JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Mr. Mutassim Abdallah Ahmad, a Field Language Assistant with the African Union-United Nations Hybrid Operation in Darfur (UNAMID), contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the decision to place him on Special Leave with Full Pay (SLWFP) for two months, and requested termination indemnity. The UNDT, while finding that the contested decision was unlawful, dismissed his application in its entirety. Mr. Ahmad appeals, and the Secretary-General files a cross-appeal. For the reasons set out below, we reject both the appeal and the cross-appeal and affirm the UNDT Judgment.

Facts and Procedure

2. Mr. Ahmad joined UNAMID on 29 April 2008, and his contract was converted to a fixed-term appointment (FTA) as of 1 July 2009. He was assigned to the Umm Baro team site on 13 April 2016. His FTA was extended for the last time for six months from 1 July 2018 to 31 December 2018.

3. In June 2018, the Chairperson of the African Union Commission and the Secretary-General of the United Nations submitted a special report to the Security Council, recommending the drawdown and phased closure of UNAMID. Umm Baro and nine other team sites were to be closed between 8 October and 9 December 2018. 66 national staff members, including Mr. Ahmad, were thus affected.

4. By facsimile dated 29 August 2018 addressed to the Director of Field Personnel Division, Department of Field Support (FPD/DFS), the Director of UNAMID's Mission Support requested approval by the Office of Human Resources Management (OHRM) to place the affected national staff members of UNAMID on SLWFP from the date of the closure of their respective team sites until the expiry of their FTAs on 31 December 2018. The Director of Mission Support explained that since the closure dates of the team sites would not coincide with the expiry of the appointments of the aff/2

5. On 24 September 2018, the Director of FPD/DFS requested the approval from the Assistant Secretary-General for OHRM of UNAMID's request to place its 66 national staff members on SLWFP from the date of the closure of their respective team sites until the expiry of their FTAs on 31 December 2018. According to an internal analysis conducted, it would cost over 350,000 more to terminate the contracts of the 66 national staff members than to place them on SLWFP until the expiry of thei

USD 725,522,700. On 22 December 2018, the General Assembly endorsed ACABQ's recommendations in resolution 73/278.

10. Mr. Ahmad was separated from service with UNAMID effective 1 January 2019.

11. Mr. Ahmad applied to the Dispute Tribunal on 25 March 2019, maintaining that his placement on SLWFP was *de facto* termination of his FTA, and that he had been denied of termination indemnities.

12. In Judgment No. UNDT/2020/022, the Dispute Tribunal dismissed Mr. Ahmad's application. In the view of the Dispute Tribunal, his case could not be considered as a *de facto* termination. The Dispute Tribunal found that the applicable legal framework for abolishment of post did not confer upon a staff member a right to have termination as the modality of separation. It accepted the Secretary-General's argument that there was no legal basis for unilateral termination, given that, at the relevant time, the abolishment of post had not yet been endorsed by the General Assembly. It further found that there was no agreed termination. Finally, it held that Mr. Ahmad's case could not be qualified as a disguised termination because he retained his status as a staff member until the expiration of the appointment as per its original term, and received his salary and accrued entitlements (leave, pension, seniority, etc.). Consequently there was no basis for payment of a termination indemnity. As for placing Mr. Ahmad on SLWFP until the expiry of his FTA, the Dispute Tribunal found no support in the jurisprudence for resorting to SLWFP as a generic cost-saving alternative to termination or a default modality for downsizing. It did not find that the Secretary-General had established exceptional circumstances justifying placing

13. Mr. Ahmad filed the appeal on 7 April 2020, and the Secretary-General filed his answer and a cross-appeal on 15 June 2020. Mr. Ahmad filed an answer to the cross-appeal on 17 August 2020.

Submissions

Mr. Ahmad's Appeal

14. Mr. Ahmad requests that the Appeals Tribunal rescind the SLWFP decision and award him USD 10,000, which represented the difference between the termination indemnity and payment of one-month salary in lieu of notice of termination that he would have received and pre-judgment and post-judgment interest on that amount and the salary that he received while on SLWFP, or an alternativ

17. Mr. Ahmad further submits that the Dispute Tribunal erred in fact and in law when it rejected his argument that it was an unlawful exercise of discretion for the Administration

of UNAMID was different from any other closure of missions to make Mr. Ahmad's case an exceptional one to justify placing him on SLWFP. Notwithstanding its correct finding, the Dispute Tribunal erred in not rescinding the SLWFP decision.

28. As the ILO Administrative Tribunal found in a similar case, the Administration in the present case abused its discretion by unilaterally placing Mr. Ahmad on SLWFP.

29. In his cross-appeal, the Secretary-General misinterprets the Appeals Tribunal Judgment in *Simmons.* Unlike *Simmons*, Mr. Ahmad is not contesting the decision to abolish his post; he is simply seeking the indemnities that are afforded to staff members whose contracts were cut short before their expiry, as admitted by the Administration in

Administration. However, the Appeals Tribunal does not have to examine whether the UNDT committed an error. Even if it did, this would be of no consequence for the present appeal.

32. For Mr. Ahmad's ultimate goal (to receive termination indemnity) it is not sufficient to find that the Secretary-General could have terminated his appointment with effect from the end of October 2018. In order to reach this goal,

when his contract was de facto terminated thereby denying him of termination indemnities" and requested the rescission of the SLWFP decision, payment of termination indemnity and related payments, and compensation for unfair treatment. However, a staff member cannot request termination indemnity while, at the same time, keeping the advantages and benefits of remaining a staff member. As laid out above, termination is, by definition, a separation from service, that is, the end of all employment relations between a staff member and the

member.[2] In the present case, there is no direct link between the SLWFP decision and the termination indemnity. Mr.

Judgment

38. The appeal and the cross-appeal are dismissed and Judgment No. UNDT/2020/022 is affirmed.

Original and Authoritative Version: English

Dated this 30 day of October 2020.

(Signed)	*(Signed)*	*(Signed)*
Judge Raikos, Presiding Athens, Greece	Judge Knierim Hamburg, Germany	Judge Neven Brussels, Belgium

Entered in the Register on this 4 day of December 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar