



# Administrative Tribunal

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## ADMINISTRATIVE TRIBUNAL

Judgement No. 1275

Case No. 1358

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Kevin Haugh, Vice-President, presiding; Ms. Jacqueline R. Scott; Mr. Dayendra Sena Wijewardane;

Whereas, on 28 May 2004, a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP) filed an Application requesting the Tribunal, inter alia:

“2. [T]o declare the non-renewal of [the] Applicant’s contract unlawful;

...

5. [T] order, in lieu of reinstatement, payment of an amount equivalent to two years’ net base salary for the monetary and moral injury sustained ...; should the Tribunal find that the case is so exceptional as to warrant recourse to the provisions in article [10.1] of its Statute, [the] Applicant respectfully requests the Tribunal to consider an amount equivalent to 32 months.”

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent’s answer until 30 September 2004 and twice thereafter until 31 December;

Whereas the Respondent filed his Answer on 30 December 2004;

Whereas the Applicant filed Written Observations on 19 January 2005;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) reads, in part, as follows:

***“Employment history***

... The [Applicant], a national of Lebanon, joined the UNDP Country Office in the [United Arab Emirates (UAE)] on a one-year fixed-term contract on 3 October 1999 as an Administrative/Finance [Associate], at the GS-6 level. Shortly before his appointment expired, he was given a one-month extension (from 3 to 31 October 2000), and he was at the same time informed that his contract would not be renewed beyond 31 October 2000. ...

***Summary of the facts***

... On 26 June 2000, the UAE Ministry of Foreign Affairs addressed a ‘Note Verbale’ to the UNDP Office in Abu Dhabi. The Note advised that the support of the Office’s technical capacities [would] take place by involving more national staff in UNDP activities, and by replacing the staff holding jobs of Records Officer and Finance and Administrative Officer with national holders of university degrees. The Foreign Affairs Ministry suggested that the two jobs mentioned be combined and be renamed as ‘Assistant Resident Representative’ for Administrative Affairs and be given to [a specific UAE national]. The communication further suggested the name of [another UAE national] as Assistant Resident Representative for Programmes in replacement of [the] then Programme Affairs Officer. ...

... On 10 July 2000, UNDP Abu Dhabi received another ‘Note Verbale’ from the Ministry of Foreign Affairs, together with the minutes of a meeting held on 27 June 2000. The Ministry of Foreign Affairs in its correspondence requested the implementation of the contents of the minutes at issue.

... The minutes concerned the meeting held on 27 June 2000 between the UAE Ministry of Foreign Affairs, the Acting Resident Representative and the former Resident Representative of UNDP. The purpose of the meeting was to request UNDP to endorse the UAE Government’s appointees for the posts of Assistant Resident Representative for Administrative Affairs and Assistant Resident Representative for Programmes. In addition, the local Government expressed its intention to have five UNDP non-national staff members’ contracts discontinued, among them the [Applicant’s]. The Government also expressed its disapproval of UNDP’s intention to increase local staff members’ salary.

... In a letter dated 12 July 2000, a group of UNDP Abu Dhabi local staff members wrote to [the] Administrator, UNDP, seeking his advice and assistance in view of the UAE Government’s interference ...

... In a letter dated 20 July 2000 ... [the] then Acting Resident Representative, UNDP Abu Dhabi, requested advice on the UAE Government’s request for emiratization of the positions held by expatriates.

... [On] 25 July 2000 [the] Director of the Office of Human Resources, UNDP, responded ... [and referring] to Article 105 of the United Nations Charter and also to Article IX, paragraph 1, of the Basic Agreement between

the Government of the UAE and UNDP on the Organization's privileges and immunities ... explained that the Government of the UAE could not terminate the contracts of locally recruited staff members and replace them with nationals because the UAE Government was not party to the employment contracts of UNDP staff members. In addition, [she] recalled that under the terms of the Basic Agreement, UNDP has the latitude to hire staff deemed appropriate to its proper functioning.

... [The Director, Office of Human Resources, UNDP,] also recalled that in accordance with Chapter XV, Article 100, of the Charter of the United Nations ... 'In the performance of their duties the Secretary-General and the staff shall not seek *or receive instructions from any Government* or from any other authority external to the Organization...' (Emphasis in original). [She] therefore deemed the UAE's attempts to impose its views in the running of the UNDP Office contrary to the Charter of the United Nations. Finally, [she] indicated that the Government of the UAE could not interfere in the salary scale of UNDP, even as a net contributing country, because salaries were determined in accordance with a United Nations methodology developed by the International Civil Service Commission, endorsed by the General Assembly and applied throughout the United Nations common system. Accordingly, UNDP [could not] deviate from this methodology. In conclusion, [she] stated that in view of international law and the Basic Agreement, the Government of UAE could not interfere in the management of UNDP.

10. [On] 5 August 2000, the UNDP Abu Dhabi Office informed the [Applicant] that in connection with the UAE Government's decision to emiratize/nationalize the local positions in the UNDP Office, the [Applicant's fixed-term appointment] would expire on 31 October 2000, instead of 2 October 2000.

...

[On] 3 October 2000, the [Applicant] requested [the Secretary-General to review] the administrative decision not to renew his [fixed-term appointment]. On 16 October, the Applicant was informed that there was no justification for rescinding the original decision.]

..."

On 22 January 2001, the Applicant lodged an appeal with the JAB in New York. The JAB adopted its report on 29 January 2004. Its considerations, conclusion and recommendation read, in part, as follows:

***"Considerations***

...

24. The Panel ... agreed with the Appellant that his main contention challenged not only the non-renewal of his [fixed-term appointment] but also, more importantly the motivation behind it. ...

25. As for the Appellant's contention that the Respondent's argument that his post was abolished as a result of the restructuring exercise was erroneous ... [t]he Panel found the Respondent's argument disingenuous and misleading.

...

27. ... The Panel observed that the guidance sought and given by [the Director, Office of Human Resources, UNDP] failed to be followed and instead, the instructions of the UAE Government were followed. ...

28. ... [T]he Panel found that the Appellant had produced reliable evidence to establish prejudice on the part of the Respondent in that the non-renewal of his [fixed-term appointment] was the result of political pressure.

...

30. ... The Panel, aware of the nature of the Appellant's appointment, was of the opinion that, given the special circumstances of the case, UNDP Administration had the obligation to make a good faith effort to find the Appellant a suitable position. ...

#### ***Conclusion and recommendation***

31. In light of the foregoing, the Panel *unanimously concludes* that there is merit to this appeal. The Panel *unanimously agrees* that there is strong evidence that UNDP failed to renew the Appellant's appointment as a result of political pressure, thus in violation of the fundamental principle of independence of the International Civil Service promulgated by Articles 100 and 101 of the Charter.

32. The Panel *unanimously recommends* that the Appellant be awarded three months' net base salary as compensation for the prejudice sustained as a result of UNDP's impropriety."

On 28 May 2004, the Applicant, having not received any decision from the Secretary-General regarding his appeal to the JAB, filed the above-referenced Application with the Tribunal.

On 29 July 2004, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

"The Secretary-General has examined your case in the light of the JAB's report and all the circumstances of the case, and has decided to accept the JAB's recommendation for compensation in the amount of three months' net base salary. UNDP has also been requested to accord you priority consideration should you apply to positions in UNDP for which you are qualified."

Whereas the Applicant's principal contentions are:

1. The Applicant's fundamental rights have been violated through discrimination by reason of nationality, in violation of Articles 100 and 101 of the Charter.
2. The Respondent committed dereliction of duty, lack of care and disregard for due process and there were undue delays in adjudicating the Applicant's case.
3. The violations of the Applicant's rights by the Respondent are such that the standard compensation, essentially based upon length of service, is insufficient in this case. The Applicant should be compensated for moral damages and for loss of earnings.

Whereas the Respondent's principal contention is:

The award to the Applicant of three months' net base salary constitutes appropriate compensation for the irregularities in his case.

The Tribunal, having deliberated from 27 October to 23 November 2005, now pronounces the following Judgement:

I. The Applicant appeals an administrative decision not to renew his fixed-term contract beyond its expiry date, alleging that the decision not to renew was based upon extraneous factors. Specifically, the Applicant alleges that the non-renewal was motivated solely by political pressure on UNDP by the Government of the UAE, demanding the non-renewal of the Applicant's contract because of the UAE Government's desire to emiratize or nationalize UNDP's local posts.

II. The Applicant was appointed on a one-year fixed-term contract on 3 October 1999, as an Administrative/Finance Associate in the UNDP office in Abu Dhabi, UAE. On 26 June 2000, the Government of the UAE sent a Note Verbale to UNDP, requesting that several non-UAE national staff members, including the Applicant, be replaced by UAE nationals. The communication very specifically directed, inter alia, that the Applicant's post be combined with another post and that the Applicant's contract, as well as the contract of the individual holding the other post, not be renewed. The communication also identified the exact persons who should replace the Applicant and others. A meeting following this communication was held on 27 June at

the UNDP office, at which several representatives of the UAE Government were present. Also present were the Acting Resident Representative of UNDP in Abu Dhabi and the former Programme Resident Representative. The minutes of that meeting confirm that the UAE Government had not only directed the replacement of the Applicant but had directed that a previous raise in salary, which had been ratified by the Programme envoy, be disapproved. Finally, the notes of that meeting clearly indicate that these changes had been agreed to by UNDP.

On 10 July 2000, the Government of the UAE again requested that the changes discussed at the 27 June meeting be implemented.

III. Following the 27 June 2000 meeting between UNDP and the UAE Government, the staff of the UNDP office was briefed on the substance of the meeting. Thereafter, in a letter dated 12 July, several local staff members, who were concerned about their jobs and the influence being exerted upon the UNDP office by the UAE Government, wrote to the UNDP Administrator seeking his help. No response was received. Subsequently, in an undated letter, the Acting Resident Representative sought advice from the Acting Director of the Arab States Regional Office, UNDP, New York, who in turn sought advice from the Director, Office of Human Resources, UNDP.

In her letter of 25 July 2000, the Director, Office of Human Resources, addressed the issues of whether the Government of the UAE could (1) terminate UNDP staff members serving in that country and appoint others to replace those terminated and (2) object to the salary scale introduced by UNDP. Citing international law, the Charter of the United Nations, the Basic Agreement between the UAE Government and UNDP, as well as the Staff Regulations and Rules of the United Nations, the Director clearly and unequivocally concluded that any attempt by the UAE Government to interfere with the contracts of UNDP staff members, to force UNDP to replace certain non-UAE nationals with UAE nationals, or to interfere with the salary scale of UNDP was improper and a violation of international law and the Basic Agreement, as well as a violation of the Charter and its principles and of the Staff Regulations and Rules of the United Nations.

IV. Notwithstanding the advice provided by the Director, Office of Human Resources, on 5 August 2000, the Applicant received a letter indicating that “as a result of the Government decision for emiratization/nationalization of the local positions in

the UNDP country office”, the expiry date of his fixed-term contract would be 31 October 2000 (extended from 2 October 2000). Thus, based upon that letter, the Applicant understood that the non-renewal of his contract was a direct result of the requests and directions of the UAE Government that he be replaced with a UAE national.

On 31 October 2000, the Applicant separated from the service of the United Nations. According to the Applicant, from 31 October 2000 until 17 June 2002 he was unemployed.

V. The Applicant sought administrative review of the decision not to renew his fixed-term appointment. In response, he was informed by the Respondent on 16 October 2000 that the decision not to renew his contract was not due to any pressure by the UAE Government, but instead was simply the result of the expiration of his fixed-term contract. This was directly contrary to the letter informing him of the non-renewal of his appointment, dated 5 August. Thereafter, on 22 January 2001, the Applicant appealed to the JAB.

On 29 January 2004, the JAB held in favour of the Applicant, unanimously agreeing that there was strong evidence that “UNDP failed to renew the [Applicant’s] appointment as a result of political pressure [of the UAE Government]”, which was a “violation of the fundamental principle of independence of the International Civil Service promulgated by Articles 100 and 101 of the Charter”. The JAB recommended that the Applicant be awarded the sum of three months’ net base salary as “compensation for the prejudice sustained as a result of UNDP’s impropriety”.

VI. The Applicant now appeals the decision of the Secretary-General accepting the JAB’s recommendation. He is seeking additional compensation for the violations of his rights and the non-observance of the United Nations’ Charter and its Regulations and Rules. He also alleges that he is entitled to additional compensation because the Respondent acted in bad faith in the JAB proceedings and for the excessive time delay in the JAB process. In response, the Respondent does not dispute the facts or the conclusions reached by the JAB, but only disputes the amount of compensation sought by the Applicant. The Respondent asserts that the compensation of three months’ net base salary awarded to the Applicant is sufficient to compensate him for the “irregularities in connection with UNDP’s decision not to renew” the Applicant’s appointment. The Respondent does not address the issue of bad faith or delay. Thus,

the Tribunal must decide whether the award recommended by the JAB and accepted by the Secretary-General is sufficient to adequately compensate the Applicant for the improper conduct on the part of UNDP. In addition, the Tribunal must also address whether the Applicant is entitled to additional compensation as a result of alleged procedural flaws in the JAB process and as a result of the Respondent's conduct during that process.

VII. The Tribunal first notes that the Applicant failed to lodge his appeal with the JAB in a timely fashion. However, as the JAB apparently *de facto* waived the time limits by considering the merits of the case and making its recommendations, which recommendations were subsequently accepted and implemented by the Secretary-General, the Tribunal finds that the case is properly before it.

VIII. The Tribunal next turns to the issue of whether the JAB's award of three months' net base salary is sufficient to compensate the Applicant for the harm done to him as a result of the improper influence exerted by the UAE Government regarding his employment with UNDP. In this regard the Tribunal recalls Articles 100, 101 and 105 of the Charter. Article 100 provides that:

- "1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any Government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.
2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities."

Article 101, in relevant part, further provides that:

- "1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly".



Finally, Article 105 of the Charter provides that:

- “1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.
2. ... [O]fficials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.
- ...”

In addition to the provisions of the Charter, which specifically prohibit external interference in the personnel decisions of the Organization, the Basic Agreement entered into between the UAE and UNDP also provides that

“The UNDP mission in the country shall have such staff as the UNDP may deem appropriate to its proper functioning. The UNDP shall notify the Government from time to time of the names of the members, and the families of the members, of the mission and of changes in the status of such persons.”

Finally, the Staff Regulations and Rules make it clear that it is within the Secretary-General’s discretion to make hiring, termination and non-renewal decisions, as are at issue here. The Secretary-General has delegated his authority in this respect to the Administrator of UNDP.

IX. The Tribunal has previously recognized that a fixed-term contract carries with it no expectancy of renewal, and that a long or successful career does not entitle a staff member to such renewal. This principle of non-expectancy of renewal derives from the Staff Regulations and Rules and from the inherent discretionary power of the Secretary-General to make decisions in matters of personnel. Recently, in Judgement No. 1231 (2005), the Tribunal stated that its “jurisprudence recognizes the broad discretion enjoyed by the Secretary-General in matters of personnel, including the decision of whether to maintain a staff member in the employ of the United Nations”.

This discretion of the Secretary-General, however, is not limitless and will be vitiated where it is motivated by prejudice, bias, or other extraneous factors. In Judgement No. 1163, *Seaforth* (2003), the Tribunal reaffirmed that

“the Respondent ... generally enjoys broad discretion in making decisions of this kind. Only where the Respondent’s discretion is tainted by extraneous

factors, such as prejudice, arbitrariness, improper motive, discrimination, for example, is such discretion subject to limitation. (See Judgement No. 981, *Masri* (2000), para. VII.)”

In such cases, a staff member has the burden of proving such improper motivation, as stated in Judgement No. 1069, *Madarshahi* (2002):

“The Tribunal has consistently held that the *onus probandi*, or burden of proof, is on the Applicant where allegations of extraneous motivation are made. (See Judgements No. 639, *Leung-Ki* (1994); No. 784, *Knowles* (1996); and, No. 870, *Choudhury et al.* (1998).)”

X. The record makes clear that the UAE Government specifically directed the hiring and termination of staff members in the UNDP Office in Abu Dhabi based solely on their national origin, and that it also tried to interfere with already-approved salary increases. The Tribunal concludes that UNDP’s implementation of such directions was a clear violation of international law, the United Nations Charter, the Basic Agreement between the UAE Government and UNDP, as well as a violation of the Staff Regulations and Rules. By allowing the UAE Government to interfere in personnel decisions such as those involving the Applicant, UNDP abdicated its duty not to allow outside forces, including Member States, to make such decisions.

The Tribunal has previously held that “[w]hile the Tribunal does not substitute its judgment for the discretion of the Respondent, he must follow his own rules.” (See Judgement No. 943, *Yung* (1999).) The Tribunal has also held in Judgement No. 1060, *Baddad* (2002), paragraph III, citing ILO Judgement No. 495, *in re Olivares Silva* (1982) that

“the first and greatest safeguard against the operation of prejudice lies in the procedural requirements which every set of staff regulations contains and whose main objective is to exclude improper influence from an administrative decision. ... [P]roof of prejudice is rendered unnecessary when procedural requirements have not been observed.”

As the Respondent has violated his own rules, the Applicant is entitled to compensation.

XI. In addition, the decision of UNDP not to renew the Applicant’s contract, which, as explained above, was influenced improperly by the UAE Government,

prejudiced the Applicant, as his contract was not renewed simply because of his national origin: he was not a UAE national. This is a discriminatory, extraneous motivation, constituting an abuse of discretion and the Tribunal therefore agrees with the JAB that the Applicant is entitled to compensation. The Tribunal, however, believes that the amount of compensation awarded is inadequate, given the gravity of the improper interference and the consequent harm done to the Applicant.

In reaching its decision, the Tribunal is not unmindful of the inherent complexities that UNDP faces with Member States in matters such as these. Member States, because they are contributors to the budget of UNDP, may consider they are entitled to pressure UNDP in respect of personnel and budget decisions. The Tribunal, however, reminds that the independent functioning of the Organization requires that such pressures be resisted and the fundamental tenets upon which the United Nations was founded be upheld. In this context, the Tribunal recalls an earlier Judgement where it found that there was interference in staffing exerted by a delegate from a Member State. In Judgement No. 774, *Stepczynski* (1996), which is pertinent to the present case, the Tribunal stated as follows:

“The Tribunal sorely regrets that the Administration, which was aware of these machinations, which are incompatible with the requirements of Article 100 of the Charter regarding the independence of the staff, did absolutely nothing to put a stop to them. The Tribunal believes that the repetition of such an attitude on the part of the Secretary-General would discredit not only the Organization but would also seriously compromise its proper functioning.”

XII. The Tribunal next turns to the conduct of the Respondent in the JAB proceedings. The Applicant alleges that the Respondent acted in bad faith during that process by claiming that the non-renewal of his contract was the result of a staff reduction at the UNDP Office. The Applicant also alleges that, despite repeated attempts on his part to resolve the matter with UNDP, the latter refused to entertain any such resolution. Finally, the Applicant accuses the Respondent of failing in his obligation to find the Applicant another, suitable position in the Organization. For these shortcomings, the Applicant seeks additional compensation.

XIII. In its report, the JAB found that, despite the Respondent's assertions to the contrary, the non-renewal was not the result of a staff reduction, but, indeed, was the result of political pressure on UNDP by the UAE Government. In this regard, the JAB noted that the staff reduction did not occur until October, while the Applicant was

notified in August that his contract would not be renewed. Indeed, the JAB found the Respondent's defense of the non-renewal on that basis to be "disingenuous and misleading". In addition, the JAB concluded that the UNDP Administrator exhibited a "lack of attention" to the situation in Abu Dhabi and failed to address the matter appropriately. The JAB stated that "UNDP did not act in the present case with the care and attention to be expected of an international organization with regard to personnel questions". Finally, the JAB concluded that "given the special circumstances of the case, [the] UNDP Administration had the obligation to make a good faith effort to find the [Applicant] a suitable position". Instead, the JAB noted, the Assistant Administrator of UNDP "just 'invited' the [Applicant] to apply for any suitable position".

The Tribunal concurs with the findings of the JAB on these matters. It is clear that the decision by UNDP not to renew the Applicant's contract was indeed based solely on the external pressure put on it by the UAE Government and therefore was improper. UNDP, however, failed to take any subsequent steps to rectify the situation. Rather than admit that the decision not to renew was based on undue government pressure, the Respondent attempted to mislead the JAB by setting forth a reason that was spurious. Just as staff members are expected to conduct themselves with the highest level of integrity and professionalism, so too must the Administration be held to comparable standards. Furthermore, the Tribunal notes that UNDP failed to make any efforts, let alone good faith efforts, to find the Applicant another position with the Organization after his contract was improperly not renewed. Finally, the Tribunal notes that, despite repeated efforts on the part of the Applicant to resolve the matter with the UNDP Office on an informal and amicable basis, UNDP either refused or failed to respond. While the Tribunal cannot conclude that the conduct of the Respondent was evidence of bad faith, the Tribunal does find that the Respondent failed to act with appropriate care and diligence in this matter. The Tribunal finds that the Applicant is entitled to be compensated for the Respondent's actions or lack thereof.

XIV. Finally, the Tribunal turns its attention to the allegation that there was undue delay by the JAB in deciding the case. The Applicant alleges that the three-year period during which this matter was before the JAB was excessive and therefore violated his rights of due process. The Tribunal agrees and finds that the Applicant is entitled to compensation in this regard.

XV. In view of the foregoing, the Tribunal:

1. Orders the Respondent to pay the Applicant additional compensation equivalent to nine months' net base salary at the rate in effect on the date of this Judgement, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgement until payment is effected; and,
2. Rejects all other pleas.

*(Signatures)*

**Kevin Haugh**  
Vice-President, presiding

**Jacqueline R. Scott**  
Member

**Dayendra Sena Wijewardane**  
Member

New York, 23 November 2005

**Maritza Struyvenberg**  
Executive Secretary