



**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

BALOGUN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**

Self-Represented

**Counsel for the Respondent:**

Melissa Bullen, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, a former staff member of the United Nations Economic Commission for Africa (ECA), filed an Application with the United Nations Dispute Tribunal (UNDT) contesting the decision of ECA not to pay him termination indemnity, pursuant to Staff Regulations and 200-series rules regarding payment of termination indemnity, following the non-renewal of his fixed-term contract on 31 December 2002.

## **Facts**

2. On 26 August 1983, the Applicant entered the service of the United Nations on a one-year intermediate-term appointment as Regional Adviser in the Public Administration and Management Section of ECA at the L-5, step 1 level, under the 200-series of the Staff Rules. On 1 May 1992, the Applicant's appointment was converted to a fixed-term contract and in January 1996, his post was reclassified to L-6.

3. On 8 January 2002, some Regional Advisers, including the Applicant, sent a letter to the Human Resource Service Section (HRSS) regarding rumours about non-renewal of their contracts, asking that due process be followed in determining which contracts should be terminated.

4. On 10 January 2002, HRSS informed all the Regional Advisers that ECA was undertaking a review of regional advisory services.

5. On 4 April 2002, the Executive Secretary of ECA held a meeting with all the Regional Advisers to explain the rationale for the review of the regional advisory services. In this regard, on 19 June 2002, the Executive Secretary informed the Regional Advisers that those whose appointments would not be extended past 31 December 2002 would be notified accordingly at the end of September 2002.

6. On 30 September 2002, the Applicant and five other Regional Advisers were notified in writing that their contracts would not be renewed beyond 31

December 2002, when their fixed-term contracts were due to expire, following the review conducted at ECA in 2002.

7. On 10 December 2002, the Applicant requested the Joint Appeals Board (JAB) in New York to suspend the implementation of the decision of the



accordance with the Staff Rules which applied at the time the contested decision was made, the Applicant was not entitled to termination indemnity, and in any event, the request was not receivable as it was already time-barred since the two month limitation period had lapsed for evaluating the administrative decision.

16. On 8 February 2010, the Applicant submitted the present Application to the UNDT asking the Tribunal to find, *inter alia*, that the Application is receivable, that the Applicant was forcefully separated from his job, that the

- c. That he could not have asked that his termination indemnity be paid while still challenging the fairness and legality of the termination decision.
  
- d. That he acted within the rules when he contested the decision to

- d. The Applicant made no applications for waiver of extension of the time limits to seek management evaluation but instead seeks to contort the date of the decision to 30 September 2009.
- e. That this Application seeks to re-litigate the cases brought by the

and pass judgments on an application filed by an individual, as provided in article



mandatory, not optional.<sup>3</sup> In light of the foregoing, this Tribunal finds that this Application is not receivable because it is time-barred.

29. Notwithstanding the fact that this Application is time-barred, the issue of termination indemnity is also barred by the doctrine of *res judicata*. Though the Applicant may couch this Application in different terms from his previous applications, it is still *res judicata*. The Applicant does not have the right to bring the samyyyllica(ta)]2(t)n-10.(ytarrga)]TJ6s

33. The Applicant went ahead and has now filed a fourth application with UNDT, based on the same facts and raising the same issues as the three previous applications with the former UN Administrative Tribunal. The former UN Administrative Tribunal ruled against the Applicant in all three cases reasoning that the Applicant had no reasonable expectation for a renewal of his fixed-term contract, and even though there could be exceptions to this rule, the Applicant failed to meet his burden of proof to show any countervailing circumstances. The former UN Administrative Tribunal ruled that the doctrine of *res judicata* applied to the two preceding applications and dismissed them in their entirety.

34. The Tribunal in *Meron* UNDT/2010/051, giving deference to the United Nations Appeals Tribunal (UNAT)'s *Shanks* 2010-UNAT-026 ruling, stressed the importance of the authority of a finality of a judgment while citing the Administrative Tribunal of the International Labour Organization, which stated:

“As the Administrative Tribunal of the International Labour Organization observed in Judgment 1824, *In re Sethi* zation.72UN Ade3(201d).65(s).6(t -s6)s8uydoffial 05 -1.7

