
UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2021-UNAT-1120



Jose Daniel Arango
(Respondent)

v.

Secretary-General of the United Nations
(Appellant)

Counsel for Appellant: Maryam Kamali

Counsel for Respondent: Evelyn W. Kamau, OSLA

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by the Secretary-General against United Nations Dispute Tribunal (the UNDT or Dispute Tribunal) Judgment No. UNDT/2020/134, which granted Mr. Arango's application coAA.9 0m(.)Tj0(ant)4.icbuar

retaining him. Terms of Reference were shared with him, and he expressly confirmed his availability. The purpose of the proposed temporary appointment was to meet short-term staffing needs. No temporary position at that point existed, no job opening had been advertised, and no call for applications had been made.

6. Mr. Arango

worked for UNHCR for a short period was not a “former staff member” in the meaning contemplated in Article 3(1)(b) of the UNDT Statute. The UNDT in its first Judgment rejected that submission as follows:¹

16. The Respondent’s case is that since there had been no contractual relationship between the Applicant and the Respondent, the Respondent is not bound by the provisions of the UNDT Statute. The Respondent’s case is that since there had been no contractual relationship between the Applicant and the Respondent, the Respondent is not bound by the provisions of the UNDT Statute.

is inconceivable that the Appeals Tribunal will uphold and confirm an order of the UNDT when the facts and law establish that the UNDT had no jurisdiction or power to make such an order. The appeal of the Secretary-General is thus, not time barred.

27. Article 3(1) of the UNDT Statute limits the jurisdiction *ratione personae* of the UNDT. In terms thereof, the UNDT shall be competent to hear and pass judgment on applications of staff members, former staff members or representatives of incapacitated or deceased staff members of the Organisation. The preliminary issue in this case is whether Mr. Arango is a staff member or former staff member of the Organisation as contemplated in Article 3(1) of the UNDT Statute.

28. Before a person may be regarded as a former staff member in terms of Article 3 there must be a sufficient nexus between the former employment and the contested decision. A sufficient nexus exists when a decision has bearing on an applicant's former status as a staff member, specifically when it affects his or her previous contractual rights.⁶ The extension of the jurisdiction to former, deceased and incapacitated staff members is intended to permit resolution of disputes concerning contractual rights acquired during previous employment by staff members whose contracts have expired. The limited jurisdiction in relation to persons implies that the UNDT ordinarily will not have authority to receive applications by *inter alia* job applicants alleging illegality, unfairness or discrimination in the recruitment process.

29. The UNDT erred in concluding that Mr. Arango was a former staff member for the

employment is made and the conditions specified in the offer are fulfilled. It was held in *Latimer*⁸ that a valid quasi-contract may be concluded where an offer of appointment is issued and the other material conditions for appointment are addressed or stipulated. Mr. Arango was not given a written offer of appointment and no other conditions were addressed in the informal exchange of emails with the administration. The e-mail of Ms. [G],

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