



Judgment No. 2020-UNAT-978

Counsel for Mr. Thiombiano: Self-represented

Counsel for Secretary-General: Nathalie Defrasne

THE UNITED NATIONS APPEALS TRIBUNAL

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4. On 6 April 2016, Mr. Thiombiano was informed that his appointment had been extended retroactively from 1 March 2016 to 31 March 2016 and from 1 April 2016 to 30 April 2016. On 29 April 2016, Mr. Thiombiano requested a management evaluation of the decisions to retroactively extend him. The UNFPA Executive Director's response to his request concluded that these extensions were lawful.

law but were subject to the fulfillment of eligibility criteria and an approval process. He had been clearly informed that his extensions were finite and for the duration of the work of the UNFPA Rebuttal Panel and therefore had not entailed an *ex lege* conversion to a continuing appointment. The extensions of his appointment were lawful. Regarding Mr. Thiombiano's mention of retaliation and the retroactivity of his fixed-term appointments, the UNDT found that any such irregularities in issuing those appointments could cause vexation but did not amount to a serious violation of rights. The UNDT rejected Mr. Thiombiano's claim for moral damages.

11. On 24 June 2019, Mr. Thiombiano filed an appeal against the UNDT's Judgment and on 23 August 2019, the Secretary-General filed his answer.

12. On 26 September 2019, Mr. Thiombiano filed a motion requesting leave to file additional pleadings seeking to set forth his reply to the Secretary-General's answer. On 14 October 2019, the Secretary-General filed his comments to the motion arguing that Mr. Thiombiano had not established exceptional circumstances to warrant an additional pleading and in the additional pleading he merely reiterated the arguments he had previously set forth in his appeal brief.

13. On 23 October 2019, Mr. Thiombiano e-mailed the Appeals Tribunal's Registry requesting *inter alia* that he introduce two documents: a copy of the impugned Judgment and a letter of appointment for one year beginning on 15 August 2014. The Registry forwarded his e-mail to the Secretary-General's counsel for comment. The Secretary-General replied on 18 November 2019, noting that the two documents had already been annexed to Mr. Thiombiano's application before the UNDT, but stating that he had otherwise no comments on Mr. Thiombiano's e-mail. Mr. Thiombiano's motion is addressed herein.

Submissions

Mr. Thiombiano's Appeal

14. Mr. Thiombiano requests the Appeals Tribunal to vacate the UNDT's Judgment and order the conversion of his FTA to a "permanent" (continuing) appointment in accordance with Staff Rules 4.5 and 13.4¹. He seeks compensation in the amount of XOF 48,348,000²

¹ Mr. Thiombiano refers to a "permanent" appointment but the type of appointment at issue in this matter is a "continuing" appointment.

18. Mr. Thiombiano requests the Appeals Tribunal to award him compensation as follows: (i) three months' NBS for the UNDT's procedural delay of three years; (ii) 24 NBS (12 months each) for the two decisions not to renew his appointment; (iii) 12 months' NBS (6 months each) for the two abusive and irregular performance evaluations; (iv) 12 months' NBS for "the irregular situation involving the [FTA] for more than three years"; and (v) the implementation of the recommendations made by the Ethics Advisor which is to place him in the same situation he would have been in had the retaliatory behaviour not occurred.

The Secretary-General's Answer

19. The Secretary-General requests this Tribunal to dismiss the appeal and affirm the UNDT's Judgment. Mr. Thiombiano did not appeal the UNDT's finding that his challenge regarding the first ex0.9 (s(r)-1.8 ()-3 (b)0 Tw 7.295 0 Td [o)-3 (n o)-3 (f)-3.9 (h)-3.7 (i)-3.1 (s)-0.7

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unreasonable decision, when it found a) that there was no legal basis for Mr. Thiombiano's claim that his appointment had been converted into a continuing one; and b) that there were

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29. We find error with Mr. Thiombiano's arguments. Firstly, because technically speaking, the Judge who signed the Judgment had previously been a Judge and therefore an "official",⁵ rather than a "staff member", to another court of the United Nations system of justice, hence, not subject to the Dispute Tribunal's jurisdiction. Secondly, because her previous mandate as a Judge had long finished at the time of the issuance of the impugned Judgment, which was, at the earliest, the moment when she took her post as a full-time Judge for the UNDT. Thirdly, and more importantly, none of the circumstances aforementioned in the law relating to conflict of interest are met in the present case. It is clear that Mr. Thiombiano does not agree with the Judgment, but to cast aspersions on a Judge just because the judgment does not satisfy a party's interest is an impropriety.

30. Mr. Thiombiano's unsubstantiated allegations of bias and conflict of interest are therefore rejected.

Conversion of the fixed-term appointment into a continuing one

31. Mr. Thiombiano claims that the UNDT erred when it did not convert his FTA into a continuing one as of 1 March 2016. Since FTAs are precarious and he had not had a formal extension, despite continuing the employment relationship by the end of his last FTA on 29 February 2016, his appointment should have been automatically converted into a continuing one. Mr. Thiombiano also argues that there is no provision allowing for the Organization to retroactively extend his FTA, as it happened, with the consequence that, in his view, these further extensions were invalid.

32. It is indisputable that the Organization should have formally extended Mr. Thiombiano's FTA before the last expiry date on 29 February 2016. The UNDT Judgment acknowledged that it was not a good practice to retroactively extend the FTAs as of 1 March 2016 by the 6 April 2016 decision, even though the rebuttal process by which Mr. Thiombiano had questioned his performance appraisal was still ongoing at that time and there had been

Organization as defined in the provisions of the General Assembly. These provisions contain requirements such as selection through competitive process, assessment by the Secretariat review body, a performance rating of at least “meets expectations” or equivalent in the four most recent performance appraisal reports, a certain number of years of service remaining before reaching the mandatory age of separation from the Organization, not to mention the requirements related to the geographical recruitment area and the absence of any

decision. The rescission was favourable to Mr. Thiombiano's immediate interests, not to mention that this was made within the time limit of only a little more than a month between the request for management evaluation and the rescission.¹² While we understand a degree of frustration stemming from Mr. Thiombiano's appeal, particularly related to the errors previously made by the Administration towards him, it is undeniable that the Administration corrected them as soon as requested to do so. To award compensation for moral damage based on the administrative rescission, or any other internal documents that supported it, could be perceived as a possible deterrent or discouragement to future rescissions by the Administration, and possibly even a threat to the regular functioning of the informal dispute resolution system within the Organization,

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45. The appeal is dismissed and Judgment No. UNDT/2019/079 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th da