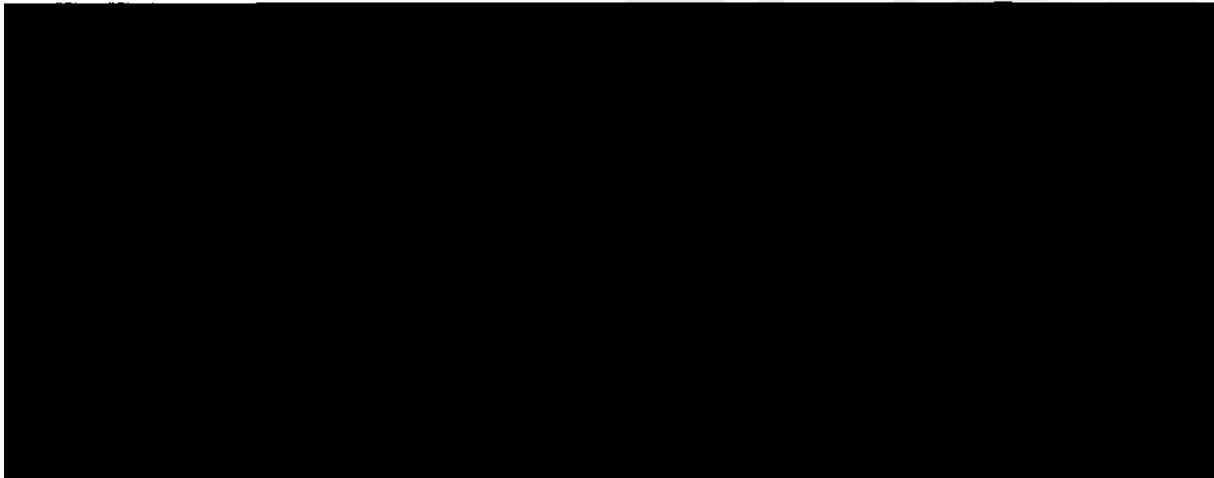




Judgment No. 2013-UNAT-382



Counsel for Appellant: Sylvain Attoh-Mensah

Counsel for Respondent: Stéphanie Cartier

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Gbadegesin Adewusi against Judgment No. UNDT/2012/161, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 31 October 2012, in the case of *Adewusi v. Secretary-General of the United Nations*. Mr. Adewusi's appeal was received on 7 January 2013. The Secretary-General filed an answer on 11 March 2013.

Facts and Procedure

2. The Dispute Tribunal made the following findings of fact, which are not disputed by the parties:¹

... On 11 November 2010, [Mr. Adewusi] was informed that his [United Nations Mission in the Central African Republic (MINURCAT)] post was downsized due to the completion of MINURCAT's mission and [he] was, either on 11 or 17 November 2010, offered a 90 day reassignment to [the United Nations Mission in Côte d'Ivoire (ONUCI)] as a Senior Political Affairs Officer at the P-5 level. He also received a ticket to Abidjan.

... [Mr. Adewusi] was placed on an ONUCI post effective 1 January 2011. It was intended that [he] would relocate to ONUCI. This was not immediately possible due to an outbreak of violence in the Côte d'Ivoire. [Mr. Adewusi's] assignment was renewed for a further 90 days, until 30 June 2011.

... [Meanwhile, o]n 30 November 2010 [Mr. Adewusi had] applied for two positions of Chief Civil Affairs Officer and for one position of Senior Civil Affairs Officer.

... [Mr. Adewusi] could not report to Abidjan for his new assignment because of

THE UNITED NATIONS APPEALS TRIBUNAL

... On 16 September 2011, [Mr. Adewusi] received an email from the staffing section informing him of the dates for taking his written tests for the three Civil Affairs positions he had applied for in November 2010. He sat the tests in October 2011. On 5 December 2011, he raised the issue of non-payment of his entitlements for his reassignment from MINURCAT to ONUCI with the CCPO of ONUCI. He sent a reminder on 14 December 2011 but received no response.

... [Mr. Adewusi] was offered a P4 post in the United Nations Integrated Mission in Timor-Leste (UNMIT) on 20 September 2011 which he took up on 7 December 2011.

... Mr. Otti informed [Mr. Adewusi] on 21 October 2011 that he had not been separated from ONUCI but had in fact been placed on SLWOP so that he would not lose out on his pension benefits since he had served for at least 36 months at the P5 level and therefore his pension benefits would be calculated at that level.

... The MEU responded to [Mr. Adewusi's] request for a management evaluation on 21 November 2011 and concluded that the impugned decisions had been rendered moot as a result of the subsequent decisions taken by the Administration to: (a) convoke him for a written assessment for the three Civil Affairs Officer Posts; and (b) to reassign him to UNMIT and place him on SLWOP in the interim. The MEU was of the view that [Mr. Adewusi's] request for compensation for regular payments of his salary from 1 July 2011 [was] non-receivable because he did not establish an underlying staff right to the same.

3. In Judgment No. UNDT/2012/161, the UNDT found that Mr. Adewusi was lawfully placed on SLWOP upon the expiry of his provisional assignment to ONUCI and was therefore not entitled to a salary from 1 July 2011 to 6 December 2011, and that there were no exceptional circumstances that would have justified placing him on special leave with full pay (SLWFP) for that period of time. As for Mr. Adewusi's claims for education and relocation grants, the UNDT concluded that those claims could not be entertained since they had not been subjected to management evaluation. However, the Dispute Tribunal found that the four-month delay in informing Mr. Adewusi of his placement on SLWOP "left [him] to labour in uncertainty as to his employment status" and "caused him much anxiety and distress", for which the UNDT awarded USD 6,000.

Submissions

Mr. Adewusi's Appeal

4. Mr. Adewusi maintains that the Administration abused its authority by placing him on SLWOP without prior consultation and without his consent.

THE UNITED NATIONS

13. The Secretary-General maintains that while pleading for more compensation, Mr. Adewusi has not referred to any specific evidence of damage that would justify an increase in the amount of compensation awarded by the UNDT. In the view of the Secretary-General, the USD 6,000 compensation awarded by the UNDT for the delay in communicating Mr. Adewusi's SLWOP was "excessive and unwarranted".

Considerations

14. This Tribunal holds that the Judgment under appeal correctly concluded that the placement of Mr. Adewusi on SLWOP enabled him, in the first instance, to preserve his pension benefits. It granted him, secondly, the opportunity of remaining a staff member of the Organization, for the purpose of applying as an internal candidate for other positions after the expiry of his contract. Thirdly, it made possible his re-location to the position that he eventually accepted.

15. Thus, the Administration adopted a protective approach with respect to Mr. Adewusi's situation; there was no abuse of authority or deliberate attempt to harm, as argued by him. These allegations have not been substantiated.

16. Due to the downsizing exercise related to Mr. Adewusi's post and his reassignment, he was not entitled to SLWOP and his consent was not required for SLWOP. Therefore, the administrative decision challenged was lawful, as the UNDT determined.

17. Whatever relevant harm Mr. Adewusi suffered for the delay in being informed of his placement on SLWOP has been compensated by

. In the absence of a cross-appeal by the Secretary-General, this Tribunal will affirm the UNDT's monetary award and the impugned Judgment.

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