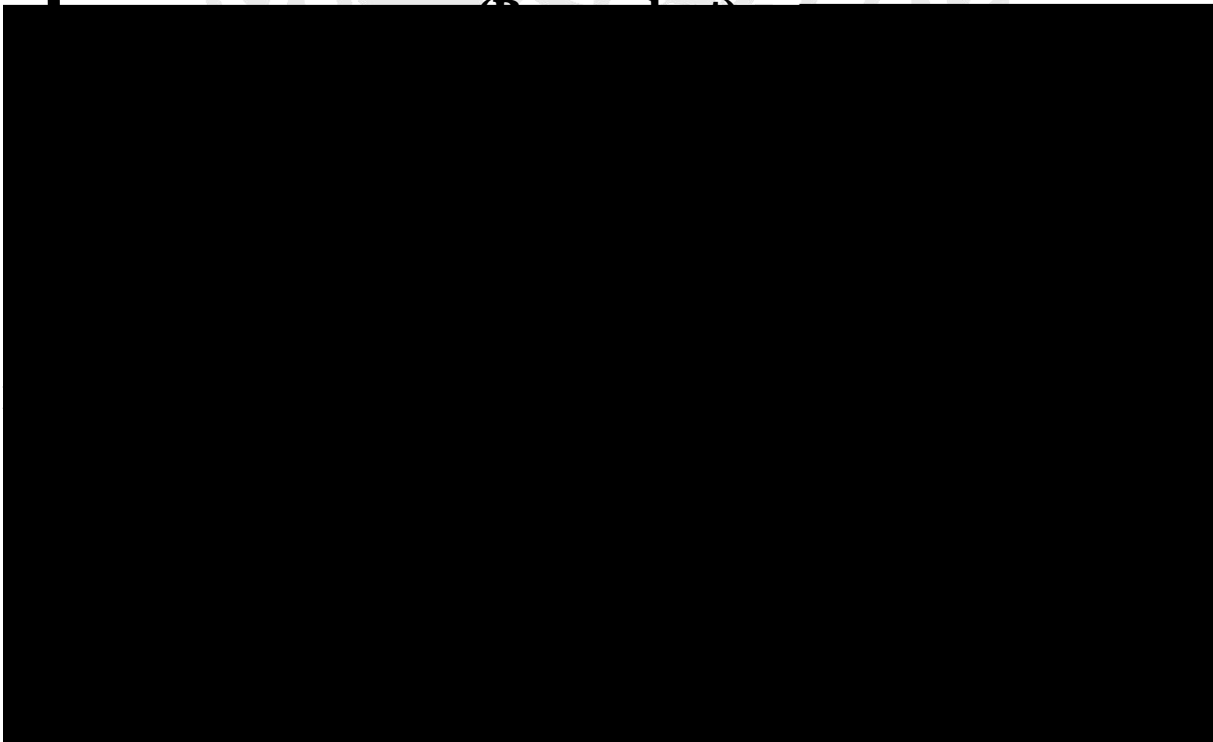




UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2010-155

Ahmed
(Appellant)



THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2011-UNAT-153

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to the Administration's attention his allegations of financial fraud and misconduct. It concluded that Ahmed's allegations were properly investigated and were found to be lacking in substance. Accordingly, the UNDT dismissed Ahmed's application in its entirety.

15. Ahmed appeals the UNDT Judgment.

Submissions

Ahmed's Appeal

16. Ahmed asserts that the UNDT failed to properly consider his allegations and

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Considerations

Preliminary Issue

29. Ahmed requests the production of the OIOS reports and leave to present evidence on the credibility of his supervisors whose prejudice and ill intentions, he maintains, influenced his PAS ratings and the decision not to renew his appointment.

30. We note that, under Article 8(1) of its Statute, the Appeals Tribunal may “order production of documents or such other evidence as it deems necessary, subject to Article 2 of the present statute”.

31. Article 2(5) of the Statute of the Appeals Tribunal provides that in exceptional circumstances, this Tribunal “may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings”.

32. As in *Calvani* and *Bertucci* we reiterate that this Tribunal has discretionary authority in the conduct of the proceedings and the production of documents and evidence in the interest of justice for the purpose of achieving a fair and expeditious disposal of a case.¹

33. We do not have sufficient reason to consider it pertinent to order the production of documents and call additional evidence. The request is therefore rejected.

Substantive Issues

Scope of Jurisdiction

34. Ahmed submits that the UNDT failed to consider the Administration’s decision not to investigate his conduct following the comments made in his PAS. He claims that his complaints and the un-investigated allegations concerning his conduct and behavior formed the basis of his negative PAS and the decision not to renew his fixed-term appointment.

¹ *Calvani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-032; *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-121.

35. Ahmed accordingly submits that the UNDT erred in finding that the scope of his UNDT application was limited to the non-renewal of his fixed-term appointment.

36. We find no merit in Ahmed's submission. Ahmed's poor performance cannot be considered as misconduct to warrant the institution of disciplinary proceedings, though it may be the basis for the non-renewal of his fixed-term appointment. However, it should be noted that refusal or failure to carry out one's duty may in certain circumstances amount to misconduct.²

37. Under Article 8(1)(c) of the UNDT Statute, the jurisdiction of the UNDT can only be invoked if a contested administrative decision has been previously submitted for management evaluation.

38. The remedy sought by Ahmed before the UNDT was a rescission of the decision not to renew his fixed-term appointment for poor performance. Accordingly, the UNDT did not err in limiting the scope of his application to the non-renewal of his fixed-term appointment.

Contested Administrative Decision

39. Ahmed requests that this Tribunal rescind the decision of the Secretary-General not to renew his fixed-term appointment.

40. Former Staff Rule 104.12(b)(ii) provides that "[t]he fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment". Former Staff Rule 109.7(a) reads that "[a] temporary appointment for a fixed term shall expire automatically and without prior notice on the expiration date specified in the letter of appointment".

41. Administrative instruction ST/AI/2002/3 entitled "Performance Appraisal System" provides, in Section 10.5, that "[a] rating of 'does not meet performance expectations' may lead to a number of administrative actions, such as transfer to a

² Cf. *Abu Hamda v. Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-022.

different post or function, the withholding of a within-grade increment..., the non-renewal of a fixed-term contract or termination for unsatisfactory service”.

42. Under the above rules Ahmed, who was on a fixed-term appointment, did not have an expectancy of renewal of his appointment. Furthermore the rating of “does not meet performance expectations” was a valid reason for the non-renewal of his fixed-term appointment.

43. Ahmed requests the Appeals Tribunal to rescind the decision of the Secretary-General to “terminate” his appointment and to re-instate him to his former position with, among other reliefs, all benefits. The Secretary-General submits that Ahmed has not established any errors warranting the reversal of the UNDT Judgment.

44. In *Sanwidi*, this Tribunal held that

[a]dministrative tribunals worldwide keep evolving legal principles to help them control abuse of discretionary powers. There can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reasons interfere with the exercise of administrative discretion.³

45. It is recognized that, if based on valid reasons and in compliance with procedural requirements, fixed-term appointments may not be renewed. Accordingly, an administrative decision not to renew a fixed-term appointment can be challenged as there is a duty and requirement on the Organization to act fairly, justly, and transparently in its dealings with the staff members.

46. In that respect, if the Administration gives a staff member a legitimate expectancy of renewal of his or her fixed-term appointment, then that may be a good reason for the Tribunal to interfere with the non-renewal decision on the grounds of unfairness and unjust dealing with the staff member. Similarly where a decision of non-renewal does not follow the fair procedure or is based on improper grounds, the Tribunal may intervene.

³ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084.

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