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1. Both parties appeal against the Judgment of the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) issued on 30 April 2020, which concluded that Richard

5. The CRP began on the same day, 22 August 2017. Its Terms of Reference included the potential for what were called "dry cuts", that is where a post or function proposed for reduction did not have a comparator post or function in the same category or at the same level within the same section. In these circumstances, incumbents of such posts would not be subjected to a comparative review.

6. The CRP exercise categorized Mr. Geegbae as being in the Administration category of staff although he was qualified for and rostered into the Logistics occupational group. At the conclusion of the CRP, Mr. Geegbae and another FTA-holding FS-4 level Administrative Assistant's posts were considered to be "dry cuts" while two other FS-4 level Administrative Assistants who held continuing appointments were designated for retention in their posts.

7. On 25 August 2017, Mr. Geegbae



17. The Dispute Tribunal reasoned that pursuant to Staff Regulation 9.3(a)(i) and Staff Rule 9.6(c)(i), the Secretary-General may terminate the appointment of a staff member following the abolition of posts. Further, the Organization can also abolish posts provided that it complies with its duty to act fairly, justly and transparently in dealing with staff members.<sup>2</sup> The UNDT considered that the onus of proving ill-motivation rested on the staff member.<sup>3</sup>

18. The Dispute Tribunal was not persuaded by Mr. Geegbae's argument that he was placed in harm's way by the prejudicial actions of his managers, who reassigned him to the Administrative Assistant post purportedly knowing that such post would likely be abolished in the future. It reasoned that because budget cuts which prompted the reduction of staff came two years later in 2017, Mr. Geegbae could not show that his managers acted with improper motives in 2015.

19. Turning to the second issue, the UNDT considered that pursuant to Staff Rule 9.6(e) and following the judgment of this Tribunal in *Timothy*,<sup>4</sup> the Administration is to make reasonable and good faith efforts to find suitable placements for redundant staff members whose posts have been abolished. This duty, however, had to be reciprocated by the staff members affected. The Dispute Tribunal reasoned that when Mr. Geegbae had applied for a particular position known as Job Opening 81519, he met his obligation (as a staff member) to do so by showing his interest in the position.

rostered for a position they are already occupying so they can select them after a reclassification ... you are rostered already so why waste your time".<sup>5</sup>

21. Hence, the Dispute Tribunal found that the Contested Decision (his severance from service) was unlawful and rescinded it. As an alternative to reinstatement, the UNDT ordered that Mr. Geegbae be paid a sum equivalent to five months and 15 days' net-base salary. The UNDT did not award moral damages as it said Mr. Geegbae had not submitted any evidence to support his claim to these.

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22. The Secretary-General filed an appeal to the United Nations Appeals Tribunal (the Appeals Tribunal or UNAT) on 29 June 2020, and Mr. Geegbae filed an answer and a cross-appeal on 7 August 2020, to which the Secretary-General filed his answer on 9 October 2020. The Secretary-General seeks the vacating of the UNDT Judgment in its entirety.

23. The Secretary-General's first ground of appeal is that the UNDT erred in law by confounding the obligations of the Organization vis-à-vis staff members holding permanent or continuing appointments, with those holding FTAs.

24. Distinguishing Mr. Geegbae's case from the circumstances underlying the UNAT Judgment in *Timothy*,<sup>6</sup> the Secretary-General argues that because Mr. Geegbae did not hold a permanent or continuing appointment, but rather a FTA, he could have held no legitimate expectation of its renewal. As a result, "the special relationship between the Organization and staff members holding permanent or continuing appointments expounded upon by the UNAT

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precluded [Mr. Geegbae] from continuing to pursue the application." The Chief of Logistics had told Mr. Geegbae the job opening (JO 81519) was purportedly "to get someone rostered



being abolished. To the contrary, the Administration had the right to administer the written test to a wide group of candidates to determine the most suitable one(s) for the position(s).

ally, the fact that other staff members took the written test did not prevent [redacted] from doing so himself. It was within a hiring manager's authority to assess the [redacted] wide pool of candidates, including permanent, continuing, fixed-term and temporary appointees, in the event that candidates who merited priority consideration were not found to be suitable for the vacant position

non-competitive basis due to abolition of his post. Instead, two lower-level FS-3 staff were selected and promoted into the positions.

35. The competitive technical assessment therefore obviated the purposes of the roster and of Staff Rule 9.6(e). Importantly,

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43. The UNDT correctly held that Mr. Geegbae's 2017 separation was unrelated to his .24 18 583.92 cr

47. Third, the Secretary-General argues the UNDT was correct when it held Mr. Geegbae did not prove his reassignment was tainted by improper motives. The onus of proving improper motives lies on the staff member contesting the decision. Mr. Geegbae not only did not prove improper motives, but he also did not even state what the improper motivations were, and as such the UNDT was correct when it held that he had not discharged that burden of proof.

48. Fourth, Mr. Geegbae's claim regarding his 2015 reassignment was time-barred. Although not addressed by the UNDT, it should have dismissed Mr. Geegbae's 2015 claims pertaining to his 2015 reassignment as not receivable as no timely request for management evaluation was made to contest such a decision at the time.

49. It is undisputed that the reassignment was not challenged at the time, and instead Mr. Geegbae is claiming that "the concrete legal effects of the 2015 decision only manifested themselves in 2017." Mr. Geegbae is trying to muddy the distinction between the 2015 Reassignment Decision and the 2017 decision to separate him from service. However, while a timely request for management evaluation was made regarding the 2017 decision, such request cannot incorporate a review of a 2015 administrative decision. As such, the Appeals Tribunal should dismiss Mr. Geegbae's claims regarding the 2015 Reassignment Decision as not receivable.

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50. We will address the Secretary-General's appeal first because if it succeeds, Mr. Geegbae's appeal will fall away. The first ground is that the UNDT erred in law by conflating the Organisation's obligations towards staff on permanent or continuing appointments which imposed on it certain obligations of post retention or replacement, which obligations it did not have to Mr. Geegbae as a FTA staff member. Decision of this ground turns on the interpretation and interrelationships of a number of United Nations Staff Regulations and Rules. These include:!

#### *Regulation 4.5 (c) Appointment and promotion*

A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service;

*Regulation 9.3 (a) (i) Separation from service*

The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of his or her appointment or for any of the following reasons:

(i) If the necessities of service require abolition of the post or reduction of the staff.

*Rule 4.13 (c) Fixed-term appointment*

A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14 (b).

*Rule 9.4 Expiration of appointments*

A temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment.

*Rule 9.6 Termination*

Reasons for termination

(c) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of the appointment or on any of the following grounds:

(i) Abolition of posts or reduction of staff;

(iii) Staff members holding fixed-term appointments.

When the suitable posts available are subject to the principle of geographical distribution, due regard shall also be given to nationality in the case of staff members with less than five years of service and in the case of staff members who have changed their nationality within the preceding five years.

51. The Secretary-General seeks to distinguish this present case from that considered by this Tribunal in *Timothy*,<sup>13</sup> arguing that because Mr. Geegbae did not hold a permanent or continuing appointment, but rather only a FTA, he could have had no expectation of a renewal of that status.

52. The Staff Regulations and Rules set out above must be interpreted and applied congruently if that is possible, that is in a manner that avoids conflict between them because the General Assembly

55. Mr. Geegbae was, at the material time, on a one-year FTA which had effect from 1 July 2017 until 30 June 2018. His FTA was intended by MONUSCO to be terminated on 30 September 2017, that is before its expressed expiry nine months later. The Organisation's actions thus amounted to a termination of his FTA (and thereby of his employment), rather than the FTA's expiry (and thereby also the end of his employment) at its date of its conclusion. He was therefore subject to the Staff Rule 9.6(e) exception to what would otherwise have been his non-expectation of renewal or continuance of employment. He was, however, in the lowest priority category for retention of his post under Rule 9.6(e)(iii) set out above.

56. So, for Mr. Geegbae, if there were other suitable posts in which his services could be used effectively having regard to his competencies, integrity and the length of his service, Mr. Geegbae was entitled to be retained on staff for one of such positions if any remained after their filling first by existing staff with continuing or permanent appointments and then other existing holders of FTAs of more than 2 years' duration.

57. Mr.



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Judgment No. 2021-UNAT-1088

63. The Secretary-General's appeal being

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66. The Secretary-General's appeal is dismissed. Mr. Geegbae's cross-appeal is dismissed. Judgment No. UNDT/2020/061 of the UNDT is hereby upheld.

Original and Authoritative Version: English

Dated this 19<sup>th</sup> day of March 2021 in New York, United States.

*(Signed)*

Judge Colgan, Presiding  
Auckland, New Zealand

*(Signed)*

Judge Murphy  
Cape Town, South Africa

*(Signed)*

Judge Raikos  
Athens, Greece

Entered in the Register on this 15<sup>th</sup> day of April 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar