



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

Judgment No. 2018-UNAT-848

**Oguntola
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Deborah Thomas-Felix, Presiding Judge Richard Lussick Judge Martha Halfeld
Case No.:	2017-1136
Date:	29 June 2018
Registrar:	Weicheng Lin

Counsel for Mr. Oguntola:	Self-represented
Counsel for Secretary-General:	Wambui Mwangi

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2017/079, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 28 September 2017, in the case of *Oguntola v. Secretary-General of the United Nations*. Mr. Johnson Akinbola Oguntola filed the appeal on 27 November 2017, and the Secretary-General filed an answer on 5 February 2018.

Facts and Procedure

2. The following facts are taken from the UNDT Judgment:¹

... The Applicant joined [the Economic Commission for Africa (ECA)] on 1 February 2005 and served at the L-5 level as Regional Advisor for Water Resources Management. He was initially appointed under the 200 series of the Staff Rules and was later transitioned to a fixed-term appointment in 2009.

... The Applicant's post and those of other Regional Advisors were funded under the Regional Programme of Technical Cooperation (RPTC) from the ECA's General Temporary Assistance (GTA) funds.

... In September 2012, a new [Executive Secretary (ES)], Mr. Carlos Lopes, was appointed to the ECA. Soon thereafter he announced his intention to restructure part of the ECA.

... On 12 December 2012, the ES/ECA held a town hall meeting with all staff and presented a timeline for implementing ECA's new organizational structure. The essential message of the presentation by the ES/ECA was that there would be "no post reduction but significant realignment to re-profiled functions". Part of the message of the presentation was that staff members would be retrained if necessary so that they could move into their new functions.

... By memorandum dated 14 December 2012, the Applicant was informed by the ES/ECA that the post which he encumbered would be abolished as of 1 April 2013 and that his appointment would not be extended beyond 31 March 2013. The Applicant was one of 13 regional advisors to face the abolition of their posts.

... ECA restructuring attracted several interventions by the Staff Union, culminating in a town hall meeting with then Secretary-General, Ban Ki-Moon. On 19 February 2013, the ECA staff union held a meeting with ECA management where it was noted that the RPTC regional advisors, including the Applicant, would

¹ Impugned Judgment, paras. 5-18 (footnotes omitted).

have to undergo competitive recruitment processes against published posts as per the Organization's policies.

... The Applicant requested [] management evaluation of the decision to abolish his post on 11 February 2013.

... The Applicant separated from ECA on 31 March 2013.

... On 30 June 2016, the United Nations Appeals Tribunal (...) issued its judgment in *Toure* 2016-UNAT-660 concerning a pleading arising from the same set of facts. The Applicant in *Toure* was also a regional advisor at ECA whose post had been abolished. In that case, the UNDT found that ES/ECA had acted *ultra vires* when he had abolished regional advisor posts, even though the RPTC budget for 2012-2013 biennium had provision for these posts until the end of this biennium, and without seeking prior approval from the Conference of African Ministers (COM), which is responsible for social and economic development, and the United Nations General Assembly. This UNDT conclusion was held to have been unsupported in fact and in law. Specifically, [the Appeals Tribunal] held in the relevant parts of their judgment:

[...]

25. The Appeals Tribunal has consistently affirmed the principle that there is no expectancy of renewal of fixed-term and temporary contracts.

[...]

32. First, the UNDT's question was based on an erroneous interpretation of a document in evidence, the 6 February 2012 memorandum regarding ECA's resources approved for the 2012-2013 biennium. That document, entitled "Allocation of approved resources for [RPTC] for 2012", only authorizes expenditures in connection with regional advisors "in the first year of the biennium" – not "for that biennium" in its entirety, as the UNDT incorrectly found and relied upon in framing its analysis.

33. Second, that the biennium budget provided funding for regional advisory services does not mean those funds will be fully used during the biennium. Unlike posts authorized in budgets approved by the General Assembly, which are specifically identified (by category and step), Regional Advisory services "are expressed in the form of work-months estimated to be needed ... during the biennium ... [which] are engaged on a temporary basis". Furthermore, there is no regulatory requirement that all amounts approved by the General Assembly must be fully expended within the budget biennium; to the contrary, regulations provide that approved funds are available and can be used "to the extent they are required" and that unused balances "will be surrendered".

34. Ms. Toure's RPTC-funded regional advisory position was fully-funded through 2012 and, in fact, was extended through 31 March 2013. Her "post" was abolished effective 1 April 2013 in connection with the restructuring proposed and begun during the last quarter of 2012. Although not necessary for our holding, we note that this restructuring was effectively approved by the COM in March 2013 and, ultimately, by the General Assembly by way of its approval of the RPTC 2014-2015 biennium, which reflected the restructuring and refocusing of priorities.

35. Finally, we find no abuse in the abolition of Ms. Toure's post nor any evidence that the decision was arbitrary or unfair. All 13 Regional Advisors' posts that were encumbered in December 2012 were abolished and the people that encumbered them, including Ms. Toure, were encouraged to apply for posts that would be published. [...]

36. As noted above, Ms. Toure served as a Regional Advisor, in a post funded through the RPTC programme. This programme is for temporary projects and needs, as set forth in the 2012 RPTC Inter-Regional Guidelines and Principles for Effective Delivery of Capacity Development Support (para. 1.4), the 2004 RPTC Report (on "Review of the regular programme of technical cooperation and the Development Account" A/59/397) and the proposed 2012/2013 RPTC Programme Budget (Section 23, para. 34). Ms. Toure did not hold a regular-budget established post but one of a temporary nature that could be discontinued without the need for the ECA Executive Secretary to seek prior approval.

[...]

39. The UNDT erred not only in finding that Regulation 6.2 applied in this case, but also when it decided that the ECA Executive Secretary lacked authority to abolish Ms. Toure's post since only changes requiring additional resources required approval by the General Assembly.

... On 17 October 2016, the [Dispute] Tribunal issued Order No. 455 (NBI/2016) requiring the parties to express their positions in light of [the Appeals Tribunal's] findings in *Toure* by 26 October 2016.

... A case management discussion took place on 3 November 2016. The Applicant's assertion was that the post he encumbered was either redeployed or reclassified, whereby the case was to be distinguished from *Toure*.

... On 7 November 2016, the [Dispute] Tribunal issued Order No. 478 (NBI/2016) in which it was decided that the documents relied upon by UNDT and [the Appeals Tribunal] in the case of *Toure* and contained in the case file were admitted as evidence in the current case. Pursuant to the same Order the Respondent was directed to file written submissions regarding the Applicant's assertions that the post he

encumbered was either redeployed or reclassified. Moreover, the Respondent was directed to produce RPTC Programme Budget of the ECA for the biennium 2012-2013.

... Having been served with the Respondent's submissions on 22 November 2016, the Applicant filed a motion for an extension of time of one week to respond. This motion for an extension was granted through Order No. 492 (NBI/2016) with the Applicant being granted one week period to present his submissions which he did on 2 December 2016. In these submissions, the Applicant presented his observations and submissions; among others, he claimed that new evidence had come to light which would prove that a reclassification of his post had taken place.

... On 12 September 2017, the [Dispute] Tribunal issued Order No. 147 (NBI/2017) requiring the Applicant to file his submissions detailing the said new facts which he did on 18 September 2017. Specifically, the Applicant found an email dated 13 June 2013 from the President, ECA Staff Union, indicating that a P-5 post created at ECA was being classified in June 2013. The Respondent filed observations on the Applicant's submission on 19 September 2017 arguing that the 13 June 2013 email should not be admitted as it "bears no relevance for the purported purpose it is offered", that it is "the author's personal interpretation of a Human Resources process and is nothing more than hearsay". The [Dispute] Tribunal, however, decided to admit the email in evidence for the sake of completeness of the Applicant's case.

3. The UNDT issued its Judgment on 28 September 2017 dismissing the application in its entirety. It considered that, given the identical temporary nature of the positions held by the applicant in the case of *Toure*² and Mr. Oguntola and the identical circumstances of their abolition, the Appeals Tribunal Judgment was binding on the UNDT in that Mr. Oguntola had no legitimate expectancy of extension of his appointment and that under the applicable budgetary rules, the abolition of the Regional Advisor posts did not require prior approval by the COM or the General Assembly and constituted a lawful exercise of managerial discretion. The UNDT dismissed Mr. Oguntola's assertion that his RPTC position had been established by the General Assembly finding that it was a GTA-funded position for temporary projects which limited the General Assembly's role to endorsing the estimated quantum of work-months for regional advisory services rather than authorizing specifically identified posts. The UNDT further rejected Mr. Oguntola's contention that the present case was distinguishable from *Toure* as ECA subsequently created a position of similar functionality which rendered the abolition of his post unlawful. This constituted neither an illegal redeployment of post nor a *de facto* classification violating or bypassing the applicable procedural provisions. In particular, the Appeals Tribunal

² *Toure v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-660.

in *Toure* endorsed the abolition (rather than reclassification) of all 13 Regional Advisor posts and the restructuring of RPTC as legitimate exercise of managerial discretion.

4. Moreover, the UNDT considered that to the extent that Mr. Oguntola's argument could be construed as alleging abuse of discretion in the abolition of his post, he had failed to substantiate his claim. Just as in *Toure*, the UNDT found no abuse, arbitrariness or unfairness in the abolition of his post considering that all 13 Regional Advisors' posts had been abolished which indicated genuine pursuit of reform rather than targeting individuals. As regards the creation of a post with some replicated responsibilities, the UNDT did not find it *prima facie* unreasonable as the funding modality through GTA was inherently inappropriate for a post of longer duration and the new posts were open for all former Regional Advisors to apply and compete for, an opportunity of which Mr. Oguntola had availed himself.

Submissions

Mr. Oguntola's Appeal

5. Mr. Oguntola submits that the restructuring exercise conducted at ECA was tainted. The UNDT Judgment contained factual errors, namely the omission of the fact that two former Regional Advisors had been laterally moved, without any advertisement or competitive selection process, to the African Climate Policy Centre (ACPC), one of the newly created sections which was funded by bilateral donors and thus constituted an extra-budgetary resource.

6. The UNDT erred in finding that Mr. Oguntola had failed to substantiate unfairness and bias by the ES/ECA. The lateral transfer to ACPC of two other Regional Advisors who had not previously taken part in activities geared towards establishing ACPC and the exclusion of Mr. Oguntola from resources of ACPC, for which he had previously served as desk officer, were unfair. While it was true that all 13 Regional Advisor posts had been abolished, all Regional Advisors based at ECA Headquarters have been found alternative posts at ECA unlike two Regional Advisors including Mr. Oguntola working at the sub-regional offices. Notwithstanding several vacancies at his grade level, ECA refused to laterally transfer him. With respect to the written examination he supposedly had failed, Mr. Oguntola maintains that there was a "mix-up" with another candidate.

7. Further, the UNDT erred in finding that no evidence indicated that the restructuring of ECA would have involved entire abandonment of functions whereas in fact the abolition of his post caused major programme disruption.

8. On that basis, Mr. Oguntola requests that the Appeals Tribunal grant the appeal and vacate the impugned Judgment. In addition, he requests: (i) compensation equivalent to his net base salary from April 2013 to-December 2013; (ii) moral damages equivalent to one month's net base salary for the breaches of his staff rights and emotional distress; and (iii) moral damages equivalent to one month's net base salary for the Administration's failure to follow applicable guidelines, rules and procedures in abolishing his post.

The Secretary-General's Answer

9. The Secretary-General submits that the UNDT correctly relied on the Appeals Tribunal Judgment in *Toure* when it upheld the decision to abolish Mr. Oguntola's post and found that the latter had failed to show how this case was distinguishable. The UNDT was correct in finding that no organizational procedures had been violated, that none of the instruments invoked obligated ECA to redeploy funding or reclassify the existing Regional Advisor positions in priority over the creation of new posts and that no illegal *de facto* reclassification of Mr. Oguntola's post had occurred. Moreover, the UNDT correctly found no abuse, arbitrariness or unfairness in the abolition of his GTA-funded post and the creation of a new post even with similar functionalities.

10. Mr. Oguntola has not established any error warranting a reversal of the Judgment. The examples of lateral transfers of other Resident Advisors proffered as evidence of unfair treatment were in fact considered and ultimately rejected by the UNDT, albeit not explicitly, and the appeal is an attempt to merely repeat and rephrase arguments that did not succeed in the lower court. Mr. Oguntola's narrative of the facts is inaccurate in that he omits that the new positions were advertised and his candidacy was fully and fairly considered. He has not demonstrated how the UNDT erred in its consideration of his claims of arbitrary or unfair treatment. Applying the relevant standard of judicial review, the UNDT correctly found that the contested decision was procedurally proper and it was neither absurd nor perverse for the ES to make the operational decisions which led to the restructuring exercise.

11. Finally, Mr. Oguntola has not proffered any valid arguments in support of his request for compensation. The UNDT correctly concluded that in the absence of an unlawful decision, no damages were warranted. Moreover, Mr. Oguntola has failed to adduce any evidence to support any claim for moral harm and an award of damages for “the failure of the Administration to follow its own guidelines, rules and procedures” would be punitive rather than compensatory.

12. In light of the aforesaid, the Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety and affirm the impugned Judgment.

Considerations

13. As a preliminary matter, Mr. Oguntola made an application for an oral hearing before the Appeals Tribunal. 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). The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. In addition, 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. In these circumstances, the request for an oral hearing is denied.

14. In his appeal of the impugned UNDT Judgment, Mr. Oguntola asserts, *inter alia*, that:

a. The Judgment contained factual errors, such as the omission of the fact that two other former Regional Advisors had been laterally moved to the ACPC;

b. The facts in the present case are distinguishable from those in *Toure* as, unlike in the latter case, posts with similar functions had been created shortly after the abolition of post which suggested an illegal redeployment, and the UNDT, therefore erred in relying on the Appeals Tribunal’s findings in *Toure*; and

c. The UNDT erred in finding that Mr. Oguntola had failed to substantiate unfairness and bias by the ES/ECA in his case.

15. Mr. Oguntola also claims compensation for material and moral harm.

16. Mr. Oguntola's assertion that the UNDT's Judgment contained factual errors, namely the omission of the fact that two former Regional Advisors had been laterally moved to the ACPC, has no bearing on the decision in this appeal because these lateral transfers were proffered as evidence of alleged unfair treatment which the UNDT did not find established.

17. The applicant in the case of *Toure*³ and Mr. Oguntola were both among the 13 Regional Advisors who experienced identical circumstances of the abolition of their GTA-funded positions. In *Toure*, the Appeals Tribunal discussed the issues of budgetary constraint and the exercise of managerial discretion as they relate to the issues surrounding the abolished post of Regional Advisor and stated *inter alia*:⁴

... Ms. Toure's RPTC-funded regional advisory position was fully-funded through 2012 and in fact, was extended through 31 March 2013. Her "post" was abolished effective 1 April 2013 in connection with restructuring proposed and begun during the first quarter of 2012. Although not necessary for our holding, we note that this restructuring was effectively approved by the COM in March 2013 and, ultimately, by the General Assembly by way of its approval of the RPTC 2014-2015 biennium, which reflected the restructuring and refocusing of priorities.

... Finally, we find no abuse in abolition of Ms. Toure's post nor any evidence that the decision was arbitrary or unfair. All 13 Regional Advisors' posts that were encumbered in December 2012 were abolished and the people that encumbered them, including Ms. Toure were encouraged to apply for posts that would be published. The record shows that some of them applied and secured other positions within the Organisation. It is not clear from the record before us, nor will it change the outcome of the case, whether Ms. Toure presented her candidacy to any published position.

18. The Appeals Tribunal agrees with the findings of the UNDT which is that due to the identical temporary nature of the positions held by the applicant in the case of *Toure* and Mr. Oguntola, and the identical circumstances of their abolition, the decision of the Appeals Tribunal in *Toure* is binding on the UNDT. We therefore find that the UNDT is correct to be guided by, and to rely upon, the *Toure* decision in the instant case.

19. Mr. Oguntola, in his appeal, has not established that the UNDT erred in law or on the facts or that it exceeded its jurisdiction when it rendered its Judgment. We wish to underscore that Article 2(1) of the Statute provides as follows:

³ *Ibid.*

⁴ *Ibid.*, para. 34-35.

The Appeals Tribunal shall be competent to hear and pass judgment on an appeal filed against a judgment rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

20. As has been repeatedly stated by the Appeals Tribunal, “[i]n the absence of a compelling argument that the UNDT erred on a question of law, or on a question of fact resulting in a manifestly unreasonable decision, we will not lightly interfere with the findings of the Dispute Tribunal”.⁵

21. In accordance with the provisions of the Statute, Mr. Oguntola must proffer arguments on appeal to support his contentions that the UNDT erred on a question of law and/or on a question of fact resulting in a manifestly unreasonable decision. This has not been demonstrated by Mr. Oguntola on appeal.

22. Moreover, we find no merit in any of the grounds of Mr. Oguntola’s substantive appeal or in his claims for compensation as we find no fault with the Judgment of the UNDT. As a consequence, the appeal is dismissed in its entirety.

⁵ *Goodwin v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-346, para. 23.

Judgment

23. The appeal is dismissed and Judgment No. UNDT/2017/079 is hereby affirmed.

Original and Authoritative Version: English

Dated this 29th day of June 2018 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Lussick

(Signed)

Judge Halfeld

Entered in the Register on this 10th day of August 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar