contract of employment. An administrative decision is a decision which adversely affects the rights of a staff member and which has a direct, external, legal effect.

19. The contested decision was one related to a complaint filed by Mr. Ross on 24 January 2019 alleging retaliation. The complaint was filed in terms of Paragraph 4.6.1.1 of the Policy.

Judgment

31. The appeal is dismissed and Judgment No. UNDT/2022/031 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

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