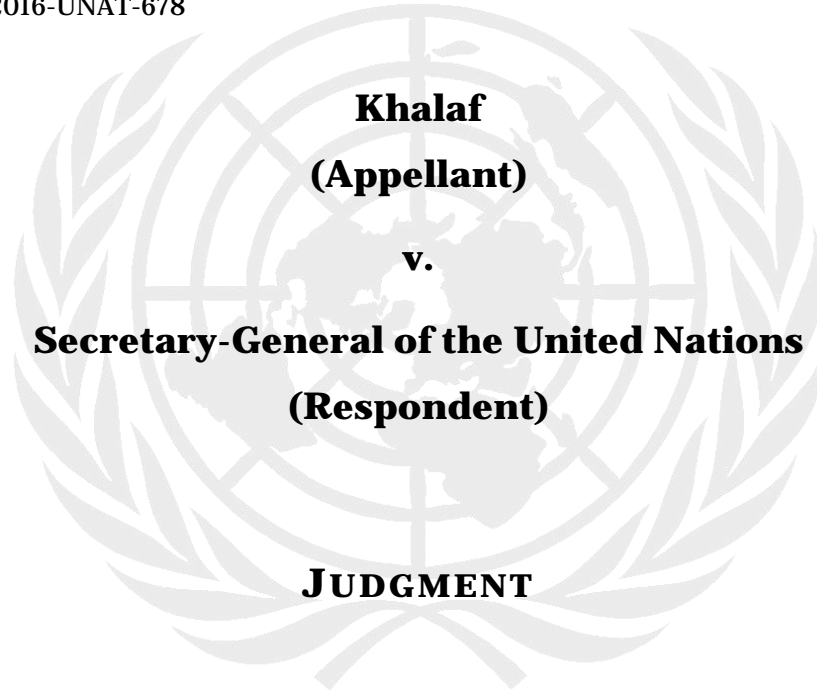




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-678



**Khalaf
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Deborah Thomas-Felix Judge Mary Faherty
Case No.:	2016-904
Date:	30 June 2016
Registrar:	Weicheng Lin

Counsel for Mr. Khalaf:	Self-represented
Counsel for Secretary-General:	Nathalie Defrasne

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Khamees Zedan Khalaf of Judgment No. UNDT/2015/123, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 31 December 2015, in the case of *Khalaf v. Secretary-General of the United Nations*. On 25 February 2016, Mr. Khalaf filed his appeal and, on 29 April 2016, the Secretary-General filed his answer.

Facts and Procedure

2. Mr. Khalaf challenges the non-renewal of his fixed-term appointment beyond 31 December 2013. Mr. Khalaf served as an Associate Political Affairs Officer (APAO) in the Office of Political Affairs (OPA), United Nations Assistance Mission for Iraq (UNAMI), based in Kirkuk. Mr. Khalaf was locally recruited in 2009 to the position, which was in the National Professional Officer (NPO) category of staff. Mr. Khalaf's position in Kirkuk was funded by a post that was "temporarily transferred" from Baghdad to Kirkuk. Mr. Khalaf maintains that he was not informed of this fact.

3. On 22 March 2012, the Department of Political Affairs (DPA) and the Department of Field Services (DFS) at Headquarters instructed UNAMI to "review the Mission's posture and activities in Iraq; rationalize staffing; and realign functions, while reducing the budget by 15 percent".¹ At this time, the political situation in Iraq had led to an increase in OPA's workload. Accordingly, the Mission proposed returning the posts that were "on loan" from Kirkuk to Baghdad or deployed in the field as part of the Baghdad office's governorate liaison network. These posts included three NPO posts on loan to Kirkuk, one of which was encumbered by Mr. Khalaf.

4. By e-mail dated 7 January 2013, the Director of OPA (Director) advised Mr. Khalaf and two other NPOs in the Kirkuk office as follows:²

Following the approval of the 2013 UNAMI budget, I am writing to advise you that from 1 January 2013 the post you encumber has been redeployed to Baghdad under the supervision of the Chief of Political Affairs. As such, steps are being taken to fill these positions locally in Baghdad.

¹ Impugned Judgment, para. 6.

² *Ibid.*, para. 9.

As the current incumbent of the post you are given priority to express your interest to be reappointed at your current level in Baghdad. Please note that any expenses against the movement/reappointment will be borne by you.

In the event that you are not interested in the reappointment in Baghdad, the posts will be advertised for Baghdad duty location on 1 February 2013 and suitable candidates willing to work in Baghdad will be selected.

Please let me know your decision by 6 of February if you are interested.

5. On 14 January 2013, Mr. Khalaf sent an e-mail to the Director, in which he sought clarification of certain issues before he responded to the Director's invitation to apply. He sent follow up e-mails on 21 and 22 January 2013. Mr. Khalaf also sent an e-mail to the Deputy Special Representative of the Secretary-General requesting his assistance.

6. On 28 January 2013, a Political Affairs Officer, on behalf of the Director, wrote to Mr. Khalaf explaining the decision. On 29 January 2013, Mr. Khalaf sent an e-mail to the Director in which he alleged that the e-mail he received from the Political Affairs Officer contradicted what the Director had told him during a phone call. Mr. Khalaf also questioned why his request for clarifications had not been responded to, as promised.

7. On 7 February 2013, Mr. Khalaf sent an e-mail to the Director requesting further clarifications. He noted that the deadline for him to express his interest in being reappointed in Baghdad had passed, without him receiving the clarifications he had requested.

8. On 8 May 2013, the Chief of Staff of UNAMI advised Mr. Khalaf that his appointment, which was due to expire on 30 June 2013, would be extended to 31 December 2013 on an exceptional basis.

9. At this time, UNAMI was attempting to secure more APAO posts in Kirkuk in the mission's budget for 2014. However, these efforts were not successful.

10. On 5 November 2013, the Head of Office, Kirkuk, UNAMI forwarded to Mr. Khalaf an e-mail dated 27 October 2013 he had received from the UNAMI Senior Political Affairs Officer advising that there would be no contract extension for Mr. Khalaf and the two other NPOs in Kirkuk beyond 31 December 2013.

11. On 12 November 2013, Mr. Khalaf requested management evaluation of the decision not to renew his fixed-term appointment beyond 31 December 2013.

12. On 14 November 2013, the Director of OPA advised Mr. Khalaf and the three other APAOs in Kirkuk that one APAO post would remain in Kirkuk and the other three posts would be “returned” to Baghdad in accordance with the mission’s budget, with effect from 1 January 2014. The Director invited the APAOs to participate in a written assessment in order to determine which APAO would remain in Kirkuk. Mr. Khalaf was invited to participate but did not take the test. In an e-mail dated 17 November 2013, Mr. Khalaf asked the Director for clarification regarding the test and expressed his concern about the restructuring process.

13. On 6 January 2014, the Under-Secretary-General for Management advised Mr. Khalaf that the Secretary-General had decided to uphold the decision not to renew his fixed-term appointment beyond 31 December 2013.

14. Mr. Khalaf’s appointment was extended until 31 January 2014 to enable him to complete the check-out process.

15. On 8 February 2014, UNAMI advertised three job openings for APAO positions at the NPO-A level in Baghdad. Mr. Khalaf did not apply for any of these positions.

16. Mr. Khalaf appealed to the UNDT. In its Judgment, the UNDT dismissed the application, having found that Mr. Khalaf had been adequately consulted prior to the contested decision being taken. Further, the UNDT held that Mr. Khalaf did not have a legitimate expectation that his fixed-term appointment would be renewed. Neither UNAMI’s 2014 budget proposal nor any views expressed by the Head of Office in Kirkuk could be interpreted as an express promise that his contract would be renewed. Finally, the UNDT found that the Administration’s decision was not ill-motivated or made in bad faith. Mr. Khalaf had not provided sufficient evidence to displace the presumption of regularity of the non-renewal decision.

17. Mr. Khalaf appealed the UNDT Judgment to the Appeals Tribunal.³

³ Mr. Khalaf’s appeal and the Secretary-General’s answer are almost identical to those filed before the Appeals Tribunal in Case No. 2016-903, which concerns Mr. Mohammed Hassan Chalabi, another APAO with UNAMI who contested the decision not to renew his fixed-term appointment beyond 31 December 2013. See *Chalabi v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-677.

Submissions

Mr. Khalaf's Appeal

18. Mr. Khalaf alleges that the UNDT made several errors of fact. He argues that the UNDT ignored many documented facts and failed to discuss certain issues. One alleged error of fact is the UNDT's finding that on 2 April 2013, Mr. Khalaf did not attend a meeting organized by the Head of Office in Kirkuk. Mr. Khalaf asserts that he did attend that meeting.

19. Mr. Khalaf claims that the UNDT erred when it found that he had been properly consulted about the contested decision. He states that the UNDT did not consider the fact that there was no consultation with him prior to the decision on 7 January 2013 to redeploy the post that he encumbered. Mr. Khalaf states that the matter was predetermined prior to this communication to him from UNAMI.

20. Mr. Khalaf contests the UNDT's conclusion that he did not have a legitimate expectation of renewal of his appointment in the context of UNAMI's 2014 budget proposal and other communications.

21. Finally, Mr. Khalaf challenges the UNDT's determination that the contested decision was not ill-motivated or taken in bad faith. In particular, he contests the finding that he was "on loan" from Baghdad to Kirkuk at any stage during his appointment with UNAMI, which was used as a reason for his non-renewal.

22. Mr. Khalaf requests that the Appeals Tribunal reverse the UNDT's Judgment and award the remedies he sought in his UNDT application, including: (a) rescission of UNAMI's decision not to renew his fixed-term contract; (b) his reinstatement to his original position or any other similar position with benefits, retroactive from 1 February 2014; and; (c) compensation for the breach of his rights, moral damage, and damage to his professional reputation.

The Secretary-General's Answer

23. The UNDT correctly concluded that Mr. Khalaf had been consulted during the restructuring of OPA. Mr. Khalaf received written notice of the impending decision to return his post to Baghdad. He was also advised of the exceptional extension of his appointment. He

engaged in extensive correspondence with the Administration about the relocation of his post in Baghdad and the potential non-renewal of his appointment.

24. Mr. Khalaf did not challenge the decision to restructure OPA or the decision to return his post to Baghdad, where it was originally located under UNAMI's budget. He challenged the decision not to renew his fixed-term appointment. A fixed-term appointment does not carry any expectancy of renewal. Separation can occur without prior notice on the expiration date specified in the letter of appointment. There is no obligation to consult a staff member regarding the non-renewal of his or her fixed term appointment.

25. UNAMI's efforts to maintain the APAO posts in Kirkuk in the draft budget for 2014 and the Head of Office in Kirkuk's support of the proposal to maintain the APAO posts in Kirkuk cannot be construed as an express promise to renew Mr. Khalaf's fixed-term appointment.

26. Mr. Khalaf's claim that UNAMI's decision not to renew his appointment was ill-motivated and was based on alleged events which pre-dated the contested decision by a considerable period of time. The alleged events have no nexus to the contested decision. In relation to whether Mr. Khalaf was "on loan" to Kirkuk, the documents show that while his "actual location" was Kirkuk, his "budget location" for the purposes of the budget templates from 2009-2013 was Baghdad. The UNDT correctly found that the post encumbered by Mr. Khalaf had been temporarily transferred from Baghdad to Kirkuk. In any case, Mr. Khalaf did not show any connection between this fact and any possible ill-motivation or bad faith on the part of the UNAMI Administration.

27. Mr. Khalaf's claims on appeal are a reiteration of his claims before the UNDT. He has failed to identify any excess or failure of jurisdiction, errors of law, material errors of fact, or errors of procedure on the part of the UNDT.

28. The Secretary-General requests that the Appeals Tribunal affirm the UNDT's Judgment and dismiss the appeal in its entirety.

Considerations

29. As a preliminary matter, Mr. Khalaf requests that the Appeals Tribunal hold an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). We find that the factual

and legal issues which arise from this appeal have been clearly defined by the parties and there is no need for further clarification. We do not find that an oral hearing would assist in the expeditious and fair disposal of the case, as required by Article 18(1) of the Rules. The request for an oral hearing is therefore denied.

30. The Appeals Tribunal holds that the requirements of Article 2(1) of its Statute are not fulfilled in Mr. Khalaf's case as the Dispute Tribunal did not commit an error of fact, resulting in a manifestly unreasonable decision. Nor was there any error of law or procedure, excess of jurisdiction or failure to exercise jurisdiction such as to vitiate the UNDT Judgment pursuant to Article 2(1).

31. As stated in our jurisprudence in *Igbinedion*:⁴

[T]he Appeals Tribunal refers to Staff Rules 4.12 and 4.13 which explicitly state that temporary and fixed-term appointments do not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service.

The Appeals Tribunal as well as the UNDT have consistently affirmed the validity of these Staff Rules and the principle that there is no expectancy of renewal of fixed-term and temporary contracts. That there is no such expectancy of renewal is always expressly stated on the face of every contract for a fixed-term or temporary duration. The position of the law is well settled[.]

32. Developing that rationale in *Kaliḥ* and *Munir*,⁵ it was established that the non-expectancy of renewal could be challenged if evidence was produced leading to the conclusion that an express and concrete decision, promise, or commitment of renewal was communicated to a staff member, consequently raising such an expectation.

33. In the present case, Mr. Khalaf has not satisfied his burden of proof by demonstrating that he was put in a position sufficient to make him genuinely believe that his appointment would be renewed. Mr. Khalaf has also failed to show that there was any kind of improper motivation behind the administrative decision to redeploy his post from Kirkuk to Baghdad and the non-extension of his appointment beyond 31 December 2013.

⁴ *Igbinedion v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-411, paras. 23 and 24.

⁵ *Kalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-580, para. 67.

⁶ *Munir v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-522, para. 24, citing *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153 and *Abdalla v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-138.

34. On the contrary, the evidence on record shows that the Administration was involved in a process of revision of activities in Iraq, rationalizing of staff, realignment of functions, and reduction of budget. These administrative activities led to the redeployment of the post encumbered by Mr. Khalaf from Kirkuk to Baghdad. UNAMI invited Mr. Khalaf and two other staff members in a similar situation to express their interest in being reappointed at the same level to positions in Baghdad from January 2013.

35. As a consequence of the Administration's restructuring process, only one APAO post like the one encumbered by Mr. Khalaf would remain in Kirkuk. Mr. Khalaf was invited to participate in a written assessment for the purposes of establishing which APAO would remain in Kirkuk.

36. As the Dispute Tribunal rightly concluded from the record, Mr. Khalaf never expressed his willingness to accept a similar appointment in Baghdad and he did not participate in the written assessment to remain in Kirkuk. Additionally, UNAMI advertised three job openings for APAO positions at the NPO-A level in Baghdad, but Mr. Khalaf did not apply to these positions.

37. This behavior shows that what the staff member really wanted was to maintain the *status quo* so as to continue with his fixed-term appointment in Kirkuk regardless of the Administration's needs and despite the restructuring process that took place.

38. As stated in *Matadi et al.*⁷

Both the Appeals Tribunal and the Administrative Tribunal of the International Labour Organization (ILOAT) have held that it is well settled jurisprudence that "an international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff".

This Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, even in a restructuring exercise, like any other administrative decision, the Administration has the duty to act fairly, justly and transparently in dealing with its staff members.

⁷ *Matadi et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-592, paras. 16 and 17 (internal citations omitted)

39. This Tribunal affirms the conclusions of the UNDT Judgment. There was no evidence that the 2014 budget proposal or communications with UNAMI management throughout 2012 and 2013 gave rise to a legitimate expectation of renewal in Mr. Khalaf's case. This Tribunal also shares the UNDT's view that the contested decision was not ill-motivated or taken in bad faith. We find no fault with the decision of the UNDT.

Judgment

40. The appeal is dismissed in its entirety and Judgment No. UNDT/2015/123 is affirmed.

Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Faherty

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar