

Judgment No. 2021-UNAT-1173



Counsel for Appellant:

Robb e ! e g"ton# \$%! A

Counsel for Respondent:

Noam & ener

UD E (AN) ALDEEP SAND* U+PRESIDIN .

1. The Appellant#t't'e former 5ead of *ol 4+ *-6 on a f 7ed-term appo ntment) t" t't'e &ater %uppl+ and %an tat on Collaborat /e Coun4 l8&%%CC or t't'e \$rgan 9at on: 4ontests t't'e de4 s on to term nate or retra4t "er s 4; lea/e result ng n "er separat on) " le on s 4; lea/e.

2. <n ts 10 August 2020 Judgment No. UN2T=2020=101 &mpugned Judgment:# t't'e Un ted Nat ons 2 spute Tr bunal 8UN2T or 2 spute Tr bunal: d sm ssed "er appl 4at on on t't'e bas s t"at t't'ere) as no obl gat on on t't'e \$rgan 9at on and t't'e Un ted Nat ons \$ff 4e for *ro>4t %er/ 4es 8UN\$*%: to e7tend a f 7ed-term appo ntment for t't'e sole purpose of allo) ng a staff member to ut l 9e " s or "er s 4; lea/e ent tlement. T't'e Appellant appeals and see;s t't'e Judgment be /a4ated and t"at "er separat on be found unla) ful. <n t't'e alternat /e# t't'e Appellant see;s 4ompensat on for 4osts n4urred be4ause of "er separat on) " le on s 4; lea/e. T't'e %e4retar+-?eneral re@uests t't'e appeal be d sm ssed.

3. -or reasons set out belo) #) e d sm ss t't'e appeal.

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0. T't'e Appellant) or; ed as t't'e 5ead of *ol 4+ for t't'e &%%CC#an organ 9at on "osted b+ UN\$*% n ?ene/a. At t't'e t me of t't'e 4ontested de4

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10. In the Judgment, the UNAT found that, contrary to the Appellant's claim (as noted in the Appellant's pleadings and in the Appellant's oral submissions), the purpose of the 2012 D-mal was to certify the Appellant's fitness to work; based on the medical report submitted, not to approve an extended absence.² The UNAT's Administrative Tribunal could have approved the Appellant's request, and the UNAT found that there was no evidence of such approval.

16. The UNAT held that the UNAT is under no obligation to extend a fixed-term appointment

13. The Appellant submits that she followed the same procedure for requesting a leave from 0, April to 13 April 2018 past the expiry of her appointment: that she had used

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The Secretary-General's Authority

23. The Respondent submits that the UN Charter (hereinafter "the Charter") does not obligate the UN Secretary-General to appoint or to terminate staff members; rather, it leaves the appointment and termination of staff members to the discretion of the Secretary-General.

30. The Respondent argues that notwithstanding the fact that Article 1.2 of the Staff Regulations and Rules (hereinafter "the Staff Regulations and Rules") contains a number of provisions that appear to support the separation of the staff member.

31. The Respondent argues that the relevant UN Charter provisions on personnel management (Articles 101, 102, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000) do not require the UN Secretary-General to terminate the appointments of staff members on a permanent basis. Article 7.6.10 of the Staff Regulations and Rules contains the provisions related to the termination of staff members on fixed-term appointments and does not obligate the UN Secretary-General to terminate the appointments of staff members on a permanent basis. The Respondent argues that the provisions of the Charter and the Staff Regulations and Rules do not obligate the UN Secretary-General to terminate the appointments of staff members on a permanent basis. The Respondent argues that the provisions of the Charter and the Staff Regulations and Rules do not obligate the UN Secretary-General to terminate the appointments of staff members on a permanent basis.

32. The Respondent submits that the UN Charter (hereinafter "the Charter") does not obligate the UN Secretary-General to terminate the appointments of staff members on a permanent basis; rather, it leaves the appointment and termination of staff members to the discretion of the Secretary-General.

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employment of staff on s 4; lea/e illustrates that absent such an administrative or decision for UN\$*#su4" an employment cannot be implied.

01. The Appellant relies on paragraph 3.1 of T/A/1333=11 that provides that the commencement of the consideration for disability benefits from the UNJ* - (ta; es pla4e) "en a staff member C"as used all " s or "er entitlement to s 4; lea/e) t" full pay. 50) e/er#t"e te7t uses Contentment. T" s read together) t" Staff Rule 1.28a: confirms that the s 4; lea/e entitlement does not outweigh the proportion of the fixed-term appointment unless expressly provided for.

07. Pursuant to Staff Rule 1.2# the general "as exercised " s discretion and delegated " s authority to establish conditions for the administration of s 4; lea/e for staff members) t" UN\$*% to the UN\$*% D7e4ut /e 2 re4tor 8see%4retar+-?eneralB'ulletin T=?' =2003=1 8Aut"or t+ of the United Nations \$ff 4e for *ro>e4t %er/ 4es n matters relating to "human resources management::: The UN\$*% D7e4ut /e 2 re4tor "as established a legislative framework) or; for UN\$*% launching and organizing the different types of policies# and guidance documents applicable to UN\$*% 8D7e4ut /e \$ff 4e 2 re4t /e Ref. D\$2.D2.2013.02::: The framework) or; includes \$perational 2 re4t /es su4" as \$perational 2 re4t /e \$2.*C?.2017.01 that outlines principles underpinning the management of UN\$*% personnel.

0A. Paragraph 1.1 of \$perational 2 re4t /e \$2.*C?.2017.01 provides the development and implementation of the re@ured process in the *J, %. *aragraph 7.6.10 of the *J, % contents instructions related to s 4; lea/e.

03. None of these provisions authorize the employment of appointments for UN\$*% staff members on s 4; lea/e should the appointment expressly or be terminated) " le on s 4; lea/e.

60. As stated in paragraph 2.1# the purpose of

Approval of the leave. Therefore, the Board does not and cannot constitute approval as that can only be done by the Appellant's superior.¹⁰

61. The lack of response from the Organ on to the Board does not imply approval of the leave. The UN Security Council or its members must approve the leave request. The approval cannot be implied from a lack of response or the Appellant's reliance on the Board.

62. Therefore, the UNAT did not err when it found that the Appellant had not been granted the leave to 13 April 2014 as terminated or retracted. We find no merit in the Appellant's submissions that the UNAT erred in its Judgment.

Conclusion

63. Accordingly, we dismiss the appeal.

Original and Authenticated Versions: English

Dated this 23rd day of October 2021.

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