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been unsupported in fact and in law. Specifically, UNAT held in the relevant parts of their judgment:

25. T

36. As noted above, Ms. Toure served as a Regional Advisor, in a post funded through the RPTC programme. This programme is for temporary projects and needs, as set forth in the 2012 RPTC Inter-Regional Guidelines and Principles for Effective Delivery of Capacity Development Support (para. 1.4 ), the 2004 RPTC Report (on “Review of the regular programme of technical cooperation and the Development Account” A/59/397) and the proposed 2012/2013 RPTC Programme Budget (Section 23, para. 34). Ms. Toure did not hold a regular-budget established post but one of a temporary nature that could be discontinued without the need for the ECA Executive Secretary to seek prior approval.

[...]

39. The UNDT erred not only in finding that Regulation 6.2 applied in this case, but also when it decided that the ECA Executive Secretary lacked authority to abolish Ms. Toure’s post since only changes requiring additional resources required approval by the General Assembly.

14. On 17 October 2016, the Tribunal issued Order No. 455 (NBI/2016) requiri

(NBI/2016) with the Applicant being granted one week period to present his submissions which he did on 2 December 2016. In these submissions, the Applicant presented his observations and submissions; among others, he claimed that new evidence had come to light which would prove that a reclassification of his post had taken place.

18.

23. Notwithstanding the fact that the ES/ECA chose to abolish the Applicant's post on 1 April 2013, ECA created two almost identical posts in August 2013 and January 2014. Specifically, the Respondent created the post of Senior Natural Resources Expert (Water) at ECA's Special Initiatives Division/African Climate and Policy Centre (ACPC). The fact that



responsibilities of the post extend beyond cooperation of shared water resources. However, the Respondent's submission failed to take into account that the Applicant's functions actually covered most of these areas. For example, the first "Responsibility" listed in the Vacancy Announcement for the post to which the Applicant initially applied comprised: "Deliver advisory services to member States and regional and sub-regional institutions in Africa on policy issues related to water resources management"; and the second "Responsibility" listed in this announcement was "Provide scientific input into the development of the water-related components/modules of the Population, Environment, Development and Agriculture (PEDA) ...".

e. The second "Responsibility" in the 2014 ACPC vacancy announcement calls for an incumbent who can perform climate change related functions. Among some of the functions that the Applicant had been performing in this regard are reflected in "Activities undertaken by Regional Adviser on Integrated Water Resources Management".

f. Most of the remaining functions in the 2014 vacancy announcement relate to analysis of the water development sector and the development and implementation of the Organization's goals related to this. The Applicant notes that similar functions were included in the 2003 vacancy announcement.

g. The email of 20 December 2010 indicates that the Applicant had been the technical focal point for the ACPC initiative from its inception in 2007 until his transfer to Lusaka. The email further indicated that the Applicant was "one of the most conversant ECA staff on climate change issues". Both of these comments indicate that the functions that the Applicant was actually performing prior to the restructuring were much broader than those indicated by the Respondent.

h. The competencies for both the ACPC post and the Applicant's RPTC post are virtually identical. Both call for Leadership, Communication, Planning and Organizing, and Judgment/Decision

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extra budgetary sources in areas of (i) macroeconomic policy; (ii) development planning; (iii) industrialization and (iv) natural resources contract negotiations. None of the classified functions required the appointment of candidates with skills-set relating strictly to water resources management.

37. The functions that the Applicant applied for and performed focused on water resources management which is a smaller component of the wider functions of a Senior Natural Resources Expert (Water) which was advertised by ECA in August 2013 and re-advertised in January 2014. The Applicant's function as a water resources management expert was part of ECA's RPTC which was complementary to ECA's core activities.

38. The Applicant's post, not being an established post funded through the regular budget, was not established by the General Assembly and was never a component of the formal ECA staffing table. Like all other Regional Advisor posts, the Applicant's post was created at the ECA level on the basis of priority areas set out by Member States. There is, therefore, no basis upon which the functions of his post, being RPTC functions funded through GTA funds would be subjected to a classification exercise for review by the Office of Human Resources Management (OHRM) as required by ST/AI/1999/8.

*There was no redeployment of functions relating to the Applicant's job description.*

39. The Applicant's functions were not redeployed and the funding for his post was not used to create posts in other ECA Divisions.

40. The two vacancy announcements of August 2013 and January 2014 were not connected to any RPTC funded programmes or posts affiliated to the Applicant's functions as a Regional Advisor. The January 2014 vacancy announcement was a re-issuance of the August 2013 announcement which had not attracted the minimum required number of female candidates.

41. The advertised position of a Senior Natural Resources Expert (Water) was to fill a vacancy at ECA's Speci









regional advisor posts was found legitimate in consideration of this feature of the restructuring.

54. Moreover, whereas the Applicant is correct that the application of ST/AI/1998/ is not limited to regular budget posts, it must however be noted that, while ST/AI/1998/9 requires classification in certain circumstances<sup>16</sup>, it does not determine whether in any given circumstance a classification of an existing post is preferred over establishing and classifying a new one of a similar functionality. As determined in the *Toure* judgement, the ES/ECA had acted within the ambit of his discretionary authority in deciding whether to keep Regional Advisors' post or not. As such, the question of legality of ES/ECA action under ST/AI/1998/9 would only concern the newly created posts. These, as demonstrated by the documents filed by the parties, were indeed submitted for classification by OHRM under ST/AI/1998/9, again, in the readily known context of restructuring of RPTC advisory services. The fact that the classification of the newly established posts would not have been concluded

56. To the extent that the Applicant's argument may be construed to be alleging abuse of discretion in the abolition of his post ("real intent of the Administration was to redeploy the Applicant's post without following proper procedures" and "He simply cannot act at his whim and later rely on false reasons, provided *ex post facto*, to cover his misdoings"), the Tribunal understands that the Applicant attributes to the ES/ECA, alternatively, acting with a prior improper intent or acting on a whim and then procuring false justifications. However, neither was substantiated. At the outset, as discussed above, no organizational procedures were violated.

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58. Last, as admitted by the Applicant, the character of his fixed-term appointment did not require ES/ECA to retain his post after expiration of his term in priority over reformulating ECA and the RPTC advisory services. All these factors considered, there was no abuse of discretion in opting for a creation of a new post at ECA, even if certain responsibilities were to be replicated. This Tribunal echoes UNAT in *Toure* that the imperative of lack of abuse, arbitrariness or unfairness was satisfied once the new posts were open for people who encumbered Regional Adviso