| UNITED NATIONS DISPUTE TRIBUNAL | Case No.: | UNDT/NY/2009/015/ JAB/2008/018 |
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| | Judgment No.: | UNDT/2010/114 |
| | Date: | 25 June 2010 |
| | Original: | English |

**Before:** Judge Adams

**Registry:** New York

**Registrar:** Hafida Lahiouel

ALAUDDIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for applicant:**
Duke Danquah, OSLA

**Counsel for respondent:**
Peri Johnson, UNDP

## Introduction

1. On 16 April 2010 I refused an application by the respondent for summary judgment (Order 73 (NY/2010)) in the instant case, which is a challenge by the

recommended that the applicant should be re-integrated into UNDP. Both the illegality of the impugned decision and the recommendation of re-integration were accepted by the respondent. Moreover, the respondent does not seek to contend that the decision not to renew the applicant's contract was legal. Rather, the respondent's position, as I understand it, is that the application has been rendered moot by the Ethics Office's proceedings and the respondent's acceptance that its decision was unlawful. Problems arose about the proposed re-integration of the applicant in UNDP in Pakistan. These have been detailed in my previous ruling and it is not necessary to repeat them here.

3. I ruled that the applicant, by making a complaint to the Ethics Office, had not abandoned his rights to invoke the jurisdiction of the Tribunal to determine the lawfulness of the impugned decision and to obtain a remedial order, at least of compensation, under the Tribunal's Statute. Of course, where an impugned decision is not merely corrected by acceptance by the respondent that it was wrong and a withdrawal, the injury, if any, caused by the decision, must also be corrected before it can be said that the breach has been resolved.

4. This is, of course, an unusual case, in that the respondent has acknowledged that its decision was a breach of the applicant's contract. The respondent submits that it has attempted to fulfil the recommendations of the Ethics Office but that this has been unsuccessful because the applicant has not satisfied the requirements of the re-

**The extent of the breach**

5. Although the respondent has agreed that the decision not to renew the applicant's contract was unlawful and has withdrawn it, the nature of the compensation rightly to be ordered depends upon the character of the breach and therefore the compensation or relief necessary to place the applicant in the same position he would have been in had the breach not occurred. I held that the respondent was bound to continue to renew the applicant's contract whilst his performance remained adequate, as had been agreed with him as a condition of his contract of employment at the outset. However, this did not mean that, in effect, the applicant had a permanent appointment whilst ever his performance was acceptable. He was entitled, as the respondent concedes, to the particular renewal (for twelve months) that he sought but whether he was entitled to further renewals was uncertain. Overall, it is fair to infer that the applicant was entitled to such further renewals as were within the policy of the UNDP to grant in cases of contracts of the type by which he was employed. There is the additional complication that the attitude of the applicant's government, which had granted him leave to work for the UNDP, needs to be taken into account and, if it refused an extension, whether the applicant would resign from that position to continue, if he were able, to work for UNDP. As I understand it, UNDP does not usually permit appointments made under fixed-term contracts to extend to five years and, if so, this must mark the outer extent of the applicant's potential term of employment and, hence, the limit of any compensation payable to him.

6. It is for this reason that the significance of the obligation of the respondent under the terms of the letter of offer (as distinct from the letter of appointment) must be considered. The sequence of events and content of these documents is fully narrated in my earlier ruling and I do not intend to repeat it here. In that ruling, I had held, in substance, that a binding agreement to employ the applicant was constituted by the letter of offer and effectuated by the letter of appointment, with the result that the two documents together constituted the contract of employment or, if this be more

consonant with the staff rules, the contract of employment was subject to the conditions bargained for and agreed in the letter of offer.

7. After I delivered my ruling, the Appeals Tribunal, in *El-Khatib* (2010-UNAT-034) dealt with the issue of a withdrawal of an offer before the execution of a letter of appointment, observing that a contract of employment with the United Nations Relief and Works Agency (UNRWA) was not created under the "common law" (this being the translated term but I think what was meant was the "general law") but under the Rules and Regulations of the Organization. Thus, the accepted letter of offer was not binding as the appointment in the circumstances was prohibited by the rules concerning appointment of spouses and no letter of appointment had been executed as the Rules required. The significance of this judgment generally on the relationship between an accepted letter of offer (which would constitute a contract under both the common and civil law) and the letter of appointment is unclear but it does not appear to me to deal with the issue in the present case. Here, there was an accepted letter of offer and an executed letter of appointment. The crucial question is whether, because of the undertaking, expressed both in the letter of offer and, as it happened, verbally by the responsible official on the occasion of issue of the letter of appointment, that the applicant's contract would be renewed if his performance was satisfactory was binding on the Organization. Whether it was binding because it was a condition of the contract or because the applicant had a legitimate expectation that, when the question of renewal was considered, his satisfactory performance would lead to renewal or whether the obligations of good faith and fair dealing entitled him to renewal in that event is of little practical importance, since each approach leads to the same outcome, namely, in the circumstances the applicant had an entitlement to renewal.

8. It is important to observe that it is implicit in the Rules and Regulations and all administrative issuances that the Organization and, for that matter, the staff members are bound to act in good faith and to make decisions in the course of fair dealing and that this obligation is not satisfied by what might be called facial compliance with the text of the relevant instrument. Accordingly, the condition in the