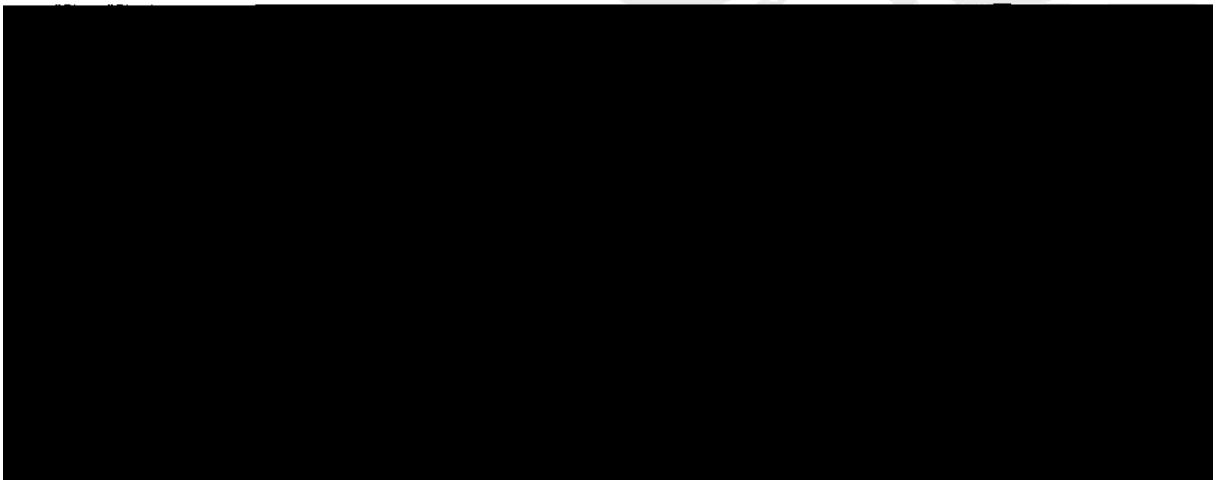


Judgment No. 2015-UNAT-597



Counsel for Mr. Wu:

Self-represented

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2014/146, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 19 December 2014, in the matter of *Wu v. Secretary-General of the United Nations*. Mr. Ming Wu filed his appeal on 10 February 2015, and the Secretary-General filed his answer on 13 April 2015.

2. On 1 July 2015, by Order No. 225, the Appeals Tribunal denied Mr. Wu's motion of 14 April 2015 to file an additional pleading responding to the Secretary-General's answer.

Facts and Procedure

3. Mr. Wu retired from the Organization on 30 June 2011, after 25 years of service upon reaching the mandatory retirement age.

4. In 2011 and 2012, Mr. Wu was re-employed as a Reviser at the R-III level under several temporary appointments with the United Nations Office at Nairobi (UNON), as well as with the Chinese Translation Section (CTS or Section) at the United Nations Office at Geneva (UNOG).

5. In 2013, Mr. Wu was granted another temporary appointment as Reviser at the R-III level with CTS/UNOG, from 1 July to 27 September 2013, which was subsequently extended to 30 November 2013.

6. On 13 November 2013, the Chief of CTS/UNOG updated the Chief of Languages Service on the Section's workload, attaching a list of pending documents. Of a total of 19 documents, eight had already been translated, three were in the process of being completed, and the eight remaining documents were to "be processed by CTS in-house".

7. On 18 November 2013, the Chief of CTS/UNOG informed Mr. Wu that his contract would not be extended beyond 30 November 2013.

8. On 19 November 2013, in response to Mr. Wu's request for "reasons behind the glaring differential treatment" between him and his colleagues, the Chief of CTS/UNOG informed Mr. Wu that "temporary assistance for meetings [...] is arranged in the [sic] light of the Section's projected workload and standing capacity", and further cited the increased

internal emphasis on the use of “contractual translation” in preference to the use of temporary on-board free-lance contracts.

9. On 25 November 2013, Mr. Wu requested management evaluation of the decision not to further extend his appointment and filed a request for suspension of action.

10. On 28 November 2013, by Order No. 188 (GVA/2013), the UNDT rejected the application for suspension of action, finding that it did not meet the criterion of *prima facie* illegality.

11. On 14 January 2014, the Under-Secretary-General for Management informed Mr. Wu that the Secretary-General had accepted the recommendation of the Management Evaluation Unit (MEU) to uphold the contested decision.

12. On 12 April 2014, Mr. Wu filed an application with the UNDT challenging the decision of the Chief of CTS/UNOG of 18 November 2013 not to renew his contract beyond 30 November 2013.

13. On 10 October 2014, the same day the UNDT convoked the parties to an oral hearing to be held on 29 October 2014, Mr. Wu filed a motion to call the Chief of CTS/UNOG as a witness at the oral hearing. The UNDT rejected the motion by Order No. 170 (GVA/2014) of 14 October 2014, finding that “for the time being” it did not consider it necessary to call any witnesses.

14. On 29 October 2014, the Dispute Tribunal held an oral hearing. During the hearing, the Secretary-General was requested to provide additional clarifications, inter alia, with respect to the e-mail of 19 November 2013 from the Chief of CTS/UNOG to Mr. Wu, explaining the reduced translation need for December 2013, and the fact that six freelancers, of which four were retirees, were subsequently employed that same month.

15. On 1 December 2014, the Respondent filed the additional explanations, and Mr. Wu filed his observations thereon on 15 December 2014.

16. On 19 December 2014, the UNDT issued its Judgment. The UNDT held that retired language staff members do not have an entitlement or a “right” to be employed for a maximum of 125 work days. Rather, Section 6.1(b) of Administrative Instruction ST/AI/2003/8/Amend.2 (Retention in service beyond the mandatory age of separation and employment of retirees)

prohibits their employment beyond the maximum of 125 work days per year. The UNDT also found that the reasons provided to support the decision contested by Mr. Wu were substantiated by the facts, and the fact that six freelancers were hired in December 2013 did not contradict the explanation given to Mr. Wu by e-mail of 19 November 2013. Further, the UNDT held that Mr. Wu had failed to provide any evidence of his allegations of bias or discrimination, and thus noted it had decided not to call the Chief of CTS/UNOG as a witness, deeming his evidence irrelevant for the adjudication of the case. The UNDT also found no evidence that would have supported Mr. Wu's argument that an express promise had been made to extend his appointment such that he may have had an expectancy of renewal. The UNDT dismissed Mr. Wu's application.

Submissions

Mr. Wu's Appeal

17. The UNDT's misinterpretation of the Appellant's arguments was unreasonable and based on errors of fact and law. By characterizing his claim as seeking an entitlement or a "right" to be employed for a maximum of 125 working days the Judgment distorted his arguments. The Appellant does not seek absolutely equal working days vis-à-vis other "retirees/temporaries", but seeks to expose discrimination in that he had consistently been treated worse than the others in terms of contract duration, timing and substance, and he produced plenty of evidence to prove this.

18. The Dispute Tribunal erred on a question of fact in determining that the contested decision was supported by available evidence, namely the Chief of CTS/UNOG's e-mail of 13 November 2013 indicating the limited workload for December 2013, although the Appellant had refuted this assertion in his observations of 15 December 2014. The Respondent never explained why the services of other retirees continued to be needed while the Appellant's services were not. Further, the Respondent resorted to semantics in trying to explain the terms "regular staff members", "standing capacity" and "CTS in-house" to the UNDT. It is apparent that the facts did not support the Administration's reasons for not renewing his contract.

19. The UNDT erred on a question of fact in determining that three other retirees were also granted less than the maximum of 125 work days, although the Appellant had refuted this assertion in his observations of 15 December 2014. Two of the other retirees had worked the

The Secretary-General's Answer

25. The UNDT correctly concluded that, in view of the express wording of the rules applicable to the temporary re-employment of retired language staff members, namely Sections 5.1, 6.1(b) and 7 of ST/AI/2003/8 and ST/AI/2003/8/Amend.2, the Appellant had no right to be re-employed beyond 30 November 2013. Further, in accordance with the Appeals Tribunal's jurisprudence, the UNDT correctly found that the Appellant had failed to establish any express promise to extend his temporary appointment beyond 30 November 2013.

26. The UNDT correctly found that the decision not to renew the Appellant's appointment was supported by the facts. As the evidence clearly shows that the decision not to renew the Appellant's temporary appointment was based on the expectation that CTS would have a limited workload for December 2013, the Chief of CTS/UNOG reasonably exercised his discretion in deciding that the workload did not warrant the temporary services of the Appellant in December 2013. The fact that the CTS subsequently needed some more limited, temporary assistance in December 2013 and retained freelancers to meet those needs did not affect the lawfulness of the decision not to retain the Appellant. Both the UNDT and the Appeals Tribunal have recognized that the Administration has broad discretion to organize its work to meet the needs and the objectives of the Organization.

27. The UNDT correctly found that the contested decision was not based on bias, discrimination or other improper motives. Further, the Appellant's claim concerning the investigation of the Chief of CTS/UNOG is misleading and incorrect since the investigation report has not been completed and thus the allegations under investigation have not been substantiated.

28. The Appellant has not established that the UNDT committed any error in declining to address his claims regarding the merits of hiring certain retirees in December 2013, since the Appellant expressly identified the contested decision as the "decision not to renew [his] 2003/8/Amend.2 rules applica

is competent to hear and pass judgment on an appeal filed against a “judgement” rendered by the UNDT, and not against the oral statements of the UNDT judge at the oral hearing which do not appear in the Judgment.

30. The Appellant’s claims regarding alleged events that succeeded his request for management evaluation are not receivable as

assessing the correctness of the decision under its review, namely the decision not to extend Mr. Wu's temporary appointment.

39.

maximum of 125 work days, nor did he have a legitimate expectation of being granted more assignments, regardless of how much more efficiently and capably he performed vis-à-vis other revisers. Hence, it is not material to the outcome in this case whether the decision not to further extend Mr. Wu's appointment could be said to be tainted by bias or discrimination.

44. Having reviewed the UNDT Judgment, we cannot discern any error under Article 2(1) of the Appeals Tribunal Statute warranting its reversal.

Judgment

45. The appeal is dismissed and Judgment No. UNDT/2014/146 is affirmed.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Faherty

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar