
APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2017-UNAT-806

Maloof
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge John Murphy, Presiding Judge Deborah Thomas-Felix Judge Sabine Knierim
Case No.:	2017-1092
Date:	27 October 2017
Registrar:	Weicheng Lin

Counsel for Mr. Maloof: George G. Irving
Counsel for Secretary-Gener

JUDGE JOHN MURPHY , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal

7. On 20 March 2015, the Deputy Director, People and Change Practice Group (PCPG), UNOPS, Mr. Nasser Stammout addressed a letter to Mr. Maloof informing him that his assignment as the interim head of the UNOPS Sudan office would end on 30 June 2015 and furthermore that he would be separated from UNOPS service from that date as a decision had been taken not to renew his appointment beyond 30 June 2015. The relevant part of the letter reads as follows:

I refer to the telephone conference of 16 March 2015 (...)

I have been informed that you were advised during this telephone conference that the job description for the long-term of the head of the UNOPS Sudan office has recently been finalized and that, consequently, your temporary assignment as the interim head of the UNOPS Sudan office will end on 30 June 2015.

Further to the above, I must with deep regret now give you formal notice that your appointment will not be renewed beyond COB 30 June 2015 and you will be separated from UNOPS service effective that date. Should you be appointed to a fixed-term post in the United Nations system on or before 1 July 2015, the foregoing would of course automatically cease to be applicable.

PCPG will provide any assistance you may require in your search for alternative employment. Between now and 30 June 2015 you should dedicate your office hours to searching for alternative employment. In this regard, you may wish to consider applying for the position of the head of the UNOPS Sudan office, which will be advertised shortly (...).

8. At the beginning of April 2015, UNOPS advertised the vacancy for the position of Head of Office/Programme Coordinator for the UNOPS Sudan office at the P-4 level. Mr. Maloof did not apply for this position.

9. On 13 May 2015, the UNOPS Internal Audit and Investigation Group (IAIG) completed the investigation in relation to the allegations against Mr. Maloof. It concluded that there was some evidence that Mr. Maloof had shouted at people in the office. Similarly, it appeared that he improperly favored a colleague in a recruitment exercise. The IAIG consulted the UNOPS General Counsel and in light of the intended separation of Mr. Maloof from UNOPS, it decided not to refer the matter for further consideration.

10. By e-mail dated 24 June 2015 to the UNOPS Human Resources Officer, Mr. Maloof requested clarification concerning his administrative leave. By e-mail dated 25 June 2015, the UNOPS Legal Specialist informed Mr. Maloof that his administrative leave had not been extended and that no disciplinary action would be taken against him regarding the allegations.

11. On 30 June 2015, Mr. Maloof was separated from UNOPS service.

12. By memorandum dated 18 August 2015 to the UNOPS Executive Director, Mr. Maloof requested management evaluation of the decision dated 25 June 2015. He primarily focused on the decisions not to extend his administrative leave and not to take disciplinary action against him, as communicated to him on 25 June 2015. The relevant part of the memorandum reads:

I am writing to request a formal management evaluation of the decision communicated to me on 25 June 2015 (...) informing me that my administrative leave has not been extended and that no disciplinary action is being taken against me (...)

This constitutes a final decision with regard to the decision to place me on administrative leave (...) It also implicitly represents a decision refusing to restore me to my prior status and to terminate my employment as of 30 June 2015 (...).

13. There was no response to his request for management evaluation.

14. On 4 December 2015, Mr. Maloof filed an application with the UNDT contesting the following decisions: (1) to cancel his administrative leave “without completing the investigation that had been initiated” against him; (2) the alleged refusal “to abide by the terms of [his] temporary reassignment” in Sudan; and (3) not to renew his contract beyond 30 June 2015. He requested the following remedies: (1) rescission of the decision to cancel his administrative leave; (2) reinstatement in a suitable post or, alternatively, placement on Special Leave With Full Pay pending the conclusion of the investigation and production of an investigation report exonerating him of any wrongdoing; (3) compensation in the amount of two years’ net base pay for loss of employment and an additional one year’s net base pay for loss of entitlements as well as moral damages for harm to his reputation, emotional stress and violations of due process; and, (4) reimbursement of 20 months of special operations living allowance (SOLA) payment.

15. After various preliminary proceedings, the UNDT held a hearing on 8 and 9 February 2017. The UNDT rendered its Judgment on 9 May 2017 dismissing the application in its entirety.

16. With respect to Mr. Maloof's first challenge, the UNDT found that the contested decision to discontinue his administrative leave did not adversely affect his conditions of employment and as such, he had no standing to contest it. It held further that a decision in terms of Staff Rule 10.4 to place a staff member on administrative leave and its duration were discretionary depending on the circumstances of each case. Staff Rule 10.4 provides that administrative leave (pending the investigation of alleged misconduct) may continue throughout an investigation and until the

19. Based on the foregoing, the UNDT found that there were no grounds to award compensation for loss of employment or moral damages, considering in particular, that Mr. Maloof did not suffer any prejudice from the decision to cancel his administrative leave which was the only decision considered on the merits. Compensation may not be awarded in the absence of actual prejudice.

Submissions

Mr. Maloof's Appeal

20. Mr. Maloof submits that the UNDT failed to exercise the jurisdiction vested in it when it dismissed his claims regarding the non-renewal of his appointment and non-reassignment as time-barred, as it mistook and narrowly interpreted the decisions he was contesting. He claims to have actually been contesting a “decision to violate his procedural rights to due process as per the legal obligations prescribed on the handling of allegations of misconduct” defined in UNOPS Organizational Directive 36 and the Universal Declaration of Human Rights and the United Nations Charter. He argues that UNOPS in effect imposed a “disguised disciplinary penalty” that resulted in his separation from service based on a “pattern of irregularities” and without any efforts of retention on the part of the Administration in violation of Staff Regulation 4.4 and Staff Rule 9.6. The decision to reassign him from the Democratic Republic of the Congo was a “pretext for his non-renewal and (...) when he succeeded beyond any expectations, the disciplinary process was misused to ensure his final separation from service” and he was “subjected to a (...) procedurally flawed disciplinary process marred by a predetermined outcome”.

21. Mr. Maloof further asserts that the UNDT erred in law by “focusing solely on the issue of the time limit specified in the Staff Rules” to submit a request for management evaluation and thus “failed to consider the larger legal issues surrounding [his] right to due process and accountability”. In particular, the UNDT failed to consider the process that UNOPS used to address the allegations of misconduct made against him and UNOPS’ failure to place him in another position following his exoneration and to afford him any consideration as a staff member in need of a placement who had taken up a temporary assignment in good faith. He argues that his application was “clearly receivable” since he was not challenging his separation “because of the ending of his temporary assignment but due to the other violations of [his] rights that took

place later” and he had challenged these developm

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30. The Secretary-General further contends that the UNDT did not commit any errors of fact. In particular, he argues that the UNDT correctly identified the applicable burden of proof and rightly found that Mr. Maloof had failed to provide evidence of any reassurance of reassignment in order to rebut the so-called presumption of regularity of official acts. In any event, the question whether Mr. Maloof had actually provided evidence of any such reassurances or whether the Secretary-General should have provided additional evidence on the abolishment of Mr. Maloof's post in the UNOPS Congo office would ultimately make no difference because his challenge of the non-reassignment was time-barred.

31. According to the Secretary-General, Mr. Maloof merely disagrees with the UNDT and reargues matters from his application before the UNDT or attempts to "reword" his challenges without actually identifying any errors by the UNDT in its Judgment. In accordance with its well-settled jurisprudence, the Appeals Tribunal should dismiss the appeal on this basis alone.

32. In light of the foregoing, the Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment and dismiss the appeal in its entirety.

Considerations

33. The Secretary-General is correct in his submission that the UNDT properly dismissed as irreceivable Mr. Maloof's claims in relation to the non-renewal of his appointment and his reassignment. Mr. Maloof now seeks to modify his claims on appeal to state that the UNDT misunderstood the decisions he was contesting. The UNDT ruled on the decisions challenged by Mr. Maloof in his application before the UNDT. Those claims, related to the non-renewal of his contract and non-reassignment to his former position in the UNOPS Congo office, are quite simply time-barred and not receivable in terms of Article 8(3) of the UNDT Statute. The UNDT properly applied the time limits for challenging administrative decisions. Mr. Maloof was informed by the letter dated 20 March 2015 of the decisions. The letter was unambiguous about his separation which was not contingent upon the outcome of the disciplinary process, or the exploration of any possibility of return to his previous position. Therefore, the UNDT correctly held that Mr. Maloof should have filed his request for management evaluation within the 60-day deadline contained in Staff Rule 11.2(c) which started to run from the 20 March 2015 non-renewal decision.

34. Regarding Mr. Maloof's claim that UNOPS violated its legal obligations by cancelling his administrative leave, the UNDT reviewed this decision under the applicable legal framework and correctly found that there was no adverse decision affecting his conditions of employment. It concluded that for such reason Mr. Maloof had no standing to contest the decision. More accurately, the decision to terminate the administrative leave was not an "administrative decision" in that it did not have any adverse legal consequences for Mr. Maloof. In terms of Article 2(1)(a

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40. The appeal is dismissed and Judgment No. UNDT/2017/033 is affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.