



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1464

Case No. 1552

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Sir Bob Hepple; Mr. Agustín Gordillo;

Whereas, on 28 September 2007, a former staff member of the United Nations, filed an Application containing pleas which read, in part, as follows:

“II. PLEAS

6. ...[T]o find that:

(i) [t]he Respondent created an expectancy and made an implied commitment to internationalize [the Applicant and that the Applicant] relied on that commitment and thus had a reasonable expectancy to be internationalized;

(ii) [h]aving redesigned, revised, reclassified, upgraded and advertised the post that [the Applicant] was hitherto encumbering (making him ineligible to apply for it), and having enticed him to apply for other international status posts, the Respondent breached his good faith obligation by failing to proactively and conscientiously search for and place him in an appropriate 200-series post;

(iii) [t]he Respondent, having assured the Applicant, albeit belatedly, that the only obstacle that stood in his path towards internationalization was a Master’s degree, breached his good faith obligation by refusing to internationalize him even after he had been awarded the Master’s degree;

(iv) [t]he Joint Appeals Board (JAB) erred in not recognizing the countervailing circumstances [of his case as regards his 200-series fixed-term-appointment (FTA)];

(v) [the JAB also erred in not applying] Staff Rule 109.1 (c) to his 100-series permanent appointment [with] the Organization;

(vi) [t]he decision of the Respondent to terminate [the Applicant's] permanent status in the Organization ... [was] tainted [by] abuse of power, and taken in violation of the Staff Regulations and Rules;

(vii) [the Respondent violated the Staff Regulations and Rules and good faith obligation by not continuing the lien on the Applicant's permanent appointment and by not affording the Applicant priority consideration for another post];

....

(viii) [the JAB] erred in denying his request for a suspension of action.

....”

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 31 March 2008, and once thereafter until 30 April;

Whereas the Respondent filed his Answer on 8 April 2008;

Whereas the Applicant filed Written Observations on 30 April 2008;

Whereas the Applicant filed additional pleas on 4 June 2008;

Whereas the statement of facts, including the employment record, contained in the report of the JAB reads, in part, as follows:

“Employment history

... [The Applicant] was recruited as a National Officer (NO-A level) (Administration and Finance) on a 100 series appointment in UNDP [United Nations Development Programme]-Burundi on 15 April 1989.

Summary of Facts

... By a memorandum dated 3 February 1999 to the Resident Representative, UNDP-Burundi, the Chief of Staffing, OHR [Office of Human Resources]/BPRM, UNDP informed him that [the Applicant] had been recruited for the post of Audit Specialist, NEX [National Execution Section]/OAPR [Office of Audit and Performance Review], on a 200 series (L3) appointment UNDP-New York for one year. That memorandum stipulated the following:

‘1. [The Applicant's] international appointment with UNDP will be limited to the post that he was successfully interviewed for, namely that of Audit Specialist ... He will be given a one-year appointment.

2. In order to proceed with the limited internationalization of [the Applicant], it is necessary that a lien be maintained on his post as National Officer in UNDP Burundi for one year.

3. If during the period that he serve[d] at OAPR, [the Applicant] is recommended for full fledged internationalization, then he would be re-assessed against selection criteria commonly used for all candidates to an international professional career within UNDP.’

... On 7 June 1999, [the Applicant] was formally appointed to the post. A one-year lien was placed on his post at UNDP-Burundi to reintegrate him after the completion of his 200 series service.

... In March 2000, [the Applicant] was reassigned to Operations Support Group (OSG), and his 200 series contract was extended to 1 April 2001.

... On 24 April 2000, [the Applicant's] supervisor recommended that he be internationalized against the P3 post which he then encumbered. On that same day in a memorandum to OHR/BOM, the Director of OSG endorsed the recommendation, requesting [that the confirmation process against the post be commenced].

... According to [the Applicant's] submission, an agreement had been reached in August of 2000 within UNDP that incumbents [of] posts to be redeployed from OSG to the Bureau for Development Policy (BDP) would maintain their respective specialized functions.

... In January 2001, during a corporate reorganization, [the Applicant] was transferred from OSG to the Bureau for Development Policy/Operational Policies and Applied Research Group (BDP/OPARG).

... On 24 April 2001, according to [the Applicant's] submission, he was informed that his post was to be redesigned, revised, reclassified and advertised. He was informed to search for another post.

... On 8 May 2001, [the Applicant] wrote to the Director of OHR/BOM explaining the background of his case. He stated:

'I highlighted to them the whole history of my appointment at UNDP Headquarters in New York and inform[ed] them that it might be difficult to convince the Country Office [CO] for another lien on the local post in Burundi. I also recalled the previous meeting held in OSG before we moved to BDP where to my understanding an agreement was reached with the Head of BDP ...

... I remain convinced that the National Execution is one of the principal modality [*sic*] for UNDP and that the actual functions of the post would remain the most important for the post and should occupy the major part of the new functions necessary to efficiently support the [COs] projects/programmes activities. I think that the review of the other post which moved together with this one and has been vacant since we moved from OAPR would be more appropriate for a full review than the one that I occupy now ...

My contract will expire on 7 June 2001 and it would be impossible for me to fulfil my obligations to pay the remaining portion of my loan and the school fees for my children with a local contract.

The Deputy Director of BDP has promised to recommend a renewal of my contract to allow me to find another post and asked me to contact the Office of Human Resources to liaise with the [CO] to renew the lien on my local post for the length of the new contract.

I have already stated [*sic*] to apply on several advertised posts.'

...
By a letter from the Assistant Administrator and Director, BDP, dated 25 May 2001, [the Applicant] was informed:

'This is to follow up on your recent conversations with [the Assistant Administrator] and [the Director], and particularly your discussion with [the Director] on 12 April 2001 and with both [the Assistant Administrator and the Director] on 24 April 2001 ...

As you have appreciated, the nature of BDP's work in relation to NEX and other execution matters is substantially different from the work that you were doing in OAPR and OSG. Specifically, the role is focused on the policy development and support dimensions of execution modalities. For this reason, we are revising the job description of the post you occupy ... You will of course be able to apply for the post but I anticipate that there will be a good number of strong candidates with experience in programme policy or programme development work.

I realize that the shift of your post, first from OAPR to OSG, and then from OSG to BDP, has taken you away from the career path that you hoped to pursue. I therefore strongly urge you to explore with OHR and other units any vacancies that may be available that are better suited to your skills and experience.

Considering that your lien on your post in Burundi expires next month, we have asked OHR to obtain a three-month extension of the lien from the [RR], in order to give you more time to explore alternative options.'

... By a letter dated 8 June 2001, the RR advised [the Applicant] that the extension of the lien would be the last, as the post needed to be filled.

... By a memorandum dated 22 August 2001, [the Applicant] wrote to the UNDP Ombudsman Panel requesting assistance with his case. In September 2001, the Ombudsman Panel took up [the Applicant's] case, and recommended that his contract be extended through December 2001.

... On 2 August 2002, after a series of consecutive extensions, [the Applicant] was informed that his contract would be extended to October 2002, and [that] the lien in Burundi would be extended to allow him to return to his country post.

... On 23 August 2002, [the Applicant] wrote to UNDP to object to the situation regarding his post.

... On 7 October 2002 ... [the] OIC [Officer-In-Charge]/OHR, confirmed [the Applicant's] separation from his 200 series appointment effective 30 October 2002 and his return to his national status in Burundi. After October 2002, [the Applicant's] contract was extended through January 2003.

... By a letter dated 6 January 2003 ... [the] Deputy Assistant Administrator and Director, OHR/BM, informed [the Applicant] the following:

'This letter is to confirm your discussion with ... [the] Deputy Director, OHR and ... [the] Chief, HRSCs, OHR on 2 December 2002.'

'As discussed, OHR has exceptionally agreed to a further extension of your contract for the period of your accrued leave balance, i.e., from 01 November 2002 to 31 January 2003. In view of this, please note that you now have a zero leave balance.'

'As explained, the Organization has now extended itself as far as it can. We stand ready to provide further support to you by contacting UNOPS [United Nations Office for Project Services] and any other Organization to which you are applying for future positions.'

... [The Applicant's] 200 series appointment and lien on his Burundi post expired on 31 January 2003. Thereafter, he remained in New York without a remunerated position, applying for numerous posts and, according to his submission, kept in close contact with the UNDP Ombudsman Panel in his search for vacant posts.

... On 7 June 2004, [the Applicant] wrote to the Administrator, UNDP, to bring his situation to the Administrator's attention and request his assistance.

... By a letter dated 18 August 2004 ... [the] Assistant Administrator and Director, BM/UNDP informed [the Applicant]:

'As is normal practice when local staff take up a 200 series assignment, the [Country Office] placed you on Special Leave without Pay [SLWOP] and granted you an initial one-year lien on your ... post so that you could be reintegrated after your 200 series service.'

'While the organization supports developmental opportunities for national staff, there is no guarantee that a conversion to international status will materialize at the end of a 200 series appointment. Such appointments are, by definition, time-bound and carry no expectation of renewal or extension....'

'In all, your 200 series appointment was extended from 7 September 2001 through 31 January 2003 ... so that you could search for alternate 100 or 200 series possibilities, which unfortunately did not materialize. Thus, the organization must proceed to finalize your separation against your 200 series fixed-term appointment at Headquarters (NY) effective 31 January 2003 (cob) [close of business].'

... On 8 October 2004, a letter from [the Assistant Administrator and Director] informed [the Applicant] that he no longer had any status as an active 200 series staff member at UNDP Headquarters, as the appointment expired effective 31 January 2003. Regarding his 100 Series appointment, he was informed that, given the time that had elapsed, the specific lien on his UNDP-Burundi post had expired, although

'while on SLWOP, you retained a general lien on your country office status. As outlined in our August 18th letter, your SLWOP and general lien could be extended to 31 December 2004 to permit your continued search as an internal candidate provided you made such a request to the Resident Representative in Burundi by 15 September 2004. Please advise whether you have in fact made such a request and also advise if you have submitted an application for agreed separation against your country office status. ...'

'If you did not request SLWOP ... UNDP is obliged to [separate you from service]. This letter serves as notice of the termination of your appointment as a locally-recruited 100 series staff member in the UNDP Country Office in Burundi for reduction of staff/abolition of post, effective 31 October 2004 (cob). Your SLWOP will be de facto extended to that date and allow you to continue to be considered as an internal candidate for the ... vacancy applications you mentioned in your September 30th letter. This will be with the payment of 3 months cash in lieu of notice (unless you choose to serve notice), and applicable basic indemnities ...'

... On 18 October 2004, the Applicant requested administrative review of the 8 October decision. On the same day, [the Applicant] wrote to the Secretary-General requesting a review of the following administrative decisions by UNDP:

(i) Declare that my 200 Series appointment in New York had expired over one and [a] half years ago, on 31 January 2003, and that from that date [on] I no longer had any status as an active 200 series staff member at Headquarters.'

‘(ii) Compel me to request ... SLWOP against my National Officer Post in Burundi until 31 December 2004 in order to allow me time to continue my search for vacancies as an ‘internal candidate’.’

‘(iii) Compel me to apply for an agreed separation by 15 October 2004, and to accept a separation arrangement, including termination indemnity that was unilaterally determined by UNDP.’

‘(iv) Serve me notice of termination of my permanent appointment on the grounds of ‘reduction of staff/abolition of post’ effective 31 October 2004.’ [Emphasis in original].

... On 18 October 2004, [the Applicant] submitted a request for administrative review of the 8 October decision.

... On 22 October 2004, [the Applicant] wrote to the JAB requesting a suspension of action. The JAB panel met on 28 October 2004 to consider the request and found that, insofar as his 200 series contract had expired on 31 January 2003, there was no decision that the panel could address on that issue; however, the 8 October 2004 notice to terminate his 100 series appointment on 31 October 2004 did represent an administrative decision that had not yet been implemented. The panel found however that [the Applicant] had not shown evidence of irreparable harm, and therefore made no recommendation in the case. On 1 November 2004, the Under-Secretary-General for Management notified [the Applicant] of her decision to accept the JAB’s conclusions.

... Email correspondence between the Office of Legal and Procurement Support (OLPS) and [the Applicant] indicates that from at least December of 2004, the parties were engaged in efforts to conciliate the case. By a letter to OLPS dated 14 June 2005, [the Applicant] stated that he had not received any proposal from UNDP, despite his attempt to contact them through email and through the Ombudsman.”

On 29 August 2005, the Applicant lodged an appeal with the JAB. The JAB adopted its report on 20 September 2006. Its considerations and recommendation read, in part, as follows:

“Considerations

34. The Panel first examined Respondent’s challenge to the receivability of the appeal. The letter of 8 October 2004 was not a decision, Respondent contends, but an attempt to inform [Appellant] that his 200-series appointment at HQ had expired [on] 31 January 2003, and that he was not an active 200-series staff member at [HQ] as of 31 January 2003. Appellant attributes the delay to the mutual efforts of the parties to reach a settled agreement.

35. The Panel notes [that] the established practice within the JAB is to view such settlement efforts within the context of the Organization’s overall policy preferences in conflict resolution. Respondent argues that recourse to negotiation and the good offices of the Ombudsman do not replace the existing mechanisms for formal conflict resolution. The Panel agrees. However, it also notes that where parties resort to such recourse in good faith, it cannot later be used ... for tolling purposes of a staff member’s right to appeal. The rather discreet work[s] of [the] Ombudsman usually [does] not allow a clear indication as to when settlement efforts have come to an unsuccessful close. Respondent implies that the Ombudsman’s terms of reference indicate when tolling commences: ‘if a resolution is not reached within a period of 45 working days, the Ombudsperson shall submit a report outlining the facts of the case, together with a recommendation to the executive head of the organization of the staff member concerned.’ The 45 day limit [does not indicate] ... when the Ombudsman’s role [has concluded or] ... that conciliation efforts [have drawn] to a close Rather, formal closure of the settlement process

seems incumbent on the substance of the Ombudsman's recommendation and the subsequent decision of the executive head.

36. In the absence of more specific rules governing the procedures to link informal and the formal conflict resolution within the Organization, the Panel finds that the first indication in the record that Appellant would be required to resort to an appeal came in the letter of 8 October 2004. It therefore finds the present appeal receivable.

37. Turning to the merits, the Panel notes that the gravamen of Appellant's claim is in what he argues is Respondent's failure to consider him for vacancies at HQ after having initially induced him to embark on a graduate programme as a condition of continued service. Appellant in this regard does not so much claim to have been promised an international appointment in New York, but that he was 'induced' into taking on the expense of a higher educational degree.

38. The Panel finds no evidence either that Appellant was entitled to a post at headquarters or that Respondent created by its actions a legally-binding promise to secure one for him. By the 11 March 1999 letter from HR, Burundi is listed as his place of recruitment as well as his place of repatriation, showing that the New York appointment was from the beginning intended to be [limited] in duration. The attached conditions of employment clearly state the temporary nature of the appointment. The 3 February 1999 letter affected his status overall in the following manner: it a) limited his international appointment with UNDP to the 200-series appointment of Audit Specialist with one year's duration; b) requested [that] a lien be put on his 100 series appointment as National Officer in UNDP Burundi for that duration; and c) offered the possibility of a re-assessment against selection criteria for all candidates to an international professional career within UNDP if he was recommended for full-fledged internationalization.

39. The Panel considers that there may have been promises of support in favour of [Appellant's] internationalization. This is substantially different [from] an unconditional undertaking. He did in fact receive such support, in the form of the wholehearted recommendation by his supervisor that he be internationalized against the post he encumbered, and the subsequent endorsement of the Director. However, despite perhaps raising Appellant's expectations, those promises expressed no commitment either to confirm him against the post or, when ... the post was [ultimately] reclassified, to secure a post at HQ. This is evident from the fact that the documents at this time continued to raise the issue of the lien on his post [in], and his repatriation to, Burundi, an issue which would have been irrelevant if in fact the Administration had clearly intended to secure him a place in New York. In the absence of a binding commitment on Respondent's part to internationalize him, Appellant could not reasonably have taken up a Master's degree programme *in return* for internationalization, but could only have chosen to do so in order to ensure his eligibility for consideration.

40. Unfortunately, after having been recommended for internationalization, Appellant's post was reclassified – apparently to the P-5 level, effectively making him ineligible to compete for it. Although an agreement was apparently reached sometime before[,] between the Administration and the Staff Council by which incumbents [of] posts re-deployed from OSG to BDP would maintain their respective specialized functions, this agreement did not hinder [the exercise of] Respondent's discretion to re-design and reclassify his post. There is no evidence that the reclassification was ill-motivated or 'surreptitious' as he puts it, although it appears that the Administration could have been more diligent in keeping him informed. Appellant's only possible contention in this regard is that his was the only encumbered post in BDP subject to this process, a fact which, in and of itself, does not show prejudice. The Panel therefore finds no violation of due process with the abolition of the post.

41. Appellant alleges that Respondent failed to give him priority consideration for a suitable alternative post pursuant to Staff Rule 109.1 (c). The Panel agrees that Respondent was not obliged to give him priority consideration: Appellant was given a 200-series appointment which has no rule comparable to 109.1 (c) (*see* United Nations Administrative Tribunal Judgement No.

1163, *Seaforth* (2003)) and does not otherwise carry the same guarantees concerning employment and career development as staff members appointed under the 100 Series (*see* Judgement No. 885, *Handelsman* (1995). *See also* Judgement No. 1000, *Langer* (2001)). Therefore, under the terms of his employment as a 200-series staff member in New York, Appellant would normally have been obliged to return to his parent duty station if he wished to remain with UNDP. Moreover, as Respondent rightly points out, he in fact did have a suitable alternative post in Burundi. However, Appellant argues that the above ignores the reality that he was surreptitiously removed from his post and remained on unassigned status while he supposedly continued to hold his rights under his 100 series appointment. First, although as stated above the Panel finds no ill-motivation in the reclassification of his post ... a different finding in that regard would have entitled him to compensation for violation of due process, with no bearing on the terms of his 200-series appointment. Secondly, his 100-series rights [were] attached to his appointment as a National Officer in Burundi, not to his assignment at HQ.

42. The Panel notes that Appellant has the right to full and fair consideration [for] suitable vacant posts in a selection exercise, and that 'once called seriously into question, the [Respondent] must be able to make at least a minimal showing that the [Appellant's] statutory right was honoured in good faith' with 'the 'fullest regard' to it'. Judgement No. 362, *Williamson* (1986), para. VII. Here, however, there is no serious indication that his right was not honoured. Appellant offers no evidence of prejudice or lapse in due process, and the fact that he apparently applied to numerous posts not just at headquarters but widely in the field. This would tend to cast doubt on the feasibility of any concerted effort to undermine his efforts. This is reinforced by the question raised as to why UNDP would have supported him for 'internationalization' at first only to attempt to weaken his career thereafter.

43. Appellant submits a partial list of UNDP posts to which he applied and for which [he] felt qualified. However, the fact that he articulates the list does not demonstrate whether he was qualified or the 'best' qualified [candidate]. In addition, the fact that he was unsuccessful in these does not indicate bad faith on the part of UNDP. Moreover, there is evidence that UNDP did seek to assist him in finding an alternative post, and in one case, that he was successful: there is evidence in the form of an email from ... UNOPS that Appellant was offered a position with UNOPS in Abidjan, and from ... UNOPS to the effect that they were proceeding with his recruitment as early as 1 November 2001. Respondent states and Appellant categorically denies that he rejected that post. An email dated 10 October 2001 from Appellant stated that, in light of the fact that his contract was renewed until the end of 2001 to allow review of his case by the Ombudsman's Office, he had explained to [...] that he would await the conclusions of that review '*pour éviter de désorienter les initiatives [en cours] sur mon dossier au PNUD [Le Programme des Nations Unies pour le développement].*' In his appeal, Appellant states that he was advised by the Ombudsman not to do anything that might jeopardize his efforts to find a long-term solution. Appellant appears for whatever reason to have followed that advice. This was a choice on his part, but one that tends to undermine his argument in the present appeal. In light of the foregoing, the Panel finds no evidence that Appellant did not receive full and fair consideration for the posts to which he applied.

44. Appellant argues that he did not return to his 100-series post in Burundi not because he had no interest in doing so, but because UNDP had requested his services in New York; it was not up to him, he contends, to seek his reinstatement in Burundi, particularly when OHR had committed itself to finding an international post. As discussed above, the Panel finds no such commitment. Appellant argues that Respondent 'let the lien on his post expire and hired someone else.' The Panel finds that he had ample warning of the imminent lapse of the lien. He was notified on 8 June 2001, when the RR advised that the extension of the lien would be the last, as the post needed to be filled. Over a year later, on 2 August 2002, he was informed that his contract and the lien in Burundi would be extended to October 2002, and would be extended to allow him to return. On 7 October 2002, OHR confirmed his separation from his 200 series appointment effective 30 October 2002 and his return to his national status in Burundi. Ultimately, the lien was further extended to 31 January 2003.

45. Clearly, then – based on this and the reasonable assumption that the Burundi office had the discretion and need to normalize the status of a post already encumbered with a four-year lien – the action regarding his post in Burundi should have come as no surprise. Thus, if UNDP had requested his services in New York after his post was reclassified, they did not indicate what further services they were requesting. The evidence shows that it was, in fact, up to him to return to Burundi.

46. Even after the expiration of the lien, he was notified that [Appellant] still retained a general lien on his country office status, and UNDP advised the CO that his SLWOP could be exceptionally extended to 31 December 2004, if he so requested, to allow him to identify suitable possibilities there. There is no indication that he made such a request or that he sought out suitable opportunities. Appellant requested a review by the Secretary-General of the decision ‘to *compel* [him] to request ... SLWOP against [his] National Officer Post in Burundi until 31 December 2004 in order to allow [him] time to continue [his] search for vacancies as an ‘internal candidate’. [*Emphasis added*]. The Panel finds no need to engage the issue of whether he had been under SLWOP from the beginning or whether it was somehow later invented by UNDP. It is clear from the language of the letter that the offer of SLWOP status at Burundi was extended for his own prerogative and offered to assist him.

47. Finally, in his observations, Appellant applies the principle of equitable estoppel to the instant case, the argument being that he relied on the promises of Respondent to his detriment, thereby estopping Respondent from denying liability. However, estoppel is a remedy in equity applicable where a promise not otherwise binding legally has induced one to act in expectation of something in return. As stated above, the Panel finds no evidence of any promise beyond the undertaking to support him for internationalization. The Panel therefore finds no basis for a recommendation in estoppel.

Conclusions and recommendation

48. In light of the foregoing, the Panel *unanimously concluded* that Respondent did not violate Appellant’s rights. It therefore *unanimously decided* to make no recommendation in the present appeal.”

On 26 December 2006, the Acting Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him as follows:

“The JAB, finding the appeal to be receivable, considered your claim that the Respondent failed to consider you for vacancies at Headquarters after having initially induced you to embark on a graduate programme as a condition of continued service. The JAB found no evidence that you were entitled to a post at Headquarters or that the Respondent created by its actions a legally-binding promise to secure one for you. In the absence of a binding commitment on the Respondent’s part to internationalize you, the JAB considered that you could not reasonably have commenced a Masters degree programme in return for internationalization but could only have chosen to do so in order to ensure your eligibility for consideration. The JAB, noting that your post was reclassified after you were recommended for internationalization, found that there was no evidence that the reclassification was ill-motivated or ‘surreptitious’ as alleged by you. The JAB considered that the Respondent was not obliged to give you priority consideration for a suitable alternative post pursuant to Staff Rule 109.1(c) as you had been recruited on a 200 series appointment. The JAB also found that there was no evidence that you did not receive ... full and fair consideration for the posts to which you had applied. With respect to your argument that you did not return to your 100 series post in Burundi

because UNDP had requested your services in New York, the JAB found that there was no evidence to support this argument and that, in fact, the responsibility was on you to return to Burundi. Finally, the JAB found that your argument based on the principle of equitable estoppel had no basis. In light of the foregoing, the JAB unanimously concluded that the Respondent did not violate your rights and unanimously decided not to make a recommendation in the present appeal.

The Secretary-General regrets to inform you that he accepts the findings and conclusions of the JAB and, in accordance with its unanimous recommendation, has decided to take no further action in this case.”

On 28 September 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. He was recommended for international status and relied on and expected the Organization to fulfill its commitment to him.
2. The Respondent breached his obligation to locate and provide an appropriate 200 series post after the post he had encumbered was redesigned, revised, and reclassified.
3. He relied on and sought a Master’s degree after the Respondent assured him that the lack of this degree was the only obstacle to his internationalization.
4. The Respondent erred in his decision to terminate his 100 series permanent contract.

Whereas the Respondent’s principal contentions are:

1. The Applicant had no expectancy of renewal of his 200 series fixed-term appointment, nor a right to conversion to an international appointment under the 100 series contract.
2. The non-renewal and the non-conversion of the Applicant’s 200 series contract did not violate his rights.
3. The Applicant had no right to priority consideration for a new post in connection with the reclassification of the post he encumbered and the expiration of his 200 series contract.
4. The Applicant’s refusal to return to Burundi and to his local post rendered it impossible for the Respondent to implement the Applicant’s rights as a locally recruited permanent staff member with a 100 series appointment.
5. The termination of the Applicant’s 100 series appointment did not violate his rights.

The Tribunal, having deliberated from 29 June to 31 July 2009, now pronounces the following Judgement:

- I. The Applicant contests: (1) the non-renewal of his fixed-term appointment as an international staff member; and (2) the termination of his United Nations local permanent appointment in Burundi.

II. The Tribunal notes that on 15 April 1989, the Applicant was recruited as National Officer, on a 100 series permanent appointment with UNDP in Burundi. On 3 February 1999, the Applicant was recruited for the post of Audit Specialist, NEX/OAPR, on a 200 series FTA with UNDP in New York. He was informed that a one year lien would be placed on his local permanent appointment in Burundi, and that if after taking up his new duties, he was “recommended for full fledged internationalization” this recommendation would be “re-assessed against selection criteria commonly used for all candidates to an international professional career within UNDP”. On 7 June 1999, the Applicant took up the duties of Audit Specialist in New York and a one year lien was placed on his permanent post in Burundi.

III. In March 2000, the Applicant was reassigned to the OSG. On 24 April, his supervisor recommended his internationalization against the P-3 post he encumbered. On the same day, the Director, OSG, endorsed the recommendation to internationalize the Applicant, and requested that OHR initiate the confirmation process. However, due to reorganization, the Applicant was transferred to another office in January 2001. The Tribunal notes that on 24 April 2001, the Applicant was informed that his post was being reclassified and that he needed to find another post.

IV. In May 2001, the Applicant and the Director, OHR, communicated regarding the Applicant’s posts changes, which took him out of his career path, and discussed that it would be difficult for the Applicant to repay his student loans and afford his children’s school fees if he were to return, at that time, back to his local permanent post in Burundi. The Director notified the Applicant that his lien on the local permanent post in Burundi would expire in June and that a three-month extension of the lien was requested in order to allow him the opportunity to seek alternative options. On 8 June, the Applicant was informed that he would not be granted a further extension of the lien because the Burundi office needed to fill the post. However, after considering his case, a UNDP Ombudsman panel recommended that the Applicant’s fixed-term contract be extended through 2001. Thereafter, his FTA was extended.

V. The Tribunal notes that during the course of the year 2002, the Applicant’s FTA was extended several times. On 2 August 2002, UNDP extended his FTA yet again for an additional three months, in order “...to allow [him] the opportunity to find a suitable posting”. UNDP also extended the Applicant’s lien on his local permanent appointment in Burundi. The Applicant was also informed that if he did not locate a new post by 31 October 2002, UNDP would be obligated to separate him from service under the 200 series appointment but also would assist him to return to his local permanent appointment in Burundi. On 23 August 2002, the Applicant contested this decision to UNDP.

VI. On 7 October 2002, UNDP informed the Applicant that although all efforts were made to assist him in locating an alternative international assignment, including the extensions of contract and allowing

him to remain on full pay status in order to compete for suitable vacancies, no further extensions would be granted.

VII. The Tribunal considers that the objective intention of the lien was that the Applicant would be able to return to his local permanent appointment once the fixed-term international appointment expired, in order to timely resume his national position. The Applicant, on the other hand, was adamant that he did not agree with this decision as it was not feasible for him, for personal and financial reasons, to return to Burundi.

VIII. Nonetheless, on 6 January 2003, the Applicant was informed that OHR had agreed to further extend his FTA for the duration of his accrued leave balance, from 1 November 2002 to 31 January 2003. The Applicant was also notified that the Organization would not extend his contract beyond 31 January, and on that date, the Applicant's FTA expired. Therefore, the Tribunal concludes that as regards this decision, the Respondent acted within his authority, as FTAs do not carry any expectancy of renewal and expire on the date cited in a staff member's letter of appointment. (See Judgements No. 1048, *Dzuverovic* (2002) and No. 440, *Shankar* (1989)).

IX. The Tribunal has taken into account that the Organization advised the Applicant regarding his options for continued employment and also granted him the opportunity to make termination arrangements for his local permanent post in Burundi due to "reduction of staff/abolition of post". Additionally, the Applicant's FTA had previously been extended for a period of over 16 months, to afford him additional time to obtain an international position in a location of his preference. Unfortunately, for the Applicant, this was not the case. Considering that the Administration recommended the Applicant for at least one appointment to a post, but that the Applicant decided not to take up this appointment due to personal and financial reasons, the Tribunal concludes that the Applicant did not present any convincing evidence of the existence of any extraneous factors which would vitiate the contested decision. In view of the foregoing, the Tribunal finds that the Applicant has not substantiated his claim that the Organization is to blame for his unsuccessful attempts to locate an alternative post. (See Judgements No. 1299 (2006); No. 870, *Choudhury et al.* (1998); No. 784, *Knowles* (1996); and No. 639, *Leung-Ki* (1994)).

X. On 18 August 2004, UNDP informed the Applicant as follows:

"... [Y]ou still retain a general lien on your country office status and we are by copy of this letter advising the CO that your SLWOP can be exceptionally extended — if you so request — to 31 December 2004, so that you can continue to seek suitable UNDP and UN System placement possibilities in Burundi (or indeed elsewhere) as an internal candidate until that date.

....

Should you not request SLWOP in order to continue your search through the end of 2004, and should you not apply for an agreed separation, we would also need to move to the termination of your Burundi CO appointment."

Subsequently, the Applicant twice requested clarification of the aforementioned communication. On 8 October 2004, the Administration reaffirmed its initial communication. The Tribunal finds that this demonstrates the Organization's intent to locate an alternative solution to accommodate the Applicant's position as he did not want to return to Burundi as a national staff member.

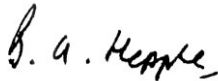
XI. The Tribunal notes that more than a year after the Applicant had been informed that the lien would not be extended, he did not attempt to resume his local permanent post in Burundi or request any arrangement for that purpose. By this time it was apparent that the Applicant did not intend to return to his national position in Burundi, even though he had been advised of the consequences of not accepting the alternatives offered to him. Furthermore, the Applicant chose not to request an extension of his special leave without pay from his local permanent appointment in Burundi or to accept an agreed termination of that position. He decided not to accept these offers and alleged that the Organization was illegally seeking to "compel" him to make such decisions. The Tribunal finds that the Organization did not compel the Applicant to resume his local permanent appointment nor did it compel him to agree to a termination of his services with a protracted special leave without pay. Additionally, the Tribunal finds that the Applicant had no right to retain his local permanent appointment in Burundi, while not returning to this post, or agreeing to any of the other options offered to him by the Organisation.

XII. In view of the foregoing, the Tribunal rejects the Application in its entirety.

(Signatures)



Spyridon Flogaitis
President



Bob Hepple
Member



Agustín **Gordillo**
Member

Geneva, 31 July 2009



Tamara **Shockley**
Executive Secretary