

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/192, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 19 October 2016, in the case of Wright v. Secretary-General of the United Nations . The Secretary-General filed the appeal on 19 December 2016. Mr. Michael Wright did not file an answer.

Facts and Procedure

2. The Dispute Tribunal made the following factual findings which the Appellant does not contest:¹

... The Applicant, a staff member of the Department for General Assembly and Conference Management (“DGACM”), filed an application [before the UNDT] contesting the decision to abolish his post and, as a result, to terminate his permanent appointment.

... The Applicant was one of fourteen former and current staff members who, in March 2014, filed applications [before the UNDT] relating to the decision to terminate their permanent appointments following the abolition of a number of posts in DGACM. Several of the applicants subsequently withdrew their applications. This case was set down for a hearing [before the UNDT] along with five other cases on 29 and 30 March 2016.

...

Employment with the Organization

... The Applicant is a long-serving employee of the United Nations, having worked with the Organization for approximately 25 years. He received a permanent appointment effective 1 October 1992.

... Prior to 20 April 2014, the Applicant was Lead Printer at the Publishing Section at the grade TC-6, step 7. The Applicant was retained on a temporary funded

proposed programme budget for the biennium 2014–2015), in which it included proposals for specific posts to be abolished, including in DGACM.

... At para. I.107, the report recorded the ACABQ’s enquiry as to the potential impact of post abolition on staff in the Publishing Section who might lose employment if the budget was approved. The report noted that the Department was “actively engaged” with OHRM and other offices to “address the matter proactively”:

Abolishments

I.106 A total of 99 posts are proposed for abolishment, including 4 General Service (Principal level), 56 General Service (Other level) and 39 Trades and Crafts posts, at Headquarters under subprogrammes 3 and 4, as follows:

...

(c) The abolishment of 39 Trades and Crafts posts and 22 General Service (Other level) posts in the Reproduction Unit and the Distribution Unit, reflecting the completion of the shift to an entirely digital printing operation ... ;

...

I.107 The Advisory Committee enquired as to the potential impact of post abolishment on staff and was informed that the staff in the Publishing Section who might lose employment would be affected if the proposed budget were approved. In anticipation of this possibility, the Department had been actively engaged, together with the Office of Human Resources Management and other relevant offices, to address the matter proactively. ...

I.108 The Advisory Committee recommends the approval of the proposed abolishment of 99 posts in the Department.

General Assembly resolution 68/246

... On 27 December 2013, the General Assembly approved the Secretary-General’s proposed programme budget for the biennium 2014–2016,^[2] section 2 of which provided for the abolition of 59 posts in the Publishing Section of the Meetings and Publishing Division of DGACM.

Note of 30 December 2013

... On 30 December 2013, Mr. Yukio Takasu, the Under-Secretary-General for Management (“USG/DM”), sent a Note to the Chef de Cabinet, stating:

² [This should read “biennium 2014-2015”.]

**Termination of appointments on abolition of posts –
DGACM staff members**

1. I refer to the attached recommendation by the USG/DGACM for the Secretary-General to terminate the appointments of a number of

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2017-UNAT-767

Continued employment

... The Applicant's permanent appointment was not terminated as he secured further employment at the G-6 level, step 11, against a special funding post.

3. Mr. Wright brought an application before the UNDT challenging “[t]he decision to abolish Applicant’s post, effective January 2014, and as a result to terminate Applicant’s permanent appointment”. Mr. Wright “seeks the immediate rescission of the 31 December 2013 decision to terminate his appointment”; and “enforcement of the Administration’s duties to search out and find an alternative suitable post to Applicant within the General Service in its duty station (New York Headquarters) [and] to retain Applicant in preference on all other types of appointments”.

4. On 19 October 2016, the UNDT issued Judgment No. UNDT/2016/192. Initially, the Dispute Tribunal found that Mr. Wright’s application was not moot and was receivable although his “termination never took effect as he was retained against a different post”.³ On the merits, the UNDT found : (i) “General Assembly resolutions 54/249 and 68/246 did not have the effect of taking away the authority of the Secretary-General to terminate permanent appointments based on approved abolition of posts”⁴

not receivable. Mr. Wright's permanent appointment was never actually terminated; thus, the impugned decision was rendered moot. Second, the decision to abolish Mr. Wright's post was the consequence of the General Assembly's decision to abolish 59 posts, including Mr. Wright's. The decisions of the General Assembly are binding on the Secretary-General and, consequently, the General Assembly's decision to abolish the post is not an administrative decision subject to judicial review.

6. The UNDT further erred in finding the application receivable on the basis that the 31 December 2013 DGACM notice to Mr. Wright constituted an appealable administrative decision. The UNDT's power of review under Article 2(1)(a) of its Statute is restricted to administrative decisions that have a direct and negative impact on the staff member's rights. The challenged DGACM notice was a mere notification deprived of any such direct impact on Mr. Wright's rights. As the decision to terminate Mr. Wright's appointment was contingent upon him not finding an alternative position, it was prep

THE UNITED NATIONS APPEALS TRIBUNAL

14. We have held in the context of an appeal that when the contested administrative decision “cease[s] to have any legal effect”, the decision has been rendered moot and there is no longer a “live issue ... on which [this Tribunal] is competent to pass judgment”.¹¹ Applying the doctrine of mootness is consistent with the purpose behind the establishment of the two-tier system of administration of justice, which was to adjudicate existing disputes; not to interpret the law when there is no live dispute before it.¹²

15. The decision to terminate Mr. Wright’s permanent appointment due to the abolishment of his post was never implemented because he obtained another position with the Organization, as the UNDT acknowledged. Mr. Wright’s continued employment with the Organization rendered moot the Administration’s decision to terminate him. Thus, the administrative decision the staff member challenged in his application was no longer a live issue and the Dispute Tribunal was not competent to pass judgment on the application. Accordingly, the Dispute Tribunal made an error of law when it found Mr. Wright’s application receivable.

16. In light of the UNDT’s error in receiving the application, the UNDT’s findings on the merits of the staff member’s claims and the award of damages to the staff member were *ultra vires* and cannot stand. The UNDT Judgment should be vacated in toto.

¹¹ *Finniss v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-708, para. 24; *Wilson v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-709, para. 26.

¹² *Wilson v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-709, para. 25.

Judgment

17. The appeal is granted and Judgment No. UNDT/2016/192 is vacated.

Original and Authoritative Version: English

Dated this 14th day of July 2017 in Vienna, Austria.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Raikos

Entered in the Register on this 5th day of September 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar