



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

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Judgment No. 2017-UNAT-794



**Afeworki  
(Appellant)**

**v.**

**Secretary-General of the United Nations**

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Counsel for Ms. Afeworki: Self-represented

Counsel for Secretary-General: Nathalie Defrasne/Isavella Maria Vasilogeorgi



Staff members were directed to the Office of Staff Legal Assistance for advice. A further circular dated 12 March 2015 informed of the evaluation criteria for the comparative review.

8. On 13 May 2015, Ms. Afeworki was informed through a letter from the Chief, RSCE that following completion of the CRP, her fixed-term appointment would not be extended beyond 30 June 2015. The relevant part of the letter reads:

The Secretary-General proposed a reduction in international posts in the RSCE budget for 2015-2016. The budget proposal is currently being considered by the General Assembly for implementation effective 1 July 2015.

A comparative review of staff members in functions where there are more civilian staff than the number of posts proposed to be retained in the new structure was conducted. The comparative review process has been finalized. It is with regret that I have to inform you that you are among those identified for retrenchment effective 1 July 2015.

As a result, your fixed term appointment will not be renewed beyond 30 June 2015, in line with Staff Rule 9.4.

In the interim, we encourage you to apply to suitable job openings in INSPIRA. This is especially important if you are not on a [Field Central Review Board (FCRB)] roster since selection for other missions is made primarily from the rosters.

9. On 25 June 2015, the Chief, RSCE informed all staff by e-mail that the Fifth Committee of the General Assembly had decided to implement the nationalisation plan for RSCE in a phased manner, over a two-year period, by nationalizing 34 FS posts in 2015-2016, and a further 34 posts in 2016-2017. The relevant part of the e-mail reads:<sup>1</sup>

The General Assembly's Fifth Committee, which is in charge of administrative and budgetary matters, reached agreement yesterday on a number of cross-cutting issues related to the financing of United Nations peacekeeping operations.

In its draft resolution (A/C.5/69/L.60 – para 59-65), the Committee decided to give operational and management independence to the Regional Service Centre, and indicates that a separate budget for the RSCE should be submitted to the General Assembly for 2016/17.

The resolution also endorses the Secretary-General's initiative that the Centre report directly to the Department of Field Support.

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<sup>1</sup> Emphases in original.

The Committee furthermore decided to implement the nationalization plan for the RSCE in a phased manner, over a two-year period, by nationalizing 34 FS posts (50 per cent) in 2015/16, and a further 34 posts in 2016/17.

In light of this decision a review of affected staff is being conducted and notifications will be sent shortly. Also, given the decision to phase the nationalization over two years, the plan to temporarily extend 40 FS posts through December 2015 to ease the impact of nationalization was no longer being pursued.

10. A few days later, on 30 June 2015, Ms. Afeworki received a formal letter informing her that her fixed-term appointment was not to be renewed beyond that date. The relevant part of this letter reads:

Re: Notice of non-extension of your fixed-term appointment with the Regional Service Centre, Entebbe (RSCE)

Pursuant to the General Assembly's approval of the mission's budget for 2015-2016, it is with regret that I have to inform you that your fixed-term appointment will not be renewed in line with Staff Rule 9.4.

11. Ms. Afeworki sought management evaluation of the decision on 28 August 2015.
12. b

way or rendered the results of the CRP immaterial. Hence, the UNDT concluded, the e-mail of 25 June 2015 did not create any direct legal consequences for Ms. Afeworki or any other staff member. The notification given to Ms. Afeworki on 30 June 2015 merely affirmed that the earlier administrative decision remained in force and was a mere reiteration of the administrative decision of 13 May 2015. To the extent that Ms. Afeworki directed her claim against the procedure and results of the comparative review and the alleged omission to convert her post into a permanent one, the process was completed and Ms. Afeworki was notified on 13 May 2015 of its results. The time for a challenge of that decision began to run on that date. On these grounds, the UNDT found that Ms. Afeworki's request for management evaluation submitted on 28 August 2015 had not been timely in light of Staff Rule 11.2(c) and her application before the UNDT was thus not receivable.

15. On 6 October 2017, Ms. Afeworki filed a motion asking the Appeals Tribunal to order the Secretary-General to produce additional evidence.

### **Submissions**

#### **Ms. Afeworki's Appeal**

16. Ms. Afeworki submits that the UNDT erred in finding her application not receivable as she had submitted her request for management evaluation within the stipulated timelines. The time limit to request management evaluation began to run as of 30 June 2015, the date she claims she was properly notified of the decision not to extend her fixed-term appointment. The notification she received on 13 May 2015 was based on a mere assumption that 75 FS posts would be abolished and the subsequent communication by the Chief RSCE to all RSCE staff members on 25 June 2015 occurred in "completely changed circumstances". She claims that a fresh review of staffing (or CRP) took place between 25 June and 30 June 2015 and it was in terms of that review that her fixed-term contract was not extended. The non-renewal notification dated 30 June 2015 was therefore not a mere confirmation of prior decisions but the relevant administrative decision not to renew her contract.

17. Ms. Afeworki contends that the UNDT erred in not determining whether she suffered discrimination in the CRP of the FS-4 level posts and in deciding not to order the production of additional evidence by the Secretary-General. She asserts that had the UNDT examined her arguments and had such evidence been produced as requested, the UNDT would have decided

in her favour on the issue of receivability. She requests the Appeals Tribunal to order the Secretary-General to produce additional evidence on the retrenchment and CRP and to be

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and constitutes a fresh administrative decision impliedly substituting the decision of 13 May 2015.

31. Accordingly, the UNDT erred in its findings that Ms. Afeworki was obliged in terms of Staff Rule 11.2(c) to request management evaluation within 60 calendar days from 13 May 2015, the date she received notification that her fixed-term contract would not be renewed, that she had failed to do so and hence that the application to the UNDT was not receivable. Ms. Afeworki sought management evaluation on 28 August 2015 within 60 days of the contested administrative decision of 30 June 2015 and hence her application was receivable. Her appeal must, accordingly, be upheld.

32. Regarding her motion to compel the discovery of the documentary evidence and her submissions in relation to the merits of the non-renewal of her contract, these are matters properly reserved for the UNDT which rightly did not canvass them in its Judgment in light of its decision on receivability.

