



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

---

Judgment No. 2022-UNAT-1203

**Torek Farhadi  
(Appellant)**

**v.**

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

**JUDGMENT**

---

|            |   |
|------------|---|
| Before:    | Judge Martha Halfeld, Presiding<br>Judge Kanwaldeep Sandhu<br>Judge John Raymond Murphy |
| Case No.:  | 2021-1523   |
| Date:      | 18 March 2022   |
| Registrar: | Weicheng Lin  |

---

|                         |                  |
|-------------------------|------------------|
| Counsel for Appellant:  | Self-represented |
| Counsel for Respondent: | Rupa Mitra       |

**JUDGE MARTHA HALFELD, PRESIDING.**

1. Before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), Mr. Torek Farhadi challenged the decision not to renew his fixed-term appointment beyond its expiration date of 30 June 2017. In Judgment No. UNDT/2020/217, the UNDT found the decision lawful and dismissed the application. Mr. Farhadi has appealed against the UNDT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal).

2. For the reasons set out below, we dismiss the appeal.

**Facts and Procedure**

3. On 4 May 2009, Mr. Farhadi joined the International Trade Centre (ITC) under an 11-month short-term appointment as Programme Coordinator (L-5 level) of the Enhancing Arab Capacity for Trade programme (EnACT). Effective 1 July 2009, his appointment was converted to fixed-term as Programme Coordinator (P-5 level), EnACT. As of 1 December 2012, Mr. Farhadi was laterally transferred to the position of Senior Adviser (P-5), Trade Finance for small and medium-sized enterprises (SMEs), Division of Business and Institution Support (DBIS), ITC.

4. Effective 1 January 2015, Mr. Farhadi was appointed to a lower-level post (P-4) as Senior Programme Adviser, Women and Trade Programme, DBIS, ITC, following the abolition of the post that he encumbered due to lack of funding. Mr. Farhadi was inter alia responsible for an ITC project titled “Economic Empowerment of Women in the Pacific” (Pacific Project) funded entirely by the government of a Donor Country. On 1 July 2016, Mr. Farhadi, together with the Pacific Project, was laterally transferred to the Division of Market Development (DMD), ITC.

5. On 1 January 2017, Mr. Farhadi’s fixed-term appointment was renewed until 30 June 2017. During the month of February 2017, the Donor Country indicated to Mr. Farhadi and other ITC Officials its intention to stop funding the project in June 2017. In this context, one of Mr. Farhadi’s supervisors, the Chief, Sustainable and Inclusive Value Chains (SIVC), Division of Enterprises and Institutions (DEI), ITC, requested him to refrain from contacting the Donor Country about the funding in an effort to channel all communications on the matter through the ITC Funder Focal Point. From 4 to 11 March 2017, the Chief, SIVC, DEI, ITC, and a Consultant undertook a review of the Pacific Project. Based on the findings of said review and on the fact that the project’s budget was nearly exhausted, the Chief, SIVC, DEI, ITC, decided to take Mr. Farhadi off the Pacific Project

and advised him accordingly by e-mail of 27 March 2017. That day, Mr. Farhadi was placed on certified sick leave.

6. By letter dated 28 April 2017, the Chief, Human Resources Division of Programme Support, ITC, informed Mr. Farhadi that his contract would not be renewed beyond 30 June 2017 due to budgetary reasons. Additionally, the letter indicated how the post that Mr. Farhadi encumbered would be funded up to the expiration of his appointment.

7. On 20 June 2017, Mr. Farhadi requested management evaluation of the decisions not to renew his fixed-term appointment and to separate him from service before exhausting his sick leave entitlement. By letter dated 22 September 2017, Mr. Farhadi was advised that the Secretary-General had decided to uphold the decision not to renew his appointment; and he would be entitled to exhaust his sick leave entitlement prior to separation subject to the submission of necessary documentation from his physician.

8. On 29 November 2017, Mr. Farhadi filed an application with the UNDT challenging the decision not to renew his fixed-term appointment beyond its expiration date of 30 June 2017.

9. On 30 September 2018, Mr. Farhadi separated from the service of the Organization following several extensions of his appointment to allow him to exhaust his sick leave entitlements.

10. On 16 November 2018, the case was transferred from the Geneva Registry to the New York Registry, following a review of the UNDT docket. It was transferred back to the Geneva docket on 29 January 2019, following the General Assembly's decision of 22 December 2018 not to extend the tenure of the *ad litem* judge in New York, and following the filing by Mr. Farhadi of another case with the Geneva Registry on 21 January 2019.

11. On 24 December 2020, the UNDT issued Judgment No. UNDT/2020/217 dismissing the application. The UNDT found that the basis for the non-renewal decision, which was a lack of funding, was sufficiently supported by the established facts, and that the record did not show that the non-renewal was the result of bias or improper motive. The UNDT also found that Mr. Farhadi had failed to substantiate his claim that the funds earmarked for the Pacific Project, which he managed, had been misappropriated. In addition, the UNDT held that the Secretary-General had not circumvented the Staff Rules on termination of fixed-term appointments, nor had the non-renewal decision been tainted by abuse of authority.

12. On 22 February 2021, Mr. Farhadi filed an appeal of the Judgment and on 30 April 2021, the Secretary-General filed his answer.

### **Submissions**

#### **Mr. Farhadi's Appeal**

13. The time period between the filing of Mr. Farhadi's application and the issuance of the Judgment, about three years, was excessive and represents a "miscarriage of justice" in his case. He suffered harm as a result of the "irregular handling of his case" by the UNDT and requests compensation in the form of moral damages. He argues that he should be exempt from the legal obligation to adduce any evidence of moral harm from the alleged irregularity on the basis that the alleged delay is so flagrant and evident that it gives rise to a presumption of moral injury. The Secretary-General should be held responsible for any such delay, in particular since the Registries of the UNDT report to the Director of the Office of Administration of Justice, who, in turn, reports to the Secretary-General.

14. The UNDT erred in applying the burden of proof in this case. The UNDT erred in not requiring the Administration to provide any evidence regarding the alleged lack of funds, thereby placing the burden of proof entirely on Mr. Farhadi. Mr. Farhadi cites the UNAT Judgment in *Loose*<sup>1</sup> for the proposition that "a staff member challenging the financial justifications put forward by the Administration cannot be required to carry alone the burden of proof to establish the existence or inexistence of sufficient resources".

15. Next, the UNDT committed a reversible error by relying on irrelevant materials in concluding that there were indeed insufficient funds to extend Mr. Farhadi's fixed-term appointment. One such irrelevant document is Annex 10 to the Secretary-General's reply which concerns a "Grant arrangement between the Government of Australia and the International Trade Centre for Economic Empowerment of Women in the Indian RIM Association (IORA) Countries", known at ITC as the "IORA project". The IORA project is different from the Pacific Project managed by Mr. Farhadi. Although the donor for both projects was the Australian Government, Mr. Farhadi was never involved in any activity related to the IORA project, whose management was assigned to another ITC staff member. While the Secretary-General did not submit any

---

<sup>1</sup> *Hine-Wai Kapiti Loose v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1043.

evidence relating to the grant arrangement for Mr. Farhadi's project, the UNDT relied on the irrelevant agreement for the IORA project to find that the non-renewal decision was justified.

16. Mr. Farhadi questions the weight given by the UNDT to certain other evidence regarding the financial status of the Pacific Project. First, he claims that the fact that the Donor Country was already considering in February 2017 to discontinue the funding of the project was irrelevant. Second, he claims that there was no evidence on whether the Donor Country actually continued to fund the Pacific Project beyond June 2017 and that the UNDT should have instructed the Secretary-General to provide such evidence. Mr. Farhadi makes additional arguments regarding information contained in the Management Review Mission Report (Mission Report). He submits that the Mission Report contains references to long-term strategies that he alleges contradict the notion that the Pacific Project was to be discontinued.

17. The UNDT erred in considering and rejecting Mr. Farhadi's claims of ulterior motives and bias. The Mission Report shows that the true reason behind the non-renewal decision was that he was considered to have been underperforming, and Mr. Farhadi was not afforded an opportunity to correct any underperformance. The Organization did not wish to comply with the applicable rules on performance management. Nor was Mr. Farhadi given an opportunity to respond to the highly prejudicial, damaging and unsubstantiated allegations concerning his performance. The Organization must have been aware that Mr. Farhadi's latest performance appraisals were satisfactory and thus had a clear additional incentive to present this case as one of lack of resources as opposed to underperformance

18. Mr. Farhadi requests UNAT to vacate Judgment No. UNDT/2020/217; rescind the contested non-renewal decision and set in lieu compensation in the amount of two years' net base salary; and award Mr. Farhadi moral damages for inordinate delays in the hearing and the adjudication of his case before the UNDT.

**The Secretary-General's Answer**

19. Mr. Farhadi's claims of a miscarriage of justice based on an alleged judicial delay and for compensation for moral damages are non-receivable and unsubstantiated and should be dismissed for the following reasons: a) it is not for the Secretary-General to defend the conduct of UNDT proceedings by the UNDT Judge; ii) the claim of excessive delay is new at the appeal stage and as such is not receivable; iii) Mr. Farhadi fails to show that there is a procedural error on the side of the UNDT; iv) Mr. Farhadi fails to provide any evidence of harm caused by the alleged delay; v) Even if UNAT were to find there was a delay at the UNDT stage, Mr. Farhadi would not be entitled to compensation for such delay as compensation can only be awarded for material or moral harm resulting from an administrative decision.

20. Mr. Farhadi's assertion that the UNDT erred in applying the burden of proof in his case is unfounded and should be dismissed. The UNAT judgment in *Loose* which Mr. Farhadi cites for the proposition that "a staff member challenging the financial justifications put forward by the Administration cannot be required to carry alone the burden of proof to establish the existence or inexistence of sufficient resources" does not support such a general principle. Moreover, the situation in *Loose* is to be distinguished from the one in the instant case. In any event, Mr. Farhadi is incorrect in asserting that the UNDT erred in not requiring the Administration to provide any evidence regarding the alleged lack of funds. The Administration did provide evidence supporting the lack of funding on which the non-renewal decision was based, including e-mails that contemporaneously documented discussions with the Donor Country at the time, as well as a screenshot from the budget portal for the Pacific Project, showing how much money was left as of June 2017.

21. Mr. Farhadi failed to show that the UNDT committed a reversible error by relying on irrelevant materials (Annex 10 to the reply) in concluding that there were indeed insufficient funds to extend his fixed-term appointment. Annex 10 is a funding agreement between the Donor Country and the ITC. The Secretary-General now recognizes that, instead of the funding agreement relating to the Pacific Project, a similar funding agreement relating to the IORA Project was mistakenly attached to the reply as Annex 10. However, the correct funding agreement relating to the Pacific Project was posted in that Project's portal entry, to which Mr. Farhadi had full access as Project Manager. Yet, Mr. Farhadi did not raise before the UNDT the discrepancy of the incorrect funding agreement having been annexed to the reply. Neither party detected the

error until the appellate level and Mr. Farhadi should not be heard to imply that the mistake may have been a deliberate attempt to confuse the UNDT when Mr. Farhadi made the same mistake.

22. In its Judgment, the UNDT relied upon Annex 10 to a very limited degree, to show that the Pacific Project had a finite duration. Annex 10 was but one element of the UNDT's overall finding that the financial basis for the non-renewal decision was supported by the established facts. The other elements that the UNDT cited were that the Appellant and other ITC Officials were fully aware in February 2017 that the Donor Country was considering not continuing to fund the project beyond 2017, and that there was a balance of USD 28,000 for the Pacific Project as of 22 June 2017, which was insufficient to pay salaries for April, May, and June 2017. The document that the UNDT relied on to support the latter element was the Pacific Project portal screenshot which listed the project's start and end dates and clearly showed the finite nature of the Project. Thus, there was sufficient evidence for the UNDT to draw its conclusions without Annex 10. However, should UNAT consider that there was not sufficient evidence, the Secretary-General requests the entry into evidence of the correct agreement relating to the Pacific Project under Article 2(5) of the UNAT Statute.

23. The UNDT correctly relied on the Pacific Project portal entry as well as e-mails regarding the financial status of the Project. Mr. Farhadi attempts to cast doubt on the screenshot of the Pacific Project portal for the first time on appeal by suggesting that it was unclear whether the stated available balance related to the Pacific Project which funded Mr. Farhadi's post or referred to financial information pertaining to the IORA project, which was irrelevant to this case. In any case, the portal screenshot clearly shows the title of the entry at the top, "Pacific: Economic empowerment of women," and lists the Pacific Project's start and end dates (as amended) of 19 May 2014 to 31 July 2018.

24. Mr. Farhadi makes additional arguments regarding information contained in the Mission Report that he failed to make before the UNDT. Since Mr. Farhadi has failed to show any circumstances which rendered him unable to raise this claim before the UNDT, the claims must be dismissed as not receivable. In any event, the claims are unfounded. The Mission Report indicates, and Mr. Farhadi does not dispute, that as of March 2017, 90 per cent of the Pacific Project budget had already been spent. This is entirely consistent with the basis for the non-renewal decision. Moreover, the references to long-term strategies that he alleges contradict the notion that the Pacific Project was to be discontinued do not pose any contradiction to the idea that the Project

was reaching its end. Rather, all of the elements that Mr. Farhadi alleges contradict the assertion that the Pacific Project had been discontinued in fact reinforce the reality of such discontinuance.

25. Finally, the UNDT properly considered and rejected Mr. Farhadi's claims of ulterior motives and bias. Mr. Farhadi is simply repeating arguments that he already made before the UNDT without demonstrating any error on the part of the UNDT.

26. The Secretary-General requests that UNAT dismiss the appeal and uphold the Judgment.

### **Considerations**

27. In his lengthy appeal, Mr. Farhadi firstly contends that the UNDT erred when it delayed delivering its Judgment within a reasonable timeframe. It took the UNDT over three years from the date when the application was filed to issue the Judgment, and most of this time involved total inactivity and successive transfers of his case from one UNDT Registry to another and back. Mr. Farhadi seeks compensation for moral damages for the harm suffered as a result of the irregular handling of his case at the UNDT stage.

28. While the Appeals Tribunal acknowledges that compliance with the terms of the Code of Conduct for the Judges of the Dispute Tribunal and the Appeals Tribunal is absolutely necessary, the explanations given by the UNDT for the delay in dealing with the present case seem reasonable. The application was filed in November 2017 before the Registry in Geneva. A year later, in November 2018, the case was transferred to the Registry in New York, but in January 2019, in light of the General Assembly's decision not to extend the mandate of the *ad litem* Judge in New York and the filing of another application with the Geneva Registry, the case was transferred back to the Geneva Registry, where it was assigned to the Judge who subsequently issued the Judgment in December 2020.

29. These successive transfers undoubtedly disrupted the management of the case, were thus unfortunate, and should be avoided in the future. However, this does not mean that Mr. Farhadi is entitled to any compensation. Article 9(1)(b) of the Appeals Tribunal Statute authorises the Appeals Tribunal to award compensation for harm deriving from an administrative decision, not from a delay in the UNDT's proceedings.<sup>2</sup>

---

<sup>2</sup> *Nadasan v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-918, para. 58.



30. Mr. Farhadi further claims that the UNDT erred in allocating the burden of proof which was placed solely on himself, and in not requiring the Administration to provide evidence regarding the alleged lack of funds to finance his post.

31. The applicable legal framework on fixed-term appointments is as follows:

Staff Regulation 4.5

...

(c) A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service[.]

Staff Rule 4.13

Fixed-term appointment

...

(c) A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14 (b).

32. The Appeals Tribunal recalls 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.<sup>3</sup> Even the renewal of the appointment of a staff member on successive contracts does not in itself give grounds for any 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. The jurisprudence requires this promise at least to be in writing.<sup>4</sup>

33. The Administration's exercise of its discretion is, however, not unfettered, and should permit judicial review. When judging the validity of the Secretary-General's exercise of discretion in administrative matters, as in the case of a non-renewal decision, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered and can also examine whether the decision is absurd or perverse. But it is not the role of the

---

<sup>3</sup> *Agha v. Secretary General of the United Nations*, Judgment No. 2019-UNAT-916, para. 16; *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 25; *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.

<sup>4</sup> *Igbinedion v. Secretary General of the United Nations*, Judgment No. 2014-UNAT-411, para. 26; *Kule Kongba v. Secretary General of the United Nations*, Judgment No. 2018-UNAT-849, paras. 25-27.

Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him/her. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.<sup>5</sup>

34. Moreover, the duty to justify a decision, as this Tribunal has long held, is essential for both Tribunals to exercise their judicial review of administrative decisions, assessing whether they are arbitrary, capricious, or unlawful. Although this obligation might not stem from any Staff Regulation or Rule, it derives from the public law principle which confers upon the Tribunals the inherent power to review the validity of such administrative decisions, the functioning of the system of administration of justice and the principle of accountability of managers.<sup>6</sup>

35. It is therefore good practice for the Organization as a whole to provide a general guidance for its managers that a well written statement of reasons, albeit sometimes succinct depending on the circumstance, is fundamental for the correct identification of the matters, concerns and reasoning process of the decision-maker, as well as for the accurate implementation of decisions, which will more likely reflect the decision maker's intent. At the same time, this practice provides better grounds for adequate explanation for those adversely affected by these decisions, perhaps even facilitating their acceptance and hence diminishing instances of disputes. What is more, when a justification is given by the Administration for the exercise of its discretion, it must be supported by the facts. In short, there is a threefold purpose for providing reasons for decisions, namely, intelligibility (enabling both implementation and acceptance), accountability and reviewability.<sup>7</sup>

36. In the present case, the reason given by the Administration to justify the termination of Mr. Farhadi's appointment was of a budgetary nature. The contested administrative decision contained the following relevant information:

I understand from Anders that he has informed you verbally that there were potential issues concerning the lack of availability of funding for your post after June 2017. Unfortunately, and despite the best efforts of management, a review of associated funding has confirmed that this is indeed the situation.

---

<sup>5</sup> *Said v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-500, para. 40; *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

<sup>6</sup> *Bantan Nugroho v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1042, para. 39.

<sup>7</sup> *Ibid.*, para. 40.

Correspondingly, I am writing to inform you that the Director of Division of Enterprises and Institutions has decided your current contract will not be renewed on its expiry on 30 June 2017. The budgetary reasons for non-renewal are as follows:

There will be a lack of Window 1 funding over the next months combined with a lack of Window 2 project detailing options that unfortunately will not allow for the organisation to continue funding your post. Your position being Women and Trade Programme Officer in former SC section (as of July 2016) and current SIVC section has been funded as below:

2016: 6 months (July-December) - Pacific: Economic Empowerment of women project

2017: 3 months (January-March) - Pacific: Economic Empowerment of women project  
3 months (April-June) -ITC PSC

37. On the issue of evidence of grounds for termination, the UNDT acknowledged the fact that there was no documentary evidence explicitly showing that funding for the Pacific Project was to end in June 2017. However, the UNDT found that there were enough elements that, if taken together, supported the budgetary reason behind the non-renewal of Mr. Farhadi's appointment.<sup>8</sup> It first found that the finite nature of the Arrangement between the Donor Country and the ITC to finance the Pacific Project was documented; and second, it found that there was documentary evidence showing a balance of USD 28,000 for the project on 22 June 2017, which was insufficient to pay salaries for April, May and June 2017.<sup>9</sup>

38. Contrary to what Mr. Farhadi alleges in his appeal, the UNDT did not shift the burden of proof, but rather assessed all the elements of evidence in the record and correctly found that, while the Administration had satisfactorily discharged its burden given the totality of the evidence, Mr. Farhadi had not provided any counter evidence in favour of his arguments. Furthermore, although the Administration acknowledged a mistake pointed out by Mr. Farhadi in that the specific Arrangement between the Donor Country and the ITC cited by the UNDT was irrelevant for the present case since it concerned another project (IORA), it appears that a similar agreement existed concerning the Pacific Project, indicating the finite nature of the Pacific Project itself.

39. This finding is not affected by the additional evidence on appeal and is a consequence of the exchange of correspondence between representatives of the Donor Country and the ITC, a factor which substantiates the discussions regarding the continuity of the funding for the Pacific Project and other projects, as well as a consequence of the screenshot of the financial accounts of the Pacific Project showing the balance mentioned by the UNDT in its Judgment cited above.

---

<sup>8</sup> Impugned Judgment, para. 23.

<sup>9</sup> *Ibid.*, paras. 24 and 25.

Furthermore, any doubts about whether the screenshot related to the Pacific Project are not valid, first, because Mr. Farhadi has only raised this issue for the first time on appeal, and second, in light of the heading of the document “A775 – Pacific: Economic empowerment of women (Women and Trade Phase II)”.

40. Moreover, Mr. Farhadi’s e-mail of 20 February 2017 unmistakably shows that Mr. Farhadi was well aware of the difficulties persuading the Donor Country to continue financing the project for which he was responsible. Also, the e-mail of 7 March 2017 clearly states that “the work plan for this project goes until June 30<sup>th</sup> 2017. Beyond that there is no funding. ... We have all discussed a possible new Log Frame with IORA included”, showing that the discussions were being held between the Donor Country and the ITC about the end of funding and a way of proceeding for both the Pacific and IORA Projects. These discussions were not ultimately entirely successful and Mr. Farhadi’s appointment was not renewed for budgetary reasons. Therefore, the undisputable error, albeit minor, concerning the arrangement referenced in the UNDT Judgment is inconsequential for the purposes of Mr. Farhadi’s appeal, since, assessed together with the totality of the evidence, it had no bearing on the outcome of the case.

41. Mr. Farhadi further contends that the UNDT’s findings are in contradiction with the Management Review Mission Report dated 13 April 2017, which, while being highly critical of his management and performance, suggests the existence of available resources to fund his post and foresees a clear strategy beyond 30 June 2017, the date on which his appointment was due to expire. The Appeals Tribunal finds, however, that this report as well as the “note for file” on the report must be read in their totality, as they also include information about previous forewarning of “no new funding, making questions around sustaining the project results more urgent”, as well as information on “the more urgent requirement to find out how the projects can be sustainable (or be transitioned to other funding) before end 2017”, suggesting that there was indeed little funding remaining for the project. The undisputable statement in the report, according to which “around 90% of the budget has already been spent”, confirms this finding that the remaining budget was limited.

42. Furthermore, Mr. Farhadi insists on the fact that the UNDT failed to consider clear evidence of ulterior motives and institutional bias against him. He maintains that the real reason behind the non-renewal decision was the dissatisfaction of his First Reporting Officer with the performance and management of the project which Mr. Farhadi oversaw. However, Mr. Farhadi contends that: i) he was not afforded the opportunity to discuss or improve his management

performance, and ii) his performance appraisals from 2014 until 2016 gave him the overall rating of “fully competent” and did not include any reference to underperformance. The UNDT found that Mr. Farhadi’s argument that the Management Review Mission Report was biased was not supported by evidence.<sup>10</sup>

43. The Appeals Tribunal reiterates its jurisprudence according to which an administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive.<sup>11</sup> However, the staff member has the burden of proving that such factors played a role in the administrative decision.<sup>12</sup> In the present case, despite the criticism in the Management Review Mission Report of Mr. Farhadi’s performance and the proposal to remove him from the management of the project, the underlying fact was still the limited available funding for the project. Moreover, the date on which the “note for file” on the report was issued (18 April 2017) indicates that there was little likelihood of any criticism to Mr. Farhadi’s performance having had any impact on the contested non-renewal decision taken shortly afterwards, on 28 April 2017.

44. Thus, Mr. Farhadi has not satisfied his burden of proof since he has not offered any evidence to support the serious allegations of discrimination and bias. In light of the above, the appeal fails.

---

<sup>10</sup> *Ibid.*, para. 28.

<sup>11</sup> *Pirnea v. Secretary General of the United Nations*, Judgment No. 2013-UNAT-311, para. 32, citing *Obdeijn v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-201 and *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153.

<sup>12</sup> *Pirnea op. cit.*, para. 32; *Assad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-021.

**Judgment**

45. The appeal is dismissed and Judgment No. UNDT/2020/217 is affirmed.

Original and Authoritative Version: English

Dated this 18<sup>th</sup> day of March 2022.

*(Signed)*

Judge Halfeld, Presiding  
Juiz de Fora, Brazil

*(Signed)*

Judge Sandhu  
Vancouver, Canada

*(Signed)*

Judge Murphy  
Cape Town, South Africa

Entered in the Register on this 26<sup>th</sup> day of April 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar