



Judgment No. 2015-UNAT-529



Counsel for Mr. Riano:

Self-represented

Counsel for Commissioner-General:

Lance Bartholomeusz

**THE UNITED NATIONS APPEALS TRIBUNAL**

Judgment No. 2015-UNAT-529

... On 13 October 2011 a disagreement arose via exchange of e-mails between [Mr. Riano] and Ms. Londén over a presentation that [Mr. Riano] was to give to the Advisory Commission Subcommittee. Ms. Londén requested that [Mr. Riano] give a 'dry-run' rehearsal of the presentation. [Mr. Riano] indicated that he felt uncomfortable doing so. [...] The disagreement appears to have severely tested Ms. Londén's patience. She felt that she had grounds to question the continued viability of the employment relationship.

... By e-mail to Ms. Ellis, the Deputy Commissioner-General, who was [Mr. Riano]'s Second Reporting Officer and Project Sponsor, and Ms. Cornelia Moussa, the [Director of Human Resources], dated 13 October, forwarding her correspondence with [Mr. Riano], Ms Londén stated [inter alia]:

I am really truly sorry to say that as this week has demonstrated, from my perspective, that this simply is not going to work. It is possible that it might work better with someone else (than me), but the frustration and feedback from the team would indicate not. [...]

... [...] According to the Respondent's Reply, by this stage [Mr. Riano] had also failed to satisfactorily complete a number of tasks assigned to him by Ms. Londén.

... On 20 October 2011, the Agency issued Vacancy Announcement No. 11-HQ-AM-47 for the post of Director, Enterprise Resources Planning, D-1. [Mr. Riano] applied for the vacancy.

... By e-mail dated 16 November 2011, Ms. Moussa informed [Mr. Riano] that his candidature for the position of ERP Director had not been successful because the position required a "different profile".

...

... By e-mail dated 27 November 2011, an Assistant Personnel Officer sent [Mr. Riano] a Performance Evaluation Report ("PER") form for the period 10 July 2011 to 30 April 2012, requesting that he complete the relevant sections before forwarding it to his supervisor for completion.

... On 14 December 2011, Ms. Londén forwarded the Assistant Personnel Officer's e-mail of 27 November 2011 to [Mr. Riano] stating [inter alia]:

... we will need to schedule the mid-term performance review session early in January when you are back from leave. DHR will take part in this discussion.

...

... [Mr. Riano] testified that some time in January 2012, his fiancée, who at that time also worked at the Agency, was notified that she had been selected for a post

in New York. As a matter of courtesy, he notified Ms. Londén that he was considering moving to New York to join his fiancée. [...]

... In early February another disagreement broke out in the ERP Project when a staff member sent a project document to an external partner. [Mr. Riano] retracted the document, stating that it had been sent without his authorization. [...]

... Other staff members working on the ERP Project were unhappy with [Mr. Riano]'s handling of the situation as evidenced by e-mails on the record that were sent to both [Mr. Riano] and Ms. Londén.

... By e-mail dated 4 February 2012, Ms. Londén [...] concluded that [Mr. Riano]'s e-mail to the external partner retracting the document had been a "wholly inappropriate" way of dealing with the situation. This e-mail was sent to [Mr. Riano] and members of the ERP team without Ms. Londén first seeking an explanation from [Mr. Riano].

...

... At a meeting on 13 February 2012, between [Mr. Riano] and Ms. Londén [Mr. Riano] indicated his intention to follow his fiancée to New York. Ms. Londén then informed [Mr. Riano] that she did not intend to recommend the renewal of his fixed-term appointment upon its expiration. [...]

... By e-mail to Ms. Moussa dated 13 February 2012, Ms. Londén summarised the meeting with [Mr. Riano] as follows:

To summarize, in a meeting today, Camilo indicated – and I accepted – that he would in tomorrow's meeting advise us both formally of his intention not to extend his contract beyond 10 July due to Louise's return to UNICEF.

Between now and end of contract I will assign him tasks outside the ERP PMO structure which do not entail close interaction or interdependencies with the team [...]

... [Mr. Riano] was concerned [...] that th

... Ms. Londén replied on the same day suggesting discussion of the draft PER with Ms. Moussa and noting that [Mr. Riano] was only half way through his performance period. [...]

... On [...] 14 February 2012, [Mr. Riano] attended a meeting with Ms. Londén and Ms. Moussa. According to Ms. Londén's testimony [Mr. Riano] was reminded that her recommendation was going to be that his contract should not be renewed. She explained to him that he had a number of options. If he did not seek renewal of his contract, no PER would need to be completed. If he did seek an extension of his contract, a PER would need to be completed, and the assessment of his performance would not be good. [...] The issue of alternative assignments was discussed. [Mr. Riano] stated that he wanted to have his contract renewed. This represented a change in [Mr. Riano]'s position since he had previously informed Ms. Londén on 13 February 2012 that he intended to follow his fiancée to New York.

... By e-mail to Ms. Londén and Ms. Moussa dated 15 February 2012, [Mr. Riano] stated that he would like to "reaffirm" his interest in having his contract renewed at the end of its term. [...]

... By memorandum dated 17 February 2012, [Mr. Riano] sent to the UN Ethics Office and UNRWA Office of Internal Oversight Services a report of alleged serious misconduct by Ms. Londén. [...]

... By e-mail dated 20 February 2012 and copied to Ms. Moussa, Ms. Londén responded to [Mr. Riano]'s e-mail of 15 February, stating, inter alia:

Following our bilateral discussion on 13th and as agreed in the meeting with DHR on 14 February, we have identified a full-time assignment for you in ISD, with effect from 21 February. This assignment is in line with your expressed subject matter interest and work experience.

The e-mail went on to set out the specific detail of the proposed new assignment in the Information Systems Division ("ISD").

... On or around 20 February 2012, [Mr. Riano] met Ms. Londén and the Chief of ISD to discuss the proposed assignment. [Mr. Riano] recorded the meeting without the knowledge of the other participants in the meeting.

... By e-mail dated 21 February 2012, [Mr. Riano] responded to Ms. Londén's e-mail, stating that he did not accept the proposed transfer [...]

...

... By e-mail dated 26 February 2012, [Mr. Riano] ... [reiterated] that he would like to continue in the Project Manager functions as described in his contract and not be moved to a different assignment in a different department. [...]



**THE UNITED NATIONS APPEALS TRIBUNAL**

Judgment No. 2015-UNAT-529

support of termination with 30 days notice, which the ACHR recommended to the Commissioner-General.

... On 18 March 2012, Ms. Ellis, as the ACHR Chair, signed off on the recommendation and on 20 March 2012 Mr. Grandi, the Commissioner-General, approved the decision.

... On 22 March 2012, [Mr. Riano] met Ms. Moussa and Mr. Nathan Baca, a Human Resources Officer. Ms. Moussa informed [Mr. Riano] that the ACHR had recommended, and the Commissioner-General had decided, that his contract should come to an end. [Mr. Riano] recorded the meeting without the knowledge of Ms. Moussa or Mr. Baca. At the meeting, [Mr. Riano] was given a letter dated that day in which Ms. Moussa informed him in writing that his fixed-term appointment would be terminated in the interest of the Agency. [...]

...

... By Interoffice Memorandum dated 16 April 2012, Ms. Christine Kisenga, the Officer-in-Charge of the Personnel Services Division, attached a PER for [Mr. Riano]'s "review and signature" on Part X as an acknowledgement of the completion of the report. She asked that he return the signed PER to her before the last day of his appointment on 22 April 2012.

... [...] The case file contains no record of [Mr. Riano] having signed the PER sent to him by Ms. Kisenga.

... By e-mail to the Deputy Commissioner-General dated 18 April 2012, [Mr. Riano] sought review of the decision to terminate his appointment. [...]

... By e-mail to the Commissioner-General dated 2 May 2012 [Mr. Riano] sought a suspension of the implementation of the 22 March 2012 decision to terminate his appointment until a decision review had been completed and the outcome notified to [Mr. Riano].

... By e-mail to [Mr. Riano] dated 5 June 2012, the Commissioner-General rejected [Mr. Riano]'s request for suspension of action, noting that the request was submitted on 2 May 2012, "at which time your separation from UNRWA had already been fully effected." The Commissioner-General also stated that the matter had been thoroughly reviewed by management and that the decision was based upon [Mr. Riano]'s "documented underperformance during the probationary period". Accordingly, he had not found a sufficient basis to suspend the decision.

... By letter to [Mr. Riano] dated 6 June 2012, Ms. Ellis responded to [Mr. Riano]'s request for decision review, affirming the decision to terminate his appointment [...]

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**THE UNITED N**

22. Regarding the repatriation grant, the Agency paid the amount that it maintained was due to Mr. Riano. As the UNRWA DT dismissed this claim for failure of Mr. Riano to support the claimed amount, there is no basis to

28. A fixed-term contract ends with the effluxion of time and in the usual course of things a person employed under such a contract does not have a right or legitimate expectations of its renewal. Mr. Riano was employed on a one-year fixed-term contract and there is no evidence that an express promise was made to him by anyone in authority to extend the life of the said contract. Indeed, his fixed-term contract was terminated before the date of expiry.

29. Therefore, there is no basis to support Mr. Riano's claim of legitimate expectations and/or rights for the renewal of his contract. As a consequence, any pecuniary claim which Mr. Riano has that is related to what he perceives as his legitimate expectation of the renewal of his contract fails.

30. Mr. Riano has failed to demonstrate that the UNRWA DT erred with respect to the amount awarded for moral damages. This Tribunal finds that the UNRWA DT evaluated all the evidence, both oral and documentary, before it and made a reasoned assessment as to the amount of anxiety and stress suffered by Mr. Ri

Original and Authoritative Version: English

Dated this 26<sup>th</sup> day of February 2015 in New York, United States.

*(Signed)*

Judge Thomas-Felix,  
Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Simón

Entered in the Register on this 17<sup>th</sup> day of April 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar