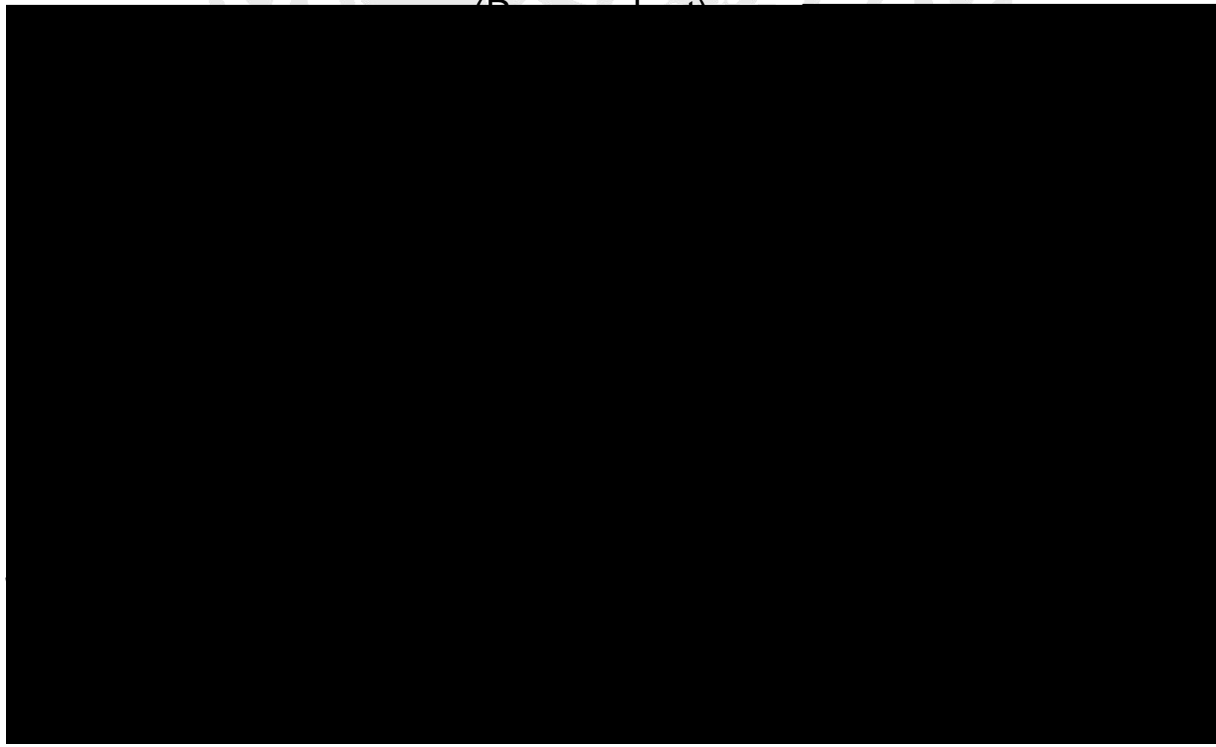




UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

Case No. 2010-187

Alauddin  
(Appellant)



Counsel for Appellant: Stephen Goldstein

Counsel for Respondent: Stéphanie Cartier

JUDGE SOPHIA ADINYIRA , Presiding.

**Synopsis**

1.

**THE UNITED NATIONS APPEALS TRIBUNAL**

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Judgment No. 2011-UNAT-181

regarding secondment are not applicable. Mr. Alauddin therefore submits that the UNDT erred in law in applying rules regarding locally recruited staff instead of the rules applicable to fixed-term appointments.

17. Mr. Alauddin submits that seeing that the secondment rules and policy do not apply to his contract, the UNDT erred in concluding that his “contract would have been renewed for the period outstanding up to the five year limit” instead of “through April 1, 2017 (when [Mr. Alauddin] would retire at the age of 62)” and also erred in calculating his compensation for loss of salary and emoluments.

18.

Tribunal, and as expressed in *Shakir*,<sup>1</sup> the Appeals Tribunal “will not admit evidence which was known to the party and could have, with due diligence, been presented to the UNDT”. In this case, Mr. Alauddin waited until 1 January 2011 to look into communications that were shared with the UNDT on 1 March 2010 and were relied upon in the 25 June 2010 and 18 November 2010 Judgments. Consequently, he “failed to exercise the necessary due diligence to raise his concerns about the 16 June 2009 communication before the Dispute Tribunal”.

22. The Secretary-General further submits that the new communication also refers to a five-year limit but notes that exceptions can be approved by the Prime Minister of Pakistan

UNDT even though he had “been afforded every opportunity to provide detailed information of which he has not availed himself” and should therefore be rejected.

25. The Secretary-General requests that the Appeals Tribunal affirm the Dispute Tribunal's Judgment in its entirety.

**Considerations**

26. Mr. Alauddin appeals the decision of the UNDT stating that it erred on questions of law and questions of fact.

27. In its Judgment, the UNDT determined that it would not be appropriate to order the reinstatement of Mr. Alauddin, due to the fact that: firstly, Mr. Alauddin 's probable period of employment, had the UNDP offered him another appointment beyond 31 December 2007, would have ended in November 2008; and, secondly, under the rules of UNDP and the policy of the Government of Pakistan, as explained in the communication dated 16 June 2009, there was a general restriction of five years which applied to such appointments.

28. Mr. Alauddin submits that the UNDT erred on a matter of law and fact in not ordering his reinstatement, stating that its conclusion was based on the incorrect application of rules regarding secondment, and also that the UNDT relied on a factually incorrect and

32. The Secretary General correctly submits that the communication of 11 January 2011 constitutes new evidence that was not previously before the UNDT, and which he did not seek, nor was he granted, leave to adduce before this Tribunal pursuant to Article 2(5) of the Statute of the Appeals Tribunal.<sup>3</sup>

33. Article 2(5) of the Statute of the Appeals Tribunal provides in part that:

In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings.

34. We do not find any exceptional circumstances that would require this Tribunal to receive this documentary evidence as its content would not affect the decision of the case.

35. There is no fundamental inconsistency between the two communications on the issue of the normal deputation period of five years.

36. Mr. Alauddin was on leave from government service during the period of his appointment with UNDP and he concedes that each year it was necessary for him to obtain the permission of the Pakistani Government for his deputation to the UNDP to be extended.

37. Accordingly, the UNDT did not err in taking into consideration the conditions governing Mr. Alauddin's deputation in order to determine his probable period of appointment with UNDP.

38. From the foregoing, Mr. Alauddin's arguments about the accuracy of the communications from the Pakistani Government of 16 June 2009 do not establish any errors of law or fact that warrant a reversal of the UNDT's conclusions regarding his probable period of employment.

39. Accordingly, we hold that the UNDT correctly determined that it would not be appropriate to order Mr. Alauddin's reinstatement.

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<sup>3</sup> *Abboud v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-100.



40. On the issue of compensation, we recall the decision of this Tribunal in *Warren*<sup>4</sup> that the very purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations.

41. The UNDT ordered compensation in the amount of Mr. Alauddin's net base pay with entitlements as if he had been reinstated for the period from 1 January 2008 to 21 November 2008.

42. We find that the UNDT correctly assessed the compensation for pecuniary damages at an amount that places Mr. Alauddin in the position that he would have been in had he been reinstated.

43. For the same reasons we decline to enhance the compensation for non-economic loss.

**Judgment**

44.