

UNITED NATIONS APPEALS T

Judgment No. 2024-UNAT-1430



Counsel for Appellant: Self-represented

Counsel for Secretary-General: Noam Wiener

Appeals

20. On 13 February 2023, the Secretary-General filed an appeal of the Judgment on Liability, and on 17 March 2023, Mr. Heurtematte filed his answer. This case was registered as Case No. 2023-1785.

21. On 23 June 2023, the Secretary-General filed an appeal against the Judgment on Remedies. Mr. Heurtematte did not file an answer. This case was registered as Case No. 2023-1818.

22. On 31 July 2023, Mr. Heurtematte filed one appeal of both the Judgment on Liability and the Judgment on Remedies. On 28 September 2023, the Secretary-General filed his answer. This appeal was registered as Case No. 2023-1833.

23. By Order No. 542 (2023), the Appeals Tribunal ordered that the appeals filed in Case Nos. 2023-1785, 2023-1818 and 2023-1833 be consolidated for all purposes.

Submissions

The Secretary -General's Appeal

UNDT Judgment on Liability

24. The Secretary-General submits that the UNDT erred in law and fact by finding that the non-renewal of Mr. Heurtematte's appointment was unlawful. Following the reorganisation of the Regional Office and the closure of its physical location, UN Women decided not to renew his appointment because the job that he performed as the Regional Director's driver was no longer needed. UN Women provided ample proof demonstrating its reorganisation plans, the closure of the physical office, the sale of the car that Mr. Heurtematte had used and, consequently, the absence of an operational need for his services. These were reasons not to renew his appointment. UN Women informed Mr. Heurtematte of this decision in writing in a letter dated 30 June 2021, in which it detailed these reasons for the non-renewal.

25. The Secretary-General contends that the UNDT erred both in law and in fact in finding that the process required to abolish the post held by Mr. Heurtematte had not been followed. The UNDT ignored evidence relevant to the non-renewal decision due to the restructuring and the closure of the Regional Office. The UNDT focused solely on the procedure and financial/budgetary

records relating to the abolition of the post, which was a separate decision from the non-renewal decision. The UNDT found erroneously that the evidence did not prove that the Regional Office had indeed reorganised and closed its physical location making Mr. Heurtematte's services operationally unnecessary. It erred further in fact by speculating that the Regional Office intended to hire a new driver in Mr. Heurtematte's place. The UNDT's decision of this issue was pure conjecture and was not based on any evidence in the case file. To the date of those submissions, the Regional Office did not have a dedicated physical location for its personnel to regularly attend, no driver had been hired in Mr. Heurtematte's place and no plan to hire a new driver existed.

26. The Secretary-General says that while UN Women was not able to submit sufficient evidence to satisfy the UNDT that the post held by Mr. Heurtematte had been abolished, ample evidence was submitted to demonstrate that the Regional Office had been reorganised and its physical location in Panama where he had been the driver had closed. The UNDT erred in law by focusing solely on the abolition and by ignoring this overwhelming evidence submitted by UN Women, which proves that the physical location of the Regional Office had indeed closed, that the Regional Office had undergone a reorganisation, and that the function of the driver having been eliminated, Mr. Heurtematte's services were, therefore and ultimately, no longer needed. This evidence provided sufficient support for the decision not to renew Mr. Heurtematte's fixed-term appointment.

27. Finally, the Secretary-General submits that in light of the evidence, the UNDT's conclusion that Mr. Heurtematte's fixed-term appointment should have been renewed despite clear absence of any operational need for his services, is erroneous. The UNDT considered that a decision not to renew a fixed-term appointment of a staff member could only be lawful if the post encumbered by that staff member was abolished. The abolition of a post, however, is not a pre-requisite for a lawful non-renewal of an appointment. In the instant case, the Organization provided three reasons for the contested decision. Two of these reasons, the reorganisation of the Regional Office and the closure of its physical location, were properly supported by evidence. Consequently, the UNDT erred in finding that the non-renewal of Mr. Heurtematte's fixed-term appointment was unlawful.

28. The Secretary-General therefore asks that the UNAT reverse the Judgment on Liability.

UNDT Judgment on Remedies

29. The Secretary-General reiterates that because the conclusion of the UNDT's Judgment on Liability was erroneous, the UNDT was also in error to award Mr. Heurtematte compensation

instead of rescission of this decision and, effectively order his reinstatement. The UNAT should also reverse the Judgment on Remedies.

Mr. Heurtematte 's Answer

UNDT Judgment on Liability

30. Mr. Heurtematte contends that the facts reveal that the abolition of his post was not motivated by the reasons proffered by the Secretary-General, but by “harassment and abuses” that he had been subjected to since the arrival of the Regional Director. The reasons given in the 30 June 2021 letter for the non-renewal of his appointment are diametrically opposed to those that were alleged during the appeal process. The contested decision did not entail any consultation process. The Organization failed to act fairly and transparently in its dealing with the staff member.

31. Mr. Heurtematte submits that the Organization failed to demonstrate that his post had indeed been abolished. While the Secretary-General submits that the Organization had given three reasons for the contested decision, and the abolition of a post is not a requirement that must be met before the non-renewal of an appointment, a review of the 30 June 2021 letter reveals that the reasons given at the time were the lack of physical space because staff were telecommuting due to COVID-19

UNDT Judgment on Remedies

34. Mr. Heurtematte did not file an answer to the Secretary-General's appeal of the Judgment on Remedies.

Mr. Heurtematte's Appeal of Judgments on Liability and Remedies

35. Mr. Heurtematte submits that the UNDT erred in fact and law by not recognizing the link between the contested decision and the harm caused by it. The UNDT erred in finding that the illnesses, which he claims were caused by the decision not to renew his appointment, probably stemmed from medical conditions that existed before the non-renewal of his appointment. Mr. Heurtematte argues that the UNDT erred by giving too much weight to the 22 December 2022 medical document that states that he had a "history of arterial hypertension and coronary artery disease". That document refers, as medical history, only to events of the previous year as another document from 2019 states that his coronary condition was satisfactory.

36. Mr. Heurtematte further argues that the UNDT should have given greater weight to the report by his cardiologist who wrote, in October 2022, that he was anxious about his economic situation and, consequently, suffered from a moderate depressive episode.

37. Mr. Heurtematte wishes to include with his appeal a document, issued by his physician, which he contends clarifies that his coronary conditions were diagnosed in January 2022.

38. Finally, he contends that the UNDT erred by finding that he was not forced to take early retirement on grounds that his household relied on his income and because at the age of 55, it was almost impossible for him to find a new job and he had no real alternative to doing so.

39. Mr. Heurtematte asks that he be granted the relief he requested before the UNDT.

The Secretary-General's Answer to Mr. Heurtematte's Appeal

40. The Secretary-General submits that the UNDT did not err in finding that Mr. Heurtematte's medical condition was probably not caused by the non-renewal of his appointment. While his medical condition is well-recorded, the documentation does not show a connection between his poor health and the decision not to renew his appointment. The documentation before the UNDT and Mr. Heurtematte's own attestations demonstrate that he suffered from a severe case of COVID-19 related illness that harshly affected both his physical

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The Secretary-General's appeal against the Judgment on Liability

44. We begin by summarising generally the nature of the UNDT's conclusions on liability. First, it held that an abolition of the post of driver may have justified that post's removal and, thereby, the cessation of its incumbent's employment. That was because there w.1 (mo)-ac(t a)7 (n)7 5u.1 71.

this question that the UNDT found this ground of challenge so unsupported that it was unworthy of comment in its Judgment. We therefore put it aside in our consideration of whether the UNDT erred in fact or law in its decision that Mr. Heurtematte was unfairly, unjustly or opaquely treated by the Regional Director whose decision it was to abolish his post and not to renew his employment.¹⁸

50. Likewise, Mr. Heurtematte now relies on another ground to support the UNDT's Judgment. That is there had been no consultation with him before the decision was made to abolish his post. However, that issue too was not mentioned at all by the UNDT in its Judgment and was not relied on in its decision favouring Mr. Heurtematte.

51. Mr. Heurtematte also contends that UN Women did not deal with him in a sufficiently sympathetic way after his continuing to attempt to perform his driving role, to the extent that it was still needed during the pandemic at which time his own health had suffered significantly. Mr. Heurtematte contends that UN Women gave insufficient consideration to his 13 prior years of what he describes as "impeccable service to previous [UN Women Regional Directors]".

52. We have considered the evidence of the Secretary-General's justification for the post abolition as it announced this to Mr. Heurtematte at the time. A year and a half's experience of operating during the COVID-19 pandemic both in practice and as an incentive to reorganise how the Regional Office operated meant that the continuation of functions no longer appropriate or needed was at serious risk. People and documents no longer needed to be moved physically around Panama City, or at least as extensively or frequently as they had been previously. The decisions to close the office premises, to use electronic communications, and to sell the vehicles previously used for these tasks were all logically explicable. It might be said that they were belatedly adopting business practices already well established elsewhere and in other fields.

53. In these circumstances it was always going to be difficult to conclude that these were not the real or supportable reasons for the abolition of the driver's post, let alone to establish ulterior and unlawful motives for doing so. We agree with the Secretary-General's submission that the UNDT was wrongly persuaded by its own speculative reasoning that the stated grounds

¹⁸ These are the antitheses of the words which the UNDT said should have been established in evidence, i.e. "fairly, justly and transparently".

for the post's abolition were not genuine. It gave inadequate weight to the evidence supporting the reasoning set out in its letter to Mr. Heurtematte dated 30 June 2021.

54. A restructuring of an organisation's activities, which may result in the abolition of posts and thereby of a staff member's employment, must be genuine and not a charade or device disguising other motivations to achieve a concealed real purpose. One indication of the absence of such genuineness is if the organisation subsequently retains the post or the activities performed under it, especially if someone else is appointed or transferred to perform those duties of the previously redundant incumbent of it. With one arguable exception, there is no sound evidence of this having occurred despite the UNDT's supposition that it might occur in the future.

55. It appears that the post of driver with UN Women was not formally abolished despite the Secretary-General's advice that it would be. That may be, on its face, neither compliance with the Organization's requirements nor the sort of good faith conduct that it is expected to exhibit towards its staff.

the possibility of hiring another driver in the future was erroneous. It could not and should not have supported a conclusion that at the time of the contested administrative decision to abolish Mr. Heurtematte's post, this was not a genuine and properly supportable decision.

59. The case law establishes that even in such circumstances the Administration has a duty to act with moderation, lawfully, rationally, procedurally correctly, proportionately, fairly, justly and transparently. The Organization does not have a completelyemn-.01 Tc 0.0.8 (g)-5.911.2 (8 (t)4.1

non-renewal decisions were lawful, means that there can be no question of any remedies for Mr. Heurtematte. We will therefore grant the Secretary-General's appeal of the Judgment on Remedies and dismiss Mr. Heurtematte's appeal of the Judgment in Remedies.

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Judgment

70. The Secretary-General's appeals are granted, and Mr. Heurtematte's appeal against the Judgment on Remedies is dismissed. Judgment Nos. UNDT/2022/131 and UNDT/2023/045 are hereby reversed. The matter of the formal abolition of the post formerly held by Mr. Heurtematte is referred under Article 9(5) of the Statute of the Appeals Tribunal to the Executive Director of UN Women for possible action to enforce accountability in relation to this apparent failure.

Original and Authoritative Version: English

Decision dated this 22nd day of March 2024 in New York, United States.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Gao

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 2nd day of May 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar