



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

Judgment No. 2022-UNAT-1201

Annette Guetgemann

v.

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

JUDGMENT

Before: Judge John Raymond Murphy, Presiding
Judge Graeme Colgan
Judge Kanwaldeep Sandhu

Case No.: 2021-1565

Date: 18 March 2022

Registrar: Weicheng Lin

Counsel for Appellant: Shubha Suresh Naik, OSLA

Counsel for Respondent: Amanda Stoltz

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Ms. Annette Guetgemann (the Appellant) appeals Judgment No. UNDT/2021/035 (Impugned Judgment) before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Ms. Guetgemann contested the decision, *inter alia*, not to renew her fixed-term appointment (FTA). In the Impugned Judgment, the UNDT dismissed her application.

2. Ms. Guetgemann appeals the UNDT finding in the Impugned Judgment that her application against the non-renewal decision was moot.

3. For the reasons set out herein, we dismiss her appeal and affirm the Impugned Judgment.

Facts and Procedure

4. Ms. Guetgemann joined the Secretariat of the United Nations Convention to Combat Desertification (UNCCD) on 15 July 2011, as an Administrative Assistant with the Policy, Advocacy, and Global Issues Unit on a temporary appointment until 8 November 2011.

5. On 9 November 2011, she was recruited on an FTA in the same unit. The FTA expired on 2 February 2014. She was reassigned to the External Relations, Policy and Advocacy Unit on 3 February 2014 under an FTA until 8 December 2014. Her FTA was subsequently extended until 31 December 2017.

6. Ms. Guetgemann maintains that she faced work-related challenges with her supervisor, her first reporting officer (FRO), but did not file a formal complaint. In October 2017, the Chief of Administrative Services recommended that Ms. Guetgemann discuss the matter of work-related challenges involving her supervisor with the Office of the Ombudsman.

7. At the end of 2017, Ms. Guetgemann requested to work part-time at 50 per cent. The FRO denied the request on operational grounds, as the position encumbered by Ms. Guetgemann was considered a full-time position. However, the Executive Secretary agreed to transfer Ms. Guetgemann to the Administrative Services Unit where she would

assist with the organisation of upcoming workshops. The position was thus created and financed on programme support costs.

8. On 12 December 2017, the Chief of Administrative Services sent an e-mail to Ms. Guetgemann enclosing a draft job description for a G-5 part-time (50 per cent) position, on an FTA that would run initially for 12 months, with the tasks of assisting the unit in organising workshops and processing actions in Umoja. It was indicated that the position might be considered for further extension at the end of the year. Ms. Guetgemann accepted the offer by signing the job description and a letter of appointment dated 18 December 2017 that reflected the foregoing. She commenced employment in that position on 1 January 2018 in terms of an FTA with an expiry date of 31 December 2018.

9. In the second week of November 2018, Ms. Guetgemann commenced an initial period of two weeks of sick leave, which was subsequently extended by a further three weeks until 14 December 2018.

10. On 26 November 2018, and after consideration of the limited workload for organising workshops and procurement actions, the Chief of Administrative Services informed Ms. Guetgemann that her FTA would not be extended beyond its expiry date on 31 December 2018. However, Ms. Guetgemann's FTA was in fact extended to ensure that her tenure could be extended until she had either recovered or had exhausted her sick leave entitlements pursuant to Section 4.9 of the ST/AI/2013/1 on Administration of fixed-term appointments. Ms. Guetgemann remained on sick leave for 15 months after the decision not to renew her FTA, until she was separated for health reasons effective 13 March 2020, pursuant to staff rule 9.6(c)(iii) and 9.6(i) and ST/AI/1999/16 on Termination for health reasons.

11. Ms. Guetgemann was subsequently awarded by the United Nations Staff Pension Committee and is now in receipt of a disability benefit under Article 33 of the Regulations of the United Nations Joint Staff Pension Fund.

12. On 24 January 2019, Ms. Guetgemann requested management evaluation of the decision in December 2017 to reassign her to the post in the Administrative Services Unit (re-assignment decision) and the decision to not renew her FTA beyond 31 December 2018 (non-renewal decision).

13. By letter dated 15 March 2019, the Management Evaluation Unit held that Ms. Guetgemann's request in relation to the re-assignment decision was not receivable and upheld the non-renewal decision.

14. On 8 June 2019 Ms. Guetgemann filed an application before the UNDT in which she challenged both the re-assignment decision and the non-renewal decision. The Secretary-General filed his reply on 8 August 2019 and an additional submission on 23 March 2020. After unsuccessful settlement negotiations, the UNDT issued the Impugned Judgment on 15 April 2021, in which it held that the application in relation to the reassignment decision was not receivable and that the application against the non-renewal decision was moot. It held that as Ms. Guetgemann's FTA was extended until her separation from service on health grounds on 13 March 2020, the challenge to the non-renewal decision had become moot. Accordingly, the UNDT dismissed the application in its entirety.

15. On 14 June 2021, Ms. Guetgemann filed an appeal with the Appeals Tribunal challenging the finding of the UNDT that the application against the non-renewal decision was moot. There is no appeal against the finding that the application against the re-assignment decision was not receivable. On 13 August 2021, the Respondent filed his response.

Submissions

Ms. Guetgemann's Appeal

16. Ms. Guetgemann submits that the UNDT erred on a question of law and failed to exercise jurisdiction by holding the application was moot.

17. Ms. Guetgemann also submits that the UNDT erred on a question of fact by concluding that there was no assurance of extension of contract given to her and that she had a legitimate expectation that her contract would be renewed after the initial contract and the reasons for not extending the contract were questionable.

18. Ms. Guetgemann further submits that the UNDT failed to exercise its jurisdiction, despite recognising that there was scope for compensation by not awarding the same as it concluded that Ms. Guetgemann was in receipt of a disability pension. Ms. Guetgemann requests the Appeals Tribunal to vacate the Impugned Judgment in its entirety and award

compensation for loss of employment/economic damage and consequential moral damages or, in the alternate, to remand the case back to UNDT for fresh adjudication.

The Secretary-General's Answer

19. The Secretary-General submits that the UNDT correctly concluded that Ms. Guetgemann's claim was moot. The UNDT's conclusions regarding Ms. Guetgemann's claim and its dismissal of her application were reached in accordance with the applicable legal framework, including relevant jurisprudence, and the facts of the present case. The non-renewal decision was superseded and rendered moot by Ms. Guetgemann's subsequent termination for health reasons pursuant to Staff Rules 9.6(c)(iii) and 9.6(i). The subsequent decision meant that the decision to separate Ms. Guetgemann on 31 December 2018 never materialised. The UNDT, therefore, correctly declined to rule on the merits of Ms. Guetgemann's claims regarding the non-renewal decision. Ms. Guetgemann's employment was lawfully terminated for health reasons and there has been no challenge to that decision.

20. Regarding Ms. Guetgemann's claim for compensation for damages, the Secretary-General submits that compensation cannot be awarded by the UNDT in the absence of any evidence establishing a cause-effect nexus between an unlawful decision that has a direct or concrete legal effect on or consequence to the staff member's terms of appointment or contract of employment, and the injury. Compensation for loss of employment cannot be awarded in the absence of any illegality.

Considerations

21. The decision of the UNDT that the application in relation to the non-renewal decision was moot because the non-renewal decision never materialised is correct. The non-renewal decision was overtaken by Ms. Guetgemann's separation for health reasons on 13 March 2020. Ms. Guetgemann has not challenged the actual decision that ultimately resulted in the termination of her employment.

22. It is well-established that an application will be moot where the impugned administrative decision has not taken effect because it has been rescinded or superseded by subsequent actions of the Administration. In such cases, the UNDT will lack subject-matter jurisdiction to examine the merits of the case.¹ For the UNDT to have competence or jurisdiction over an application in terms of Article 8(1)(a) of the UNDT Statute, the application must appeal or contest an administrative decision which has a direct or concrete legal effect or consequence on the staff member's terms of appointment or contract of employment. Thus, in *Cherneva*² the Appeals Tribunal held moot an application relating to a decision to place a staff member on special leave without pay. The Administration had rescinded that decision and granted the staff member special leave with half pay, rendering its initial decision moot. Similarly, in *Crotty*³, the Appeals Tribunal reversed the UNDT's finding of receivability where a decision to terminate a staff member due to the abolishment of his post was never implemented because he obtained another position with the Organisation and thus, his continued employment rendered moot the Administration's decision to terminate him.

23. In this appeal, the non-renewal decision was superseded and rendered moot by Ms. Guetgemann's subsequent termination for health reasons pursuant to Staff Rules 9.6(c)(iii) and 9.6(i). There were subsequent decisions of renewal and termination that meant that the initial decision to terminate Ms. Guetgemann's employment (on grounds of non-renewal) on 31 December 2018 never materialised and Ms. Guetgemann has not challenged in this appeal the decision to terminate her employment on grounds of incapacity, which was effected on 13 March 2020.

24. It follows that the issue of whether Ms. Guetgemann had a legitimate expectation of renewal of her FTA is irrelevant. Her contract was renewed for a period of 15 months subsequent to the initial decision not to renew and her termination cannot be considered illegal on grounds of any legitimate expectation of renewal when she was terminated on grounds of incapacity.

¹ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742; *Cherneva v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-870; *Crotty v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-763; and *Gebremariam v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-584.

² *Cherneva v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-870.

³ *Crotty v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-763.

25. Likewise, Ms. Guetgemann's suggestion that the UNDT failed to exercise its jurisdiction by not exploring the reasons for the non-renewal of contract, by not reviewing whether the non-renewal decision was based on proper or improper motives, and by not considering the issue of good faith efforts to find an alternate post is not sustainable. The UNDT had no obligation to consider the merits of the superseded decision once it correctly found that the application was moot. The allegations are in any event not supported by evidence or sustainable arguments.

26. Ms. Guetgemann relies on certain *dicta* in *Handy*⁴ in which the Appeals Tribunal found that the UNDT had erred on a question of fact in determining that the later decision to renew an FTA on a month-to-month basis pending the outcome of a performance appraisal rescinded and superseded the earlier non-renewal decision. This case is distinguishable on the facts. These factual circumstances are not present in the instant case since this case is not related to performance evaluation issues. In the present case, Ms. Guetgemann's termination for reasons of incapacitation superseded the non-renewal decision. The non-renewal decision did not take effect and did not produce any direct legal consequences on Ms. Guetgemann's terms of appointment or her contract of employment.

27. The UNDT accordingly did not err in finding that the decision to separate Ms. Guetgemann due to incapacitation superseded the non-renewal decision and that the application was moot.

28. Ms. Guetgemann's claim (inappropriately raised for the first time on appeal) that the UNDT "in failing to see the injurious consequences of the decision of non-renewal committed an error of law", as she did indeed face injurious consequences due to the non-renewal decision, cannot be sustained either. The evidence shows that Ms. Guetgemann's health deteriorated not as a result of the non-renewal decision but over a period of time pre-dating the non-renewal decision. The circumstances of her separation were through no fault or unlawful conduct of the Organisation. Ms. Guetgemann is in receipt of a disability benefit from the UNJSPF as a result of her separation from the Organisation because she has become incapacitated for further service with the Organisation. In these circumstances, the UNDT

⁴ *Simon Handy v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1015.

correctly concluded that the Tribunal could not order further compensation to be paid. Compensation cannot be awarded when no illegality has been established.

29. In the result, Ms. Guetgemann has failed to show any error on the part of the UNDT and the appeal should be dismissed.

Judgment

30. The appeal is dismissed and the Impugned Judgment is affirmed.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 21st day of April 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar