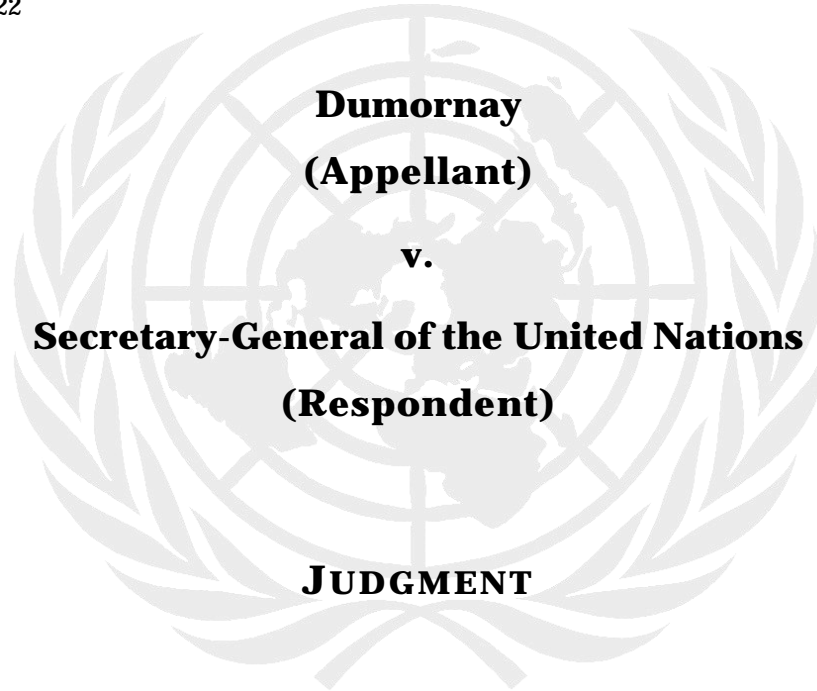




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-122



**Dumornay
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Jean Courtial Judge Mark P. Painter
Judgment No.:	2010-UNAT-097
Date:	29 October 2010
Registrar:	Weicheng Lin

Counsel for Appellant: Joseph Grinblat

Counsel for Respondent: Cristián Gimenez Corte

JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. Marie-Ange Dumornay (Dumornay) contested the administrative decision to abolish her post on the grounds that she held a permanent post and was only temporarily occupying the subject post, and that the decision discriminated against her and violated her rights. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found that she occupied the abolished post, the abolition of her post and the creation of a new post was part of a genuine reorganization of the office, and reasonable measures were taken to find her another post. This Court affirms the UNDT's Judgment and dismisses the appeal.

Facts and Procedure

2. Dumornay joined the United Nations Children's Fund (UNICEF) in 1986 as a Bilingual Secretary at the G-3 level on a short-term appointment. In 1989, her appointment at the G-4 level was converted to a permanent appointment. In 1990, Dumornay was promoted to Principal Secretary at the G-5 level. In 1997, pursuant to an agreement between Dumornay, the Director, and a Human Resources Officer, Dumornay changed reporting lines to report to the Deputy Director.

3. In August 2007, Dumornay was informed that her post was to be abolished. In November 2007, Dumornay responded that the post to be abolished was one she encumbered temporarily and requested assistance in returning to her permanent post reporting to the Director. By letter dated 10 December 2007, Dumornay was informed of the separation procedures and her entitlements upon the abolition of her post on 29 February 2008.

4. On 11 January 2008, Dumornay filed a request for administrative review by the Secretary-General and a request for suspension of action of the decision to terminate her permanent appointment before the Joint Appeals Board (JAB). Her request for administrative review was rejected. The JAB recommended suspension of the decision to terminate her appointment for a period of six months. By letter dated 29 February 2008, the Secretary-General extended her appointment for three months to allow the Administration to continue its efforts to find Dumornay a suitable post. Following the abolition of the post

on 29 February 2008, Dumornay continued to work for UNICEF on a three-month appointment from 1 March to 31 May 2008.

5. On 20 March 2008, Dumornay submitted an appeal before the JAB contesting the decision to terminate her permanent appointment. The case was transferred to the UNDT following the introduction of the new system of internal justice from 1 July 2009.

6. The Dispute Tribunal issued Judgment No. UNDT/2010/004 on 13 January 2010, which dismissed Dumornay's application. The Dispute Tribunal found that the 1997 arrangement for Dumornay to take up the position as Secretary to the Deputy Director was permanent and she was the occupant of the abolished post. Following an organizational review in 2007, the G-5 post of Principal Secretary encumbered by Dumornay was abolished together with another G-5 post, and a new Administrative Assistant post at the G-5 level was created in the newly created Strategic Unit of the office. The Dispute Tribunal found that the new post was sufficiently different from the abolished post and the organizational changes were genuine readjustments and not influenced by any improper considerations. Further, the Secretary-General met his obligations to Dumornay as a permanent staff member under former Staff Rule 109.1(c)(i) and Administrative Instruction CF/AI/2007-007 entitled "Staff on Abolished Posts", and made reasonable efforts to find her another position.

7. Dumornay filed an appeal against the Judgment on 23 February 2010. After receiving the appeal on 24 August 2010, the Secretary-General filed an answer to the appeal on 8 October 2010. On 15 October 2010, Dumornay filed a document entitled "Applicant's submission in comments to Respondent's answer of 8 October 2010".

Submissions

Dumornay's Appeal

8. Dumornay submits that the Dispute Tribunal erred in fact in finding that her abolished post of Principal Secretary and the new Administrative Assistant post were different posts. Dumornay contends that the functions of the posts were very similar. The seven major duties of the new post were included in the job description for her post and the two posts had nearly identical functions. The posts differed only with respect to the relative amount of time to be spent on each function and the description of the required qualifications.

9. Dumornay contends that the abolition of her post and the creation of a new post with nearly identical functions was a subterfuge for removing her and replacing her with a younger staff member who was considered to have more up-to-date qualifications.

10. Dumornay seeks to introduce new evidence before the Appeals Tribunal in the form of an affidavit, dated 17 February 2010, from Alice Hecht, who is a former Director of Protocol of the United Nations. The new evidence concerns the usual practice of the United Nations concerning the abolishment and movement of posts between substantive units.

11. Dumornay requests that the Appeals Tribunal find that the Dispute Tribunal erred in fact in concluding that the abolition of her post was bona fide. She seeks an award of compensation of at least two years' salary.

Secretary-General's Answer

12. The Secretary-General submits that the Dispute Tribunal correctly found that the abolition of Dumornay's post was bona fide. The jurisprudence of the former Administrative Tribunal recognized that the Secretary-General has a broad discretion concerning the organization of offices and abolition of posts, and the Administrative Tribunal could not substitute its judgment for that of the Administration concerning the reorganization of posts or staff in the interests of economy and efficiency. Further, Dumornay has not established that the exercise of the Secretary-General's discretion was tainted by extraneous factors.

13. The Secretary-General contends that Dumornay's appeal does not identify any errors in the Judgment but simply expresses her disagreement with the outcome and repeats her submissions before the Dispute Tribunal, which were rejected.

14. With regard to the contention of Dumornay that the Organization intended to replace her with a younger staff member, the Secretary-General observes that the job description for Dumornay's post as Principal Secretary was created in 1989, whereas the job description for the new post, finalized in 2007, required updated skills. It was reasonable to update a 20-year old job description for the new post and this evidence does not support Dumornay's contention.

15. The Secretary-General argues that the affidavit of Ms. Hecht does not state that she has knowledge of the facts of the case or expertise concerning the rules and practices of UNICEF. Further, Ms. Hecht's affidavit is dated more than one month after the Judgment was issued. Additional evidence may only be received by the Appeals Tribunal in exceptional circumstances under Article 2(5) of the Statute of the Appeals Tribunal (Statute). In this case, there are no exceptional circumstances as the evidence was known to Dumornay and should have been presented before the Dispute Tribunal.

16. The Secretary-General requests that the Appeals Tribunal make a number of findings and dismiss the appeal in its entirety.

Considerations

17. As a preliminary matter, this Court rejects Dumornay's request to present additional evidence in the form of the affidavit of Ms. Hecht. This Court may only receive additional evidence in exceptional circumstances under Article 2(5) of the Statute, and the request does not address this requirement. In this case, the evidence of Ms. Hecht should have been presented at first instance before the Dispute Tribunal. This Court also rejects the additional pleading filed by Dumornay on 15 October 2010 as she has not established that there are exceptional circumstances which justify the additional pleading.¹

18. On the merits of the case, this Court holds that Dumornay has not demonstrated that the UNDT made any errors in finding that the Administration met its obligations to Dumornay as a permanent staff member under the applicable Staff Rules and administrative issuances. Hence, there are no grounds to rescind the administrative decision to terminate her permanent appointment or award her any compensation.

19. Dumornay has failed to persuade this Court that there was any substantial error or flaw in the first instance Judgment. Dumornay repeats arguments already thoroughly considered and rejected by the UNDT. There are no new arguments and the appeal is an attempt to have a hearing *de novo* of the application, which is not the function of this Court.²

¹ See *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 27, and *Solanki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-046, paras. 12-13.

² See *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

20. The evidence supports the conclusion of the UNDT that the abolished post was the post that Dumornay occupied. It is difficult to accept Dumornay's assertion that she occupied her position merely on a temporary basis for a period of about ten years and was entitled to return to a post she left a decade earlier under an agreement between her and the Administration.

21. There is no evidence to support Dumornay's assertions that discrimination or any other improper purpose was the motivation behind the abolishment of her post and the creation of a new post as part of the reorganization of the office. Dumornay was given a three-month temporary appointment after her post was abolished and reasonable efforts were made by the Administration to try to find her a suitable post. This Court does not find any violation of the staff member's rights in this particular case.

22. In conclusion, Dumornay has not provided any persuasive arguments to justify the reversal of the Judgment under appeal.

Judgment

23. This Court affirms the UNDT Judgment and dismisses the appeal in its entirety.

Dated this 29th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Simón, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Painter

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar