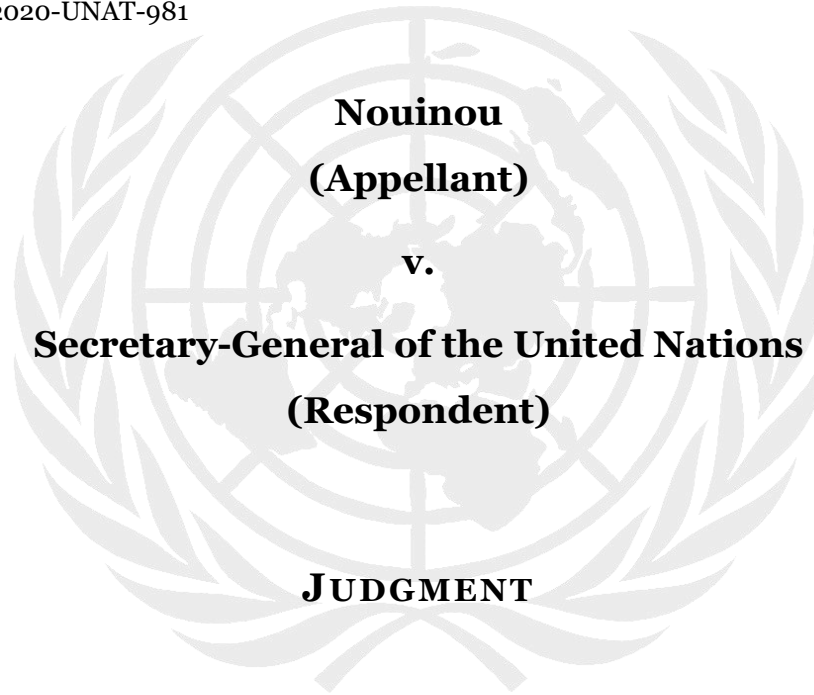




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2020-UNAT-981



**Nouinou
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Jean-François Neven, Presiding Judge Sabine Knierim Judge Martha Halfeld
Case No.:	2019-1279
Date:	27 March 2020
Registrar:	Weicheng Lin

Counsel for Ms. Nouinou:	Self-represented
Counsel for Secretary-General:	Maryam Kamali

JUDGE JEAN-FRANÇOIS NEVEN, PRESIDING.

1. Ms. Fátimazöhra Nouinou contested the non-renewal of her six months' temporary appointment. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) rejected her application. For reasons set out below, we affirm.

Facts and Procedure

2. On 16 January 2018, the Office of Counter-Terrorism (OCT) at the Headquarters circulated a temporary job opening (TJO) for the position of Programme Management Assistant at the G-5 level. The TJO specified that the position was available for six months.

3. Ms. Nouinou applied, and was selected, for the TJO. In a letter dated 18 April 2018, the Office of Human Resources Management (OHRM) offered Ms. Nouinou “a Temporary Appointment effective as soon as possible for 6 month(s) at Step VI of the G5 level as a Programme Management Assistant in the Office of Counter-Terrorism, New York. This appointment is limited to the duration indicated ... Your appointment will take effect from the day you report for duty.”

4. According to Ms. Nouinou, she was notified of her selection for the TJO on 16 February 2018 and was asked to start working on 1 March 2018, but she was not able to start until 24 April 2018 due to delay caused by work permit issues.

5. On 28 September 2018, OCT circulated a job opening (JO) for the position of Programme Management Assistant at the G-5 level. The JO was posted online for a month from 28 September 2018 through 27 October 2018. It specified that the advertised post was “for a finite period of one year” subject to the possibility of extension. Ms. Nouinou did not apply for the JO.

6. A week later, on 4 October 2018, the Chief of Office, OCT, announced that the Under-Secretary-General had selected a candidate from the roster of pre-approved candidates of Programme Management Assistants at the G-5 level to fill the JO. On 5 October, Ms. Nouinou was informed that her temporary appointment would not be extended beyond its expiry date of 23 October 2018, as a roster candidate had been selected for the position.

7. On 19 October 2018, Ms. Nouinou wrote to the Secretary-General requesting a management evaluation of the decision not to renew her temporary appointment beyond 23 October 2018. Subsequently, her appointment was renewed first for a week through 31 October 2018 due to her being on sick leave and then for another week through 9 November 2018 while her request for management evaluation was pending.

8. In a letter dated 8 November 2018, the Management Evaluation Unit (MEU) informed Ms. Nouinou of the outcome of the management evaluation that the Secretary-General had decided to uphold the decision not to renew her contract.

9. On 27 November 2018, Ms. Nouinou filed an application with the UNDT contesting various issues in connection with her recruitment and employment at the OCT and the subsequent non-renewal of her appointment.

10. In Judgment No. UNDT/2019/073 issued on 1 May 2019, the UNDT rejected Ms. Nouinou's application in its entirety. The Dispute Tribunal concluded that Ms. Nouinou's application against the decision to select her for the TJO position was not receivable both because it was time-barred and because it did not concern an appealable decision in the sense that she did not suffer any harm from that decision. Also, not receivable were those aspects of her claims concerning her performance appraisal. The UNDT was satisfied that Ms. Nouinou did not have any legitimate expectation of an appointment renewal, that the reasons for the non-renewal of her temporary appointment were credible and lawful, and that there was no impropriety in the OCT's selection of a rostered candidate for the position, which Ms. Nouinou occupied temporarily.

11. On 27 June 2019, Ms. Nouinou appealed the UNDT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal). On 19 July 2019, she filed a motion for confidentiality and correction of orthographic errors in her appeal, to which the Secretary-General filed a response on 31 July 2019. By Order No. 353 (2019) dated 6 September 2019, this Tribunal, *inter alia*, granted her request to file a corrected appeal. It ordered that Ms. Nouinou's request for confidentiality be included in the case file to be reviewed and decided upon by a panel of Judges to which this case would be assigned.

12. During the course of the present proceedings, Ms. Nouinou has filed a number of motions detailed in the considerations below.

Submissions

Ms. Nouinou's Appeal

13. The Dispute Tribunal abused its power and exceeded its jurisdiction and competence by focusing on the Respondent's closing statement, in total disregard of her detailed submissions and multiple requests for discussions and hearings or her request for witness appearance. The UNDT Judge intentionally avoided the legal process of case management discussion and oral hearing. He summarized Ms. Nouinou's contentions as "various issues" without stating them in detail. A different Judge and a different Respondent's representative were assigned to her case without her being notified thereof.

14. Orthographic errors in the impugned Judgment demonstrate speed and lack of focus on the part of the UNDT Judge.

15. The UNDT made factual errors about when she was notified of her selection for the TJO. It reached its conclusions without laying out all the facts and "without seeing her face or hearing her voice". This is the proof of collusion and conspiracy against Ms. Nouinou by the UNDT Judge, the Respondent and her supervisor. The factual errors led the UNDT Judge to take a manifestly unreasonable decision on Ms. Nouinou's application.

16. The issuance of the JO and the selection of a rostered candidate to fill the position were carried out to "get rid of [Ms. Nouinou] hurriedly and viciously", though her first reporting officer had never told her that her contract would not be renewed. She was let go after she became the Staff Representative and raised issues of lack of transparency in the recruitment process. She was tricked into attending a meeting with her second reporting officer and the executive officer about the decision on the JO amongst other things, on 5 October 2018. The JO was cancelled right after that meeting. Consequently, Ms. Nouinou did not have any opportunity to apply for the JO.

17. There was no performance evaluation completed for Ms. Nouinou before her separation. Underperformance was invented in bad faith after Ms. Nouinou had left OCT on 9 November 2018 to "tarnish her image and reputation".

18. Ms. Nouinou requests that the Appeals Tribunal remand her case to the Dispute Tribunal for additional fact findings by a different Judge and order that the UNDT Judge conduct oral hearings and review other forms of non-written evidence before reaching a determination.

The Secretary-General's Answer

19. The Dispute Tribunal correctly concluded that Ms. Nouinou's appeal of her selection for the TJO was not receivable, both because it was time-barred and because it did not concern an appealable decision. Even if 16 February 2018, according to her assertion, were to be accepted as the date of notification, Ms. Nouinou's request for management evaluation filed on 19 October 2018 would still have been out of time. Moreover, she suffered no harm by being selected for the TJO and subsequently accepting the offer.

20. The Dispute Tribunal correctly concluded that Ms. Nouinou's claims about her terms of employment at the OCT including issues about her performance appraisal were not receivable. Ms. Nouinou did not raise the issue in her request for management evaluation. It was not credible for her to state that she was unable to raise those issues in a timely request for management evaluation, given that she was able to bring several submissions before the UNDT after her office and computer access had been disabled.

21. The Dispute Tribunal correctly determined that Ms. Nouinou had failed to substantiate her assertion that the non-renewal of her temporary appointment was unlawful. She did not have a legitimate expectation of renewal. In this regard, the Secretary-General notes that her appointment renewal for two weeks through 9 November 2018 was due to exceptional circumstances. She had not provided evidence of any written commitment by the OCT to renew her temporary appointment, or of extraneous factors, such as bias and malice, tainting the contested decision.

22. There was nothing unlawful about the OCT advertising the position that Ms. Nouinou occupied temporarily or the OCT selecting a candidate from the relevant roster for that JO. Contrary to Ms. Nouinou's claim, the JO was closed, and not cancelled, after a rostered candidate had been selected. The fact that the processing of a selection decision may result in a lapse of 24 hours before the closure of the JO is reflected on the Inspira job site does not constitute evidence of any impropriety personally targeted against Ms. Nouinou.

23. The Secretary-General requests that the Appeals Tribunal affirm the impugned Judgment and dismiss the appeal in its entirety, because it is unsubstantiated and unsupported by evidence.

Considerations

Preliminary issues

Oral hearing

24. Ms. Nouinou filed a request for an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal's Statute, which states: "[t]he judges assigned to a case will determine whether to hold oral proceedings" and by Article 18(1) of the Appeals Tribunal's Rules of Procedure (Rules), which states: "[t]he judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case". 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. Moreover, 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. Accordingly, the request for an oral hearing is denied.

Motions filed by Ms. Nouinou

25. In the course of the present proceedings, Ms. Nouinou has filed an unusual number of motions, some of which relate to her other appeal registered as Case No. 2019-1304.

26. On 26 June 2018, the UNDT issued Judgment No. UNDT/2018/070 in the case of *Nouinou v. Secretary-General of the United Nations*. The UNDT granted Ms. Nouinou's application in part. On 27 August 2018, the Secretary-General appealed the UNDT Judgment. On 14 January 2019, Ms. Nouinou filed a motion for leave to file additional pleadings. In her motion, Ms. Nouinou claimed that she had in the meantime, since the beginning of the proceedings, lost her short-term assignment in the OCT and she was facing a "difficult risky dangerous situation" in regard to her personal affairs. She further alleged a "collision" between the Office of Internal Oversight Services (OIOS) and the Administrative Law Section and made submissions regarding financial hardship. By Order No. 339 (2019) Corr.

dated 30 January 2019, the Appeals Tribunal denied Ms. Nouinou's motion to file additional pleadings.

27. On 29 March 2019, the Appeals Tribunal orally pronounced that the Secretary-General's appeal was granted and that Judgment No. UNDT/2018/070 was vacated. That decision was to be subsequently released in Judgment No. 2019-UNAT-902. Following the oral pronouncement, in April 2019, Ms. Nouinou filed two motions: "Motion to Overcome Judicial Bias and Withhold Case for Independent Oversight" and "Motion for Clarification, Dissuasion and Reconsideration".

28. In Motion one, Ms. Nouinou alleged that the Secretary-General, the Administrative Law Section and the Appeals Tribunal, "all Males", "conspire[ed]" to "sign [her] death penalty after using her bright skills" during her career with the Organization. Ms. Nouinou requested that an independent panel be assigned to "check/oversee the [a]ppeal's credibility" and that the Appeals Tribunal "withhold her case" and not issue the judgment in her case. In Motion Two, Ms. Nouinou "ordered" the Appeals Tribunal to immediately remove, for her safety, Order No. 339 Corr. (2019) from the Appeals Tribunal website or to redact paragraph 3 of the Order. She again "urg[ed] the [Appeals] Tribunal to reconsider voiding the [a]ppeal that is a [s]ham".

29. By Order No. 344 (2019) dated 1 May 2019, the Appeals Tribunal denied Ms. Nouinou's motions, deciding:

[t]here is no legal basis for granting Ms. Nouinou the relief she seeks in Motion One. Article 10(5) of our Statute provides that the judgments of the Appeals Tribunal shall be binding upon the parties; and Article 10(6) of the Statute provides that the judgments of the Appeals Tribunal shall be final and without appeal, subject only to the provisions of Article 11 of the Statute. Article 11 permits for a revision of a judgment on the basis of the discovery of a decisive fact which was, at the time the judgment was rendered, unknown to the Appeals Tribunal and the applicant for revision and provided the ignorance was not due to negligence. ... The grounds raised by Ms. Nouinou do not fall into the category of permissible grounds for reconsideration stipulated in Article 11. ...

With regard to Motion Two, paragraph 3 of Order No. 339 Corr. (2019) states that Ms. Nouinou lost her short-term assignment in the Office of Counter-Terrorism which in her opinion put her in "difficult risky dangerous situation" in regard to her [personal affairs]. The redaction of evidence is only permitted where it is necessary to protect information of a confidential and sensitive nature. Ms. Nouinou provides no

rational or coherent basis for concluding that the disclosure in Order No. 339 Corr. (2019) ... is so sensitive as to override the requirement of judicial transparency.

30. A day after the issuance of Order No. 344 (2019), Ms. Nouinou filed a submission stating her disagreement with the Order and requesting its annulment. A day after the issuance of Judgment No. 2019-UNAT-902 on 29 May 2019, Ms. Nouinou filed another motion entitled “Appellee’s Follow-up on Motion of 2 May 2019 and Question about Judgment 2019/UNAT/902”.

31. In Order No. 348 (2019) issued on 20 June 2019, the Appeals Tribunal denied Ms. Nouinou’s motions, finding that those motions were “clearly without merit, frivolous and constitute[d] an abuse of process”. The Appeals Tribunal warned Ms. Nouinou that if she kept abusing the process, it would have no choice but to award costs against her pursuant to Article 9(2) of the Appeals Tribunal Statute.

32. On 27 June 2019, as mentioned before, Ms. Nouinou lodged the present appeal. On 19 July 2019, she filed a motion for confidentiality and correction of orthographic errors in her appeal, to which the Respondent filed a response on 31 July 2019. By Order No. 353 (2019), this Tribunal granted her request to file a corrected appeal. It ordered that Ms. Nouinou’s request for confidentiality be included in the case file to be reviewed and decided upon by a panel of Judges to which this case would be assigned.

33. On 1 August 2019, Ms. Nouinou filed an application for revision of Judgment No. 2019-UNAT-902. The case was registered as Case No. 2019-1304. On 6 August 2019, Ms. Nouinou filed a motion for confidentiality requesting that the Appeals Tribunal not publish any private information related to her personal status. In the motion, Ms. Nouinou alleged that the Appeals Tribunal Judges had subjected her to “harassment, intimidation, threat, and exposure to danger ... crucifying her online and remotely, dealing with her as if she [was] a digit that need[ed] to be deleted by pressing a key through UNAT Joke System”. She also alleged that her status as a woman “mean[t] nothing to” the Appeals Tribunal.

34. The motion was denied by Order No. 353 (2019). Noting that Ms. Nouinou had raised serious accusations against the Judges of this Tribunal without providing any evidence in their support and that her statements were derogatory, baseless, and abusive, in clear violation of Articles 4 and 8 of the Code of Conduct for Legal Representatives and Litigants in Person. For her abusive behavior, the Tribunal decided to apply Article 9(2) of our Statute,

which states: “[w]here the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party.”. The Tribunal ordered Ms. Nouinou to pay USD 600 and decided that she would be refused access to prosecute any case, in connection with Case No. 2019-1304, before the Appeals Tribunal, if she failed to timely comply with that Order. Ms. Nouinou never paid \$600 as ordered. Subsequently, Case No. 2019-1304 was administratively closed.

35. On 13 March 2020, Ms. Nouinou filed a second motion for confidentiality. On 20 March 2020, she filed a motion to correct Respondent’s observations dated 20 March 2020.

Motions for confidentiality and to correct Respondent’s observations

36. In the Motion filed on 19 July 2019, the Appellant urges this Tribunal to respect confidentiality by not publishing any of her private information. In the Motion filed on 13 March 2020, the Appellant seeks a protective order to limit the disclosure of personal information, to exclude any confidential details during the Appeals Tribunal public hearing and in the Appeals Tribunal public document related to her case.

37. The present motions are not the usual motions for anonymity in which staff members wish to have their names redacted from published judgments and which this Tribunal grants in exceptional circumstances.¹ The Appellant claims that the various personal data related to her citizenship and immigration status should not be disclosed by the Tribunal in its Judgment. This claim is not justified in the present case.

38. First of all, the case concerns a temporary appointment granted to Ms. Nouinou in February or April 2018, the conditions of employment during that appointment and the issue of its non-renewal. The personal data for which the Appellant requests confidentiality and a protective order are not pertinent to such a case. Nationality and immigration status are not at stake in a case of non-renewal of a temporary appointment. Secondly, the disclosure that Ms. Nouinou wishes to avoid would not have taken place without her motions for confidentiality, as no one would have been interested in her personal status in the host country, and the Tribunal would not have asked her to disclose these data. Thirdly, Ms. Nouinou's claim is a paradox. She wishes her personal data not to be disclosed even

¹ See *Applicant v. Secretary-General of the United Nations*, Order No. 228 (2015).

though she personally contributed to the disclosure of such data, in particular with the letters requesting the establishment of a fact-finding panel to investigate his supervisor, as an “espionage-hungry spy” or requesting an investigation into his supervisor’s activities as “a possible [s]py” for a Member State and as an “anti-immigrant” “villain”, which she sent to the Secretary-General of the United Nations and to the OIOS and attached to her appeal. Granting confidentiality motions would therefore encourage Ms. Nouinou in her obstinate attitude and in a "perverse game" in which she fuels the conditions of her own victimization. The motion filed on 20 March 2020 aims at responding to the Respondent's observations on the motion that Ms. Nouinou filed on 13 March 2020. Our rules of procedure do not provide for the possibility of responding to observations on a motion. The motion is not receivable and is denied.

Motion to exclude Judges from the present appeal

39. Ms. Nouinou claims that “to avoid [c]onflict of [i]nterest and [b]ias and to [e]nforce [a]ccountability”, the Appeals Tribunal Judges, who have rendered judgments in cases in which she was a litigant, should be excluded from the present appeal.

40. This motion contains, once again, serious accusations against the Judges of this Tribunal. Without providing any evidence in its support, this motion accuses some Judges to be “[a]busive” and “[u]nfair”. This statement is derogatory, baseless, and abusive, in clear violation of the Code of Conduct for Legal Representatives and Litigants in Person, which states:

Article 4

Basic standards

1. Legal representatives and litigants in person shall maintain the highest standards of integrity and shall at all times act honestly, candidly, fairly, courteously, in good faith and without regard to external pressures or extraneous considerations.

Article 8

Relations with the Tribunals

1. Legal representatives and litigants in person shall assist the Tribunals in maintaining the dignity and decorum of proceedings and avoiding disorder and disruption.

41. The Tribunal warns the Appellant that in the future it will no longer tolerate such intemperate statements and abusive accusations against the Judges of this Tribunal, the judges of the UNDT or any other person she might mention in the course of proceedings.

42. The motion provides no rational or coherent basis for concluding there could be a conflict of interest. Article 22 of the Rules of Procedure of the Appeals Tribunal states that the term conflict of interest “means any factor that may impair or reasonably give the appearance of impairing the ability of a judge to independently and impartially adjudicate a case assigned to him or her”, and “[a] conflict of interest arises where a case assigned to a judge involves any of the following:

- (a) A person with whom the judge has a personal, familiar or professional relationship;
- (b) A matter in which the judge has previously served in another capacity, including as an adviser, counsel, expert or witness;
- (c) Any other circumstances that would make it appear to a reasonable and impartial observer that the judge’s participation in the adjudication of the matter would be inappropriate.

43. The fact that a Judge has rendered judgments in previous cases in which a litigant was involved is not in itself a circumstance that raises a conflict of interest that could justify the recusal of that judge.

44. The motion is denied.

Merits

Relief sought by Ms. Nouinou

45. Ms. Nouinou alleges that the UNDT Judgment contains different orthographic errors and/or factual errors. In her “corrected individual appeal”, she contests many of the facts and circumstances mentioned in the Judgment. She claims that the UNDT should have held oral hearings and granted her request for witness appearance. She contends that the UNDT exceeded, or failed to properly exercise, its jurisdiction and competence by deciding that some of her claims were not receivable and by failing to hold a case management discussion and hearing on the case.

46. As relief, Ms. Nouinou seeks that the Appeals Tribunal “orders the case and the judgment be remanded to the Dispute Tribunal for additional findings of facts, that the Appeals tribunal determines that a decision cannot be taken without oral testimony or other forms of non-written evidence”. She urges that the Appeals Tribunal “orders that the case be considered by a different judge of the Dispute Tribunal since the Judge who ruled on the case exercised abuse of power and gender-based discrimination against the Appellant denying her motions and requests for case management discussion and hearing since the case is concerning her fear for her life”.

47. The UNDT has broad discretion with respect to case management. In *Onifade*,² the Appeals Tribunal decided:

It is our consistent jurisprudence that case management issues, including the question of whether to call a certain person to testify or to order the production of documents, remain within the discretion of the UNDT and do not merit a reversal except in clear cases of denial of due process of law affecting the right to produce evidence by a party.

48. We can add that, as a court of first instance, the UNDT is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties. Therefore, the Appeals Tribunal should not interfere lightly with the broad discretion of the UNDT in the management of cases.³

Scope of Judicial Review

49. The terms of Ms. Nouinou’s pleadings are so confusing that the Tribunal has difficulty in identifying the grounds for her appeal. It is therefore necessary to recall the competence of the Appeals Tribunal and the admissible grounds for an appeal.

50. Article 2(1) of our Statute states that the Appeals Tribunal is only competent to hear and pass judgment on an appeal 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;

² *Onifade v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-668, para. 41, citing *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110, para. 20.

³ *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062, para. 23.

- (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.

51. The grounds for which an appeal can be lodged are limited and the Appeals Tribunal has no discretion to deviate from Article 2(1) of its Statute.

Did the UNDT err in deciding that the appeal of the selection for a temporary job and the claim about the terms of employment at the OCT were not receivable and is it necessary to remand the case for additional fact-finding about this issue?

52. The Dispute Tribunal correctly concluded that Ms. Nouinou's appeal of her selection for a temporary job was not receivable, both because it was time-barred and because it did not concern an appealable decision.

53. The UNDT is not competent to hear and pass judgment on a claim that has not been the subject of an administrative decision and thereafter, management evaluation. Staff Rule 11.2 states:⁴

Management evaluation

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

54. Even if 16 February 2018 were to be accepted as the date of notification of the hiring in the temporary job, Ms. Nouinou's request for management evaluation that she filed on 19 October 2018 would still have been out of time.

⁴ Staff Regulations and Rules of the United Nations, Secretary-General's Bulletin, ST/SGB/2018/1, dated 1 January 2018.

55. Moreover, Ms. Nouinou suffered no harm by being selected for a temporary job in OCT and subsequently accepting the offer. It is necessary to recall that “an appeal is not receivable if it does not identify a concrete grievance suffered by the appellant as a direct consequence of the outcome of the impugned decision, which warrants repair by an appellate court through a change in the decision by annulling, vacating it totally or partially and/or remanding the case for a trial *de novo*”.⁵

56. In the case at hand, the selection for a temporary job was not an appealable administrative decision in that it did not have any adverse legal consequences for Ms. Nouinou.⁶

57. The Dispute Tribunal also correctly concluded that Ms. Nouinou’s claim about her terms of employment at the OCT, including issues about her performance appraisal, was not receivable. Ms. Nouinou did not raise these issues in her request for management evaluation.

58. It is not credible for her to state that she was unable to raise those issues in a request for a management evaluation in a timely manner after her office and computer access had been disabled. It is settled case law that requesting management evaluation or decision review is a mandatory first step in the appeal process and there is no room for the UNDT to deviate from this obligation, except in the specific situations mentioned by the Staff Rules.

59. In this case, even if some information was missing, it would have been possible to file a request for management evaluation.

60. Finally, avoiding the issues of receivability, the Appellant raises numerous allegations regarding her selection for a temporary employment and her conditions of employment in the OCT. She, for example, alleges that “her hiring process and expiration of contract” were “tainted with criminal plan to insult her”, and that “she suffered harm in OCT”. These allegations have nothing to do with the receivability of the case and could not impact this issue. As we confirm that the claims relating to selection for a temporary employment and conditions of employment in the OCT were not receivable, it is not necessary to respond to these allegations. The UNDT correctly used its discretion not to order additional fact-finding about the allegations that could not alter its decision. There is no need to remand the case.

⁵ *Saffir and Ginivan v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-466, para. 23.

⁶ *Maloof v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-806, para. 34.

Did the UNDT err in considering that Ms. Nouinou did not substantiate the unlawfulness of the non-renewal of her temporary appointment and is it necessary to remand the case for additional fact-finding about this issue?

61. The UNDT recalled the legal framework governing non-renewal of temporary appointments.

62. Staff Regulation 4.5(b) provides that “[a] temporary appointment does not carry any expectancy, legal or otherwise, of renewal. A temporary appointment shall not be converted to any other type of appointment”, and Staff Rule 4.12 states:

Temporary appointment

(a) A temporary appointment shall be granted for a period of less than one year to meet seasonal or peak workloads and specific short-term requirements, having an expiration date specified in the letter of appointment.

...

(c) A temporary appointment does not carry any expectancy, legal or otherwise, of renewal. A temporary appointment shall not be converted to any other type of *appointment*.

63. In *Kellie*,⁷ the Appeals Tribunal decided:

We recall the well-established principle that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment. Even the renewal of the appointment of a staff member on successive contracts does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended. In order for a staff member’s claim of legitimate expectation of a renewal of appointment to be sustained, it must not be based on mere verbal assertion, but on a firm commitment to

⁷ *Kellie v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-875, paras. 41 and 44, citing *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 25, which in turn cited *Ncube v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-721, para. 15; *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32; *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-261, para. 33; *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. Also see *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, paras. 25-27; *Igbinedion v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-411, para. 26.

renewal revealed by the circumstances of the case. ... Our jurisprudence requires a promise to renew an FTA at least to be in writing.

64. In *Ahmed*, the Appeals Tribunal held that “if based on valid reasons and in compliance with procedural requirements, fixed-term appointments may not be renewed” and unless the Administration “abused its discretion, or was motivated by discriminatory or improper grounds in not extending the appointment, the non-renewal of a staff member’s fixed-term appointment is not unlawful.”⁸

65. Our jurisprudence places the burden on the staff member to show a legitimate expectancy of renewal or that the non-renewal of his fixed-term appointment was arbitrary or motivated by bias, prejudice or improper motive against the staff member.⁹

66. These principles are applicable to the non-renewal of a temporary appointment.

67. The UNDT noted that the Appellant had not provided any evidence of a commitment by the OCT that her temporary appointment would be renewed, and correctly decided that the Appellant did not have any legitimate expectation of renewal of appointment. The UNDT also examined, in depth, the lawfulness of the selection process for the post that the Appellant had occupied temporarily.

68. Regarding this selection process, the UNDT confirmed that the specific short-term requirement for which the Appellant had been granted this temporary appointment was, in accordance with Administrative Instruction ST/AI/2010/4/Rev.1 (Administration of temporary appointments), to “temporarily fill a vacant position pending the finalization of the regular selection process” for this post, and recalled that, pursuant to Staff Regulation 4.5(b), her appointment could not be converted into any other type of appointment.

69. The UNDT also noted that another candidate had been selected for the relevant post after a regular process, pursuant to ST/AI/2010/3 (Staff selection system), in which the Appellant had not participated. The UNDT recalled that Section 9.5 of Administrative Instruction ST/AI/2010/3/Amend.1 that “[s]hould an eligible roster candidate be suitable

⁸ *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153, paras. 45 and 47.

⁹ *Hepworth v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-503, para. 44, citing *Obdejin v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201; *Jennings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-184.

for the job opening, the hiring manager may recommend his/her immediate selection to the head of department/office/mission without reference to the central review body”.

70. Regarding these administrative instructions, the Appeals Tribunal held:¹⁰

The plain wording of Sub-sections 9.4 and 9.5 makes it clear that the head of department/office has the discretion to make a selection decision from candidates included in the roster. The roster is a pool of assessed candidates reviewed and endorsed by a central review body and approved by the head of department/office who are available for selection against a vacant position. *There is no requirement in Section 9.4 for the head of department to first review all non-rostered candidates.* If the head of department’s discretion is subject to such a requirement, then it would be essential for the instruction to provide as much. On the contrary, as pointed out by the Secretary-General, Section 9.4 has been amended specifically to remove such a requirement.

71. In those circumstances, the UNDT correctly decided that the selection of a candidate from the roster, shortly after the job opening had been formally advertised, was lawful.

72. In her appeal, the Appellant does not challenge the reasoning of the UNDT and does not establish that the UNDT erred in deciding that the Appellant “was only hired to fill the post on an interim basis until someone was recruited for this post after the finalization of a regular selection process”¹¹ and she was “separated from the Organization as a consequence of the fact that her temporary appointment had expired in accordance with her letter of appointment”.¹²

73. The Appellant reiterates that “Selection of Candidate from Roster was made to get rid of her hurriedly and viciously on 4 October 2018”. These allegations are vague and non-pertinent for the case, as the Appellant did not apply for the post and does not establish that the selection process was not regular or that she would have had a chance to be selected. The UNDT correctly decided that “[e]ven if the decision-maker had, somehow, held an inappropriate bias against [Ms. Nouinou], this would not have changed the reason behind the decision not to renew her temporary appointment, namely that another candidate was selected for the relevant post after a regular selection process pursuant to ST/AI/2010/3, in

¹⁰ *Skourikhine v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-468, para. 33 (Emphasis added), quoting *Charles v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-416, para. 28.

¹¹ Impugned Judgment, para. 51.

¹² *Ibid.*, para. 52.

which [Ms. Nouinou] did not participate because she did not submit a job application before the selection decision was made”.¹³

74. In this regard, the UNDT properly used its discretion not to order additional fact-finding into the allegations that could not alter its decision. There is no need to remand the case.

¹³ *Ibid.*, para. 10.

Judgment

75. The appeal is dismissed and Judgment No. UNDT/2019/073 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of March 2020.

(Signed)

Judge Neven, Presiding
New York, United States

(Signed)

Judge Knierim
Hamburg, Germany

(Signed)

Judge Halfeld
Bournemouth, United Kingdom

Entered in the Register on this 19th day of June 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar