CSAT APL/44 REVIEW BOARD (2025)

IN PROCEEDINGS BEFORE THE

COMMONWEALTH SECRETARIAT ARBITRAL TRIBUNAL

BETWEEN:

DR TAWANDA HONDORA

APPLICANT

-and-

THE COMMONWEALTH SECRETARIAT

RESPONDENT

Before the Review Board constituted by

Judge McDonald-Bishop (Chair), Judge Radhakrishnan, Judge Levine, Judge Injia and Judge Shall

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JUDGMENT ON APPLICATION FOR REVIEW

I. INTRODUCTION

1. This is an application brought by Dr Tawanda Hondora ('the Applicant') on 25 August 2024 for a review of the decision made by a panel of three members of the Commonwealth Secretariat Arbitral Tribunal (CSAT) ('the Tribunal') on 25 June 2024 ('the Judgment'). The Judgment concerns an application brought by the Applicant against his employer, the Commonwealth Secretariat ('the Respondent'), regarding the non-renewal of his fixed-term employment contract.

2. The Applicant was employed by the Respondent as Adviser and Head of the Rule of Law Section ('Rule of Law Head') for a fixed contractual period of three years from 1 September 2020 to 31 August 2023.

3. The Applicant, in his application before the Tribunal, challenged the Respondent's decision not to renew his contract of employment for a second three-year term on the grounds that it was unlawful, tainted by conflict of interest, and constituted victimisation for "protected acts". He sought damages, including exemplary damages, for the non-renewal/termination of his contract, victimisation, and moral injury, as well as costs, anonymity, and disclosure of certain documents held by the Respondent.

4. The application was strongly contested by the Respondent, who rejected all the allegations made by the Applicant and denied any entitlement to the reliefs sought, including costs. The Respondent also opposed the requests for anonymity and disclosure.

5. Following various interlocutory orders, including the refusal of the request for anonymity, the Tribunal held the application in a public oral hearing. Before the hearing, the Tribunal identified the salient issues for its determination, which were communicated to the parties for the purpose of submissions.

6. Following the hearing, on 25 June 2024, the Tribunal delivered its Judgment dismissing the application with an order that each party bear its own costs.

II. THE CONSTITUTION OF THE REVIEW BOARD

7. In response to the Tribunal's decision, the Applicant filed his application for review ('the Review Application') dated 20 August 2024. However, following the filing of the application, the Applicant, through an unrequested written submission dated 24 September 2024, contended that the Tribunal was not competent to determine its own procedure and that the challenge to the Judgment should automatically proceed for review rather than based on an order made by the President of the Tribunal in the exercise of her power under Article XI (8) of the Statute of the Commonwealth Secretariat Arbitral Tribunal ('the CSAT Statute').

8. The Respondent, in its Response to the Review Application dated 16 October 2024, contended, for a different reason, that there is no basis for reviewing the Tribunal's decision pursuant to Article XI(8). In its view, the Review Application lacked merit; therefore, there was no basis to trigger the review mechanism.

9. With regard to applications for review of CSAT first-instance judgments, the CSAT Statute, Article IX (5) becomes relevant. It states that, subject to Article XI, the Tribunal's judgment shall be final and binding on the parties and shall not be subject to appeal. Article XI, however, provides for review and revision. Insofar as is relevant, Article XI (5) enables a party to file an application for review of a judgment in prescribed circumstances. It provides:

> "XI(5). A party to a case in which judgment has been delivered who challenges the judgment on the ground that the Tribunal has exceeded or failed to exercise its jurisdiction or competence, or has erred on a question of fact or law or both, or that there has been a fundamental error in procedure which has resulted in a failure of justice or that the Tribunal has acted unreasonably having regard to the material placed before it, may apply to the Tribunal, within a period of 60 days after the judgment was delivered, for a review of the judgment."

10. Upon receipt of such an application for review, the President, under Article XI (8), must consider whether the requirements of Article IX (5) have been met. If so, the President shall establish a panel to act as a Review Board to review the judgment. Article XI (8) of the Statute reads as follows:

> "XI(8). The President, if satisfied that the requirements of paragraph 5 have been met, shall constitute a panel comprising the five members who did not sit on the initial panel that delivered the judgment in question, to sit as a Review Board to review the judgment."

11. By virtue of the provision above, the President was empowered in the present case to constitute a Review Board once she was satisfied that the requirements of Article XI(5) were met. In making her order, the President stated that, having regard to the applicable threshold, she was satisfied that the requirements of Article XI(5) had been met. In reaching her decision, she opined that the Tribunal was competent to determine its own procedure, in accordance with the CSAT Statute, CSAT Rules, and the principles of international administrative law. She regarded the Applicant's unrequested written submission of 24 September 2024 as "vexatious and now moot".

12. With regard to the Respondent's contention, the President held that "the threshold to constitute a Review Board in accordance with the Statute is relatively low" and that she needed only to be "satisfied that the requirements [for a challenge] [had] been met". These "requirements" are that the challenge falls within the grounds established by Article XI(5) of the CSAT Statute.

13. The President, having rejected the conflicting submissions of the parties and acting in the exercise of the powers vested in her by Article XI(8) of the CSAT Statute, ordered that a panel comprising five members of the CSAT, who were not members of the Tribunal at first instance, be constituted as a Review Board to consider the Review Application.

14. The Review Board affirms that it is lawfully constituted to consider the Review Application by the order made by the President on 24 October 2023.

III. MODE OF PROCEEDINGS BEFORE THE REVIEW BOARD

15. The Review Board held its first sitting on 12 November 2024, via a case management conference. It was decided that, in considering the Review Application, no oral hearing needed to be held, and that the decision would be made on the basis of the parties' written submissions and the materials placed before the Review Board and the Tribunal.

IV. THE RELIEF SOUGHT BEFORE THE REVIEW BOARD

16. In para 2 of the Review Application, the Applicant states that he is asking the Review Board to:

> "(a) **set aside** the **CSAT APL/44 decision** on the grounds of irrationality and unreasonableness, errors of fact and law, and for breaches of [his] right to a fair hearing;
>
> (b) **rule** that the Respondent's non-renewal and termination of [his] Advisor and Head-Rule of Law Section (ROL Section) contract of employment was unlawful;
>
> (c) **rule** that the Respondent subjected [him] to victimisation, i.e. detrimental treatment for protected acts; and
>
> (d) **order** the Respondent to pay [him] compensation and damages for its unlawful non-renewal and termination of [his] contract of employment and for victimisation." (Emphasis as in original.)

17. The Respondent contends in its Response to the Review Application that the Applicant is not entitled to the relief sought, as the application is without merit and should be dismissed with costs awarded to the Respondent.

V. THE RELEVANT FACTUAL BACKGROUND AND CHRONOLOGY OF EVENTS LEADING TO THE APPLICATION BEFORE THE TRIBUNAL

18. The facts that led to the termination of the parties' relationship and the dispute between them, which resulted in the application before the Tribunal, are comprehensively and usefully detailed in paragraphs 3 to 52 of the Tribunal's Judgment. Consequently, the facts will not be reproduced in such detail for present purposes, although they have been considered in their entirety by the Review Board as gleaned from the record of the proceedings before the Tribunal.

19. It is sufficient to state that the Review Board has relied extensively on and adopted (with some modification, where necessary) what it considers to be an accurate summary of the material facts recorded by the Tribunal in the Judgment. A synopsis of the salient facts is as follows.

20. The Applicant commenced employment with the Respondent on 1 September 2020 as Rule of Law Head within the Governance and Peace Directorate ('GPD'). The Applicant was part of the diplomatic professional group. He reported to the Senior Director of the GPD, Professor Luis Franceschi, who subsequently became the Assistant Secretary-General on 1 July 2022. At all material times, Professor Franceschi ('the ASG') served as the Applicant's direct line manager and was a member of the Respondent's Senior Management Committee, reporting directly to the Secretary-General.[1]

21. Notably, the job description for the Applicant's role in the Rule of Law Section stipulated, among other things, that he should report to and support the ASG.[2]

22. By mid-2022, the Applicant's relationship with the ASG and other colleagues became strained, particularly with the Adviser and Head of the Office of Civil and Criminal Justice Reform ('the OCCJR Head'), regarding role and responsibility boundaries. The ASG requested the Human Resources Section ('HR')[3] to intervene. HR concluded that the roles of the Rule of Law Head and the OCCJR Head were distinct and identified, among other issues, a challenge in relationship management between the two Section Heads. HR recommended a follow-up meeting to address the problem.

23. The Applicant believed that the ASG and OCCJR Head were collaborating to undermine his position and transfer elements of his responsibilities to the OCCJR Head. This led him to inform both the ASG and the OCCJR Head of his intention to lodge a grievance against them. The OCCJR Head subsequently resigned.

24. In November 2022, the ASG instructed the Applicant not to attend the Commonwealth Law Ministers Meeting, where the Applicant would participate as Deputy Conference Secretary, but instead to focus on the deliverables of the Respondent's Cyber Project. The ASG believed that the Applicant was struggling to meet the deliverable objectives and that

[1] Annex CC
[2] Annex AA/02
[3] Business Partner, Employee Relations -Respondent's Annex (RA)4/9

he needed to concentrate his time and energy on fulfilling those objectives. According to the Applicant, this experience was distressing and humiliating.

25. On 12 January 2023, the Applicant sent a memorandum to three members of the Respondent's management team: Dr Umakant Panwar, Director of Human Resources and Facilities Management Division ('HR Director'); Mr Ben Spittles, Human Resources – Business Partnering ('HR Business Partner'); and Ms Joyce Kamau, Business Partner, Employee Relations. The memorandum was entitled "***Framework for the resolution of employment challenges***". In that memorandum, the Applicant outlined the "challenges" he was experiencing with the ASG and how he wished the situation to be resolved. He stated that he wanted the ASG and the Respondent to resolve the situation on terms suggested by him.

26. Following this memorandum, HR made efforts to mediate between the Applicant and the ASG, which included appointing an external mediator at the Applicant's request. All attempts to resolve the dispute ultimately failed as the Applicant continued to raise several complaints against the ASG, including breaches of the Respondent's data policy and confidentiality. The Applicant subsequently requested an investigation into his allegations against the ASG.

27. The Applicant was eventually asked to submit his reports to HR under the Disciplinary and Grievance Procedures outlined in the Staff Handbook for the purpose of the Respondent conducting an investigation. However, the Applicant did not comply; instead, he raised additional complaints to HR against the ASG regarding data protection breaches ('the Whistleblowing Complaint'). During the course of these further complaints, the Applicant requested that the HR Director consider changing his line management from the ASG pending the investigation of his Whistleblowing Complaint.

28. Following the filing of his initial complaints against the ASG, the Applicant, in or around March 2023, sought information from HR regarding the renewal of his contract, which was set to expire on 31 August 2023.[4] Following one of his queries in an email of 21 June 2023,

[4] Annex AA/05

he was advised that the proposal for renewal of his contract was "still under consideration" and that he would be updated by HR as soon as a decision was made.[5]

29. Before any decision was reached, the Applicant was informed by the HR Business Partner that his Whistleblowing Complaint would be investigated by an external organisation. He was provided with the investigator's name. This led to a series of email exchanges between the Applicant and the HR Business Partner. These emails included questions and responses regarding the credentials of the proposed external investigator, as well as further complaints from the Applicant about the alleged failure of the Respondent to protect him from the ASG's "retaliation" against him for filing the Whistleblowing Complaint and the "ongoing bullyism and harassment."[6]

30. In an email dated 3 August 2023, the Applicant outlined, as part of his allegations of victimisation, the delay in informing him about the renewal of his contract. He noted that over the past four months, the contracts of all his colleagues in the Rule of Law Section had been renewed, extended, or affirmed, but the question regarding the renewal of his contract remained outstanding. He expressed, as far as is of immediate importance, that "[i]n the absence of a clear and reasonable explanation, there is no doubting that my direct line manager is penalising me for raising workplace grievances and lodging a whistleblowing report against him."[7]

31. He also indicated in that email that he had asked HR and the DSG to arrange for him to be moved and managed by a different line manager to protect him from "this and other egregious violations of the organisation's policies, not least the breaches of confidentiality, privacy and data protection of which [they] are now well aware." He complained that his requests had not been acted upon and that he had not been offered any support, except for a referral to an Occupational Health Practitioner. He then reiterated his request for protection against detrimental treatment and asked HR to consider transferring his line management from the ASG to another senior director or the Deputy Secretary-General pending the investigation of his Whistleblowing Complaint. The Applicant further

[5] Annex AA/05
[6] Annex AA/05 and AA/06
[7] Annex AA/06

complained that "like all other employees, [he was] entitled to be given six months' notice of termination/renewal of [his] contract."[8]

32. On 4 August 2023, the HR Director informed the Applicant via email that the mediation procedure had concluded without an agreement having been reached and that this part of the dispute resolution process had ended. The HR Director explained that an external investigator would investigate all concerns the Applicant had raised in the Whistleblowing Complaint.[9] The HR Director further stated that:

> "In response to your request for a change of line management, there are limited options given your seniority and the size of the organisation, however we will provide a more substantive reply to this and in relation to your contract renewal as soon as possible."[10]

The HR Director also requested that the Applicant provide some emails, which the Applicant promised to do the following week. The Applicant, however, did not comment on the aspect of the email regarding his request for a change in his line management.

33. On 15 August 2023, the HR Director and the Applicant met regarding his contract renewal.[11] During the meeting, the HR Director informed the Applicant that his contract was "going to be renewed," but that, due to the Applicant having "issues with line management," there was a proposal for his future role. In summary, the dialogue regarding the proposal unfolded as follows: the Applicant was offered a new role at the same pay grade with similar responsibilities to his current work, albeit with additional tasks and a change in line management that would remove him from the ASG's supervision. He would retain his cybersecurity responsibilities linked to his role as Rule of Law Head, but other aspects of his current portfolio, particularly those related to the justice sector, would not transfer to the new role. The aim of the move was described as two-fold. First, the Respondent sought to provide the Applicant with "a more amicable" and "friendly" work environment, where he would be "more comfortable" and "able to deliver and perform

[8] Annex AA/06
[9] Annex AA/06
[10] Ibid
[11] Annex AA/08

better," thereby securing his tenure for the full six years. Second, the Respondent was focused on "sorting out cyber work."[12]

34. The HR Director explained that the relationship between the Applicant and the ASG "despite considerable efforts, [was] not going to be the same" and that "moving to a different management reporting line and bringing with [him] maybe half the work or more than that and then getting some new work" would be "very good for [him] and obviously for the organisation".[13] The Applicant stated, in reply, that he had no problem in principle with a possible move to a different department in the near future, but he was concerned about losing the bulk of his work, which concerned the justice sector.

35. The HR Director expressed his plan to draft a job description for the new role and to work collaboratively with the Applicant on refining it, with the priority being to extend the Applicant's contract to avoid termination. The Applicant then said, "Yeah, I think that's the approach that I would prefer. You know, the issue for me is making sure that my contract does not terminate."[14] The HR Director concluded the meeting by stating that he would discuss with the ASG and others about "how much content [could] be brought over or not brought over" and that he would ask HR to prepare the extension of the contract. The Applicant replied, "Yes, yes, please. Yes, please."[15]

36. On 16 August 2023, the HR Director emailed the Applicant, offering a new three-year contract (the 'New Contract Offer').[16] This email correspondence is essential for the review, and for that reason, it is included in full. It reads:

> **I am pleased to confirm that the Secretary-General has approved that at the expiry of your present contract with the Secretariat on 31 August 2023, you be offered a new contract for a further period of three years.**
>
> **Given your request for a change of line manager, the Secretariat has considered whether, in the interests of the organisation, you**

[12] Ibid
[13] Annex AA/08
[14] Ibid
[15] Ibid
[16] Annex AA/09

> **might be redeployed on a lateral transfer to another post for the duration of a second and final 3-year term reflecting the Rotation Policy. Accordingly, the Secretariat is offering you a role of equal status at Paypoint E in the Strategy, Portfolio, Partnership and Digital Division, reporting to the Senior Director, Joshua Setipa.**
>
> If this offer is acceptable to you, we will arrange a meeting with the Senior Director SPPD to discuss the proposed Job Description.
>
> Your employment will continue to be subject to the Commonwealth Secretariat Staff Regulations and Staff Rules as laid down and amended from time to time by member Governments and/or the Secretary-General. A copy of your updated terms and conditions of service is attached.
>
> **Please let me know if you will accept the new contract by returning the signed scanned copy of this letter and contract acceptance to me by 23 August 2023**."[17] (Emphasis added.)

37. On 20 August 2023, the Applicant responded to this letter by emailing the HR Business Partner and the HR Director, stating that he was "pleased to accept the renewal of his contract of employment with the Commonwealth Secretariat" but that "renewal must be [on] the same terms and conditions as my current contract that is terminating on 31 August 2023".[18] He stated:

> "In the interests of full transparency, I asked for a change of my line manager because of the extensive and well documented bullying and harassment I faced (and continue to face) from the ASG."[19]

38. The Applicant also stated that he was unable to accept any offer that "(a) enables the ASG to achieve his goal through the back door i.e. by leveraging [his] request for Whistleblowing protection to remove [him] from discharging [his] role and responsibilities as Head – Rule of Law" and "(b) removes key functions from [him] as well as the line management responsibilities over the organisation's respective legal advisors." He

[17] Annex AA/09
[18] Annex AA/10
[19] Ibid

expressed that his "major concern" with the New Contract Offer was that it was "obvious that [he] would not be able to take with [him] and discharge under SPPD the role and functions/responsibilities that are integral to Head – Rule of Law function."[20]

39. The Applicant went on further to indicate that if renewal of his contract on his current terms and conditions was not acceptable to the Respondent, then he was "open to entering into a without-prejudice basis conversation on the termination of [his] employment with the Secretariat on mutually agreed terms."[21] He further stated that "pending finalisation of these discussions, I expect and request that my current contract be renewed on terms and conditions that reflect my current contract."[22]

40. On 21 August 2023, the HR Director replied to the Applicant, stating that it was unclear from his response whether he had accepted the offer[23]. The HR Director further informed the Applicant that the new contract would carry the same terms and pay as the previous one but would be for a new role in SPPD, reporting to a Senior Director, due to the Applicant's request for a change of line manager. The role's responsibilities would be worked out and defined through collaboration between the Applicant and the Senior Director. The Rule of Law Section would remain under GPD and would not be moved to the Strategy, Portfolio, Partnerships, and Digital Division ('SPPD'), although some cybersecurity work could potentially be transferred to the Applicant's new role, where feasible. Attached to the email was a first draft of a job description, indicating that the job title was "Adviser and Head Commonwealth Cyber Resilience," that it would be located within the SPPD, would report to the "Senior Director" of SPPD, and would be at Grade E.

41. The letter explained that the draft job description was intended as a starting point open to changes in consultation with both the SPPD and GPD Senior Directors. The HR Director closed the correspondence by advising the Applicant:

[20] Ibid
[21] Ibid
[22] Ibid
[23] Annex AA/11

> "Since your current contract is due to expire shortly (Aug 31, 2023), in the interest of time, if you agree to the approach proposed above … kindly accept the offer of appointment by signing and returning a copy of the offer letter".[24]

42. The following day, on 22 August 2023, the Applicant informed the HR Director that he would only accept a contract renewal if it included his current job description, as he anticipated a second three-year contract in his present role. He did not wish for his job description to be changed to address issues with the ASG.[25]

43. On 28 August 2023, the HR Director replied, clarifying that the offer was for a lateral transfer to a new role with the same status and pay in SPPD, reporting to the Senior Director of that division, but not for his current position as Adviser and Head of the Rule of Law Section.[26] The HR Director further explained:

> "You have been offered this role in consideration of your request to move your reporting line out of the GPD directorate. You made that request on grounds of not being able to function effectively in your role as adviser and head Rule of Law due to alleged misconduct of your line manager for which you have raised a complaint which, as you are aware, is under investigation."[27]

44. In the same email, the HR Director indicated that the offer of renewal of contract satisfies the Applicant's "legitimate expectation of continuation of service for the second and final 3 year term."[28] He further noted:

> "The change in your JD is made to serve the business needs of the organisation for which the Secretary General is assigned the responsibility and authority under the recruitment and selection policy […] It is simply not possible for you to continue in your existing position serving one directorate and report to another."[29]

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[24] Annex AA/11
[25] Annex AA/13
[26] Annex AA/14
[27] Ibid
[28] Ibid
[29] Ibid

45. On 29 August 2023, the Applicant replied, just before his contract was due to expire, indicating that he would "consider" the Lateral Transfer Offer over the next few weeks, as he felt he had not had sufficient time to evaluate it. He stated that he believed the 16 August offer letter implied his current contract would be renewed and requested reasons if that was not the case. He clarified that his earlier mention of a different line manager had been misunderstood and was not a request for an immediate or permanent change. He emphasised that he had not requested a change in the past year and wished to remain in his current role.[30]

46. On 30 August 2023, the HR Director sent the Applicant an even more critical email, which is at the centre of the dispute and this Review Application.[31] It is therefore useful to recount its terms *verbatim*. It reads:

> "I write to formally confirm that your contract as Adviser and Head, Rule of Law Section (Paypoint E) in the Governance and Peace Directorate will not be renewed. Your last day of service in that role will be 31 August 2023.
>
> The offer for a new role at SPPD was made to you on 16th August. As is evident from your detailed email responses since then, you have had ample time to consider the offer.
>
> However, the Secretariat will extend your tenure for an additional day, to Friday 1 September 2023, to allow you more time to consider the SPPD offer by that deadline. If you wish not to accept the offer of a new role at SPPD, your contract with the secretariat will end on Sep 1, 2023." [32]

47. On 31 August 2023, the Applicant replied to the HR Director,[33] asserting that he had not been provided with reasons for the decision not to renew his contract of employment, and seeking clarification on whether the decision to terminate his existing contract was made by the Secretary-General. If not, he requested to be informed who made the relevant decision. There was no response to that email. The Applicant then followed up with an

[30] Annex AA/15
[31] Annex AA/18
[32] Ibid
[33] Annex AA/19

email to the HR Director on 1 September 2023, seeking the reason for his loss of access to the Respondent's email system.[34]

48. There was additional email correspondence between the Applicant and the Respondent. Most pertinent for present purposes is what the HR Director informed the Applicant in an email dated 5 September 2023.[35] In that email, the HR Director explained that in response to his request for a change of line manager, the Secretariat had offered him a different role of equal status in the SPPD, which he did not accept. The HR Director noted that, due to an administrative error, the Applicant's access to his emails was suspended at the end of his original contract on 31 August 2023, but was restored on 1 September and remained active until 5 September 2023. The HR Director formally confirmed that the Secretariat had not renewed his contract as Rule of Law Head and that:

> "For the effective delivery of the RoL portfolio, it is essential that the Adviser and Head of RoL has an effective working relationship with senior management. The Secretariat is aware of a number of difficulties you have raised about your working relationships and we are trying to resolve these."[36]

In the same email, the HR Director noted that the Applicant's last day of service was 1 September 2023, that he would be paid up to that date, and that the balance of six months' notice from 16 August 2023 would be paid in lieu, based on salary, emoluments, and any allowances after appropriate deductions.

49. On 7 September 2023, the HR Director again wrote to the Applicant in response to points and queries raised in the Applicant's emails of 29 August and 1 September 2023.[37] The HR Director noted that the Applicant had chosen to decline the offer of a new role without acting on the invitation to discuss the new position and outline the job description with the Senior Director, SPPD. He stated that the Applicant's position was not comparable to those of other Advisers and Heads, whose contracts had been renewed, because they had not requested a change of line manager. He mentioned that the decision not to renew the

[34] Annex AA/20
[35] Annex AA/22
[36] Ibid
[37] Annex AA/23

Applicant's existing contract had been taken by "the Senior Management". He apologised for any inconvenience caused by the Applicant being temporarily shut out of the Respondent's email system. He denied that the Applicant was victimised and said that: "The Secretariat considered that it was in the interests of the organisation to offer another role, which was done."[38]

50. On 19 September 2023, the Applicant sent a letter before action to the Secretary-General (received on 21 September 2023),[39] demanding compensation and damages for the unlawful non-renewal of his contract of employment.[40]

51. On 13 October 2023, the investigator completed his investigation report into the Whistleblowing Complaint ('Investigation Report').[41] The Investigation Report concluded that the ASG did not unlawfully disclose the Applicant's personal data to unauthorised third parties, and that there was no case to answer regarding the Applicant's complaints of wrongful disclosure of data. The Investigation Report stated that the issues raised by the Applicant should have been brought forward as a grievance and did not constitute a whistleblowing complaint, as the complaints were not in the public interest but related instead to his employment contract. Furthermore, the Investigation Report determined that the Applicant's complaints were not made in good faith and were vexatious. It further stated that had the Applicant continued in the post or accepted the New Contract Offer, "it would be recommended that disciplinary procedures be initiated."

52. The Investigation Report also concluded materially that:

> "Had [the Applicant's] contract been renewed given the breakdown in trust and working relationship between both parties the Applicant and ASG but also others it is likely the working relationship would be damaged further thereby impacting Commonwealth Secretariat significantly in its delivery of its work".[42]

[38] Ibid
[39] Respondent's Answer, para. 66
[40] Annex AA/26
[41] Annex to Answer/22
[42] Annex to Answer/22

53. On 20 November 2023, the HR Director replied to the Applicant's letter before action on behalf of the Respondent, rejecting the Applicant's allegations of unlawful non-renewal of his contract of employment.[43] In that letter, the HR Director explained, among other things, the Respondent's delay in considering the Applicant's contract renewal and the reasons for the non-renewal, chief among them being:

(i) The initiation of informal dispute resolution procedures against his line manager, the ASG, who is a member of the Senior Management Committee ('SMC').

(ii) The failed mediation processes.

(iii) The deferral of the renewal decision pending the outcome of the informal grievance process. Due to no renewal recommendation having been made by the line manager, HR invited the SMC to consider the renewal of the contract at their meetings on 28 March 2023 and 1 June 2023. However, at each meeting, the decision was deferred due to attempts to settle the dispute.

(iv) The unavailability of the HR Director, who was on vacation leave, resulted in a gap in communication with the Applicant regarding the decision made on 9 August 2023 not to renew his contract, which was communicated on 15 August, and the offer of a new contract made on 16 August.

On 17 January 2024, the Applicant was appointed judge of the High Court of Belize.

VI. THE PROCEEDINGS BEFORE THE TRIBUNAL

(i) The Application

54. As previously indicated, on 15 November 2023, the Applicant submitted his application to the Tribunal, which was noted to be 96 pages long and, in the Tribunal's view, "unnecessarily complex and repetitive."[44] The Tribunal distilled the Applicant's grievance as primarily concerning the Respondent's non-renewal of his contract, claiming that it was

[43] Annex to Answer/43
[44] Tribunal's Judgment, para. 54

unlawful, breached his legitimate expectation of the renewal of his contract, was procedurally and substantively unfair, and tainted by conflicts of interest, due process violations, and victimisation for "protected acts."[45]

55. In paragraphs 54 – 59 of the Judgment, the Tribunal recorded what it considered to be the primary allegations of the Applicant against the Respondent as follows:

(i) The decision not to renew his contract breached his legitimate expectation of renewal for a second and final three-year term. More specifically, by virtue of Staff Regulation 13, the Rotation Policy, and the case of ***Ojiambo v Commonwealth Secretariat***[46], he had an enforceable legitimate expectation of being offered a second three-year term in his original position on the same terms and conditions as those of his original contract of employment. He denied experiencing any difficulties in his working relationships with senior management, denied having requested a change of line manager, and contended that the Respondent was not entitled to offer him a new role under a new contract of employment in light of those matters.[47]

(ii) The Respondent had "disapplied" paragraph 2.5 of the Rotation Policy, which states that employees do not have the right to an automatic renewal of a contract. In particular, the granting of a new contract is contingent upon fully satisfactory performance and the needs of the Respondent. As the Rotation Policy provides only two grounds on which a contract may not be renewed, and since the Respondent had not relied on either of those grounds when deciding against renewing his contract, the non-renewal decision was unlawful for breaching the duty to provide reasons for such non-renewal, for lacking any legal basis, for infringing an acquired right to the renewal of his contract of employment, and furthermore, was *ultra vires* Staff Regulation 13.[48]

[45] Ibid, paras. 53-58
[46] CSAT APL/41
[47] Tribunal's Judgment, para. 54
[48] Tribunal's Judgment, para. 55

(iii) The non-renewal decision was tainted by a conflict of interest and violations of due process on the grounds that the decision was made by "Senior Management". The ASG was a member of Senior Management and, therefore, must have participated in the non-renewal decision. Conversely, the non-renewal decision was made by the HR Director, who lacked the authority of the Secretary-General, the only person competent to terminate his employment contract.[49]

(iv) The Applicant's employment was summarily terminated by letter dated 30 August 2023, without notice, contrary to the requirements of Staff Regulations 16, 17, and 18.[50]

(v) The non-renewal decision constituted "victimisation" for "protected acts", namely, his reports alleging data breach by the ASG, the Whistleblowing Complaint, and his "request for protection from retaliation" made on 3 August 2023.[51]

(ii) <u>The Respondent's Answer</u>

56. The Respondent submitted its Answer to the Tribunal on 26 January 2024, denying all of the Applicant's allegations. The Tribunal identified what it considered to be the main features of the Respondent's answer from paragraphs 61 to 66 of the Judgment, as outlined below.

(i) Although the Applicant had a legitimate expectation that his contract would be renewed, this did not extend to a legitimate expectation that he would continue in the same role. The Respondent fulfilled the Applicant's legitimate expectation by offering him a new role under a new contract, with the same status and remuneration. The Applicant's rejection of the offer of a new contract constituted a justifiable reason not to renew his contract and brought the Applicant's

[49] Ibid, para. 56
[50] Ibid, para. 57
[51] Ibid, para. 58

employment to an end. The Applicant was offered a new role because he had requested a change of line manager, which necessitated a move outside GPD and, therefore, a different role.[52]

(ii) The Respondent correctly applied the Rotation Policy, as a new contract with the same status and remuneration was offered but subsequently rejected. The Respondent provided reasons for the non-renewal decision on at least six occasions: first, during the telephone call on 15 August 2023; second, in the letter dated 16 August 2023; third, in the email dated 21 August 2023; fourth, in the email dated 28 August 2023; fifth, in the email dated 5 September 2023; and sixth, in the letter dated 7 September 2023. The legal basis for the non-renewal decision was that his contract as Rule of Law Head would not be renewed and would expire unless he accepted the offer of a new role under a new contract. There was no breach of an acquired right to renewal, and no action was taken that was ultra vires Regulation 13 of the Staff Regulations.[53]

(iii) The Respondent denied that the decision regarding non-renewal was influenced by a conflict of interest or violations of due process. The decision to offer the Applicant a new role under a new contract, rather than renewing his existing contract, was made by the Secretary-General (the most senior member of management) after advice from Human Resources and the Deputy Secretary-General, and it was communicated by the HR Director. The ASG's involvement in the decision-making process was limited to agreeing to relinquish the cyber resilience project from the Rule of Law section, allowing it to be transferred to SPPD along with the Applicant.[54]

(iv) The Respondent denied that the Applicant's contract of employment was summarily terminated without notice. The Respondent accepted that, following ***In re Tebourbi***[55], it was required to give the Applicant "reasonable notice" of non-

[52] Ibid, para. 61
[53] Ibid, para. 62
[54] Ibid, para. 63
[55] ILOAT Judgment No. 2104

renewal and that paragraph 2.5.1 of the Rotation Policy mandated giving the Applicant at least six months' notice. The Respondent fulfilled its notice obligations because the Applicant was informed, from 15 August 2023, that the continuation of his tenure depended on his accepting a new role. He was paid until 1 September 2023, and the remaining six months' notice from 16 August 2023 was compensated in lieu, as the Respondent was entitled to do pursuant to Part 3, Section 3, paragraph 1.5 of the Staff Handbook. Therefore, the Applicant benefited from serving the entirety of his contract (plus one day, extending his tenure to 1 September 2023) in addition to five and a half months' payment in lieu of notice thereafter. Staff Regulation 16 did not pertain to summary termination, and Staff Regulations 16, 17, and 18 were irrelevant as the non-renewal decision was not taken under those Regulations. The Applicant's contract expired by the effluxion of time.[56]

(v) The Respondent denied that the non-renewal decision constituted "victimisation" for "protected acts". The independent investigator found that none of the complaints raised by the Applicant amounted to whistleblowing. He concluded that they were merely personal grievances, not made in good faith, and were vexatious. The Applicant did not experience any adverse treatment as a result of the complaints he had made. Instead, the Respondent sought to accommodate the Applicant's own request for a change of line manager, after the Applicant himself identified that he had a difficult working relationship with his line manager. In the Applicant's case, a change of line manager necessitated a move out of GPD because the ASG was the Senior Director in charge of GPD. The non-renewal decision was a consequence of the Applicant's own conduct in rejecting the offer of a new role under a new contract.[57]

(vi) The Respondent denied that the Applicant was entitled to any relief. It asserted that there was no breach of contract, and consequently, the Applicant was not entitled to any damages for breach of contract. His claim of victimisation was unfounded,

[56] Tribunal's Judgment, para. 64
[57] Ibid, para. 65

and thus, there was no entitlement to exemplary damages. The Applicant's assertion of having suffered moral injury was also unfounded. The Tribunal had no jurisdiction to issue an "erasure order." The Respondent opposed any application for costs, as well as the request for disclosure and anonymity.[58]

(iii) <u>The Applicant's Reply</u>

57. The Applicant filed what the Tribunal noted to be a 120-page Reply on 18 March 2024. The Tribunal found that he repeated his previous arguments but also introduced a new point: that the Respondent's letter of 20 November 2023[59] (which followed the Application) should be interpreted as indicating that the decision not to renew his contract was made on or around 9 August 2023, due to the ASG making a "formal recommendation" that the contract should not be renewed. According to the Applicant, the letter dated 20 November 2023 supported his assertion that his "due process rights" had been breached, that the Respondent had failed in its duty of candour, and "conspired" not to disclose the ASG's recommendation to him. Consequently, the non-renewal decision was unlawful.[60]

58. The Applicant disputed the Respondent's claim that a legitimate expectation of contract renewal did not cover a second three-year term. He argued that "renewal" should be understood as the continuation of the existing or original contract. The Applicant contended he had a legitimate expectation for renewal in the same position for a second three-year term unless there were valid reasons against it, specifically poor performance in the role or changes in organisational needs relating to that role, which the Respondent had not relied on. Therefore, on either of these two grounds, the decision not to renew his contract was unlawful.[61]

59. The Applicant again denied that he had requested a change of line manager but contended that if he had made such a request, the Respondent was not obliged to accede to it; and if

[58] Tribunal's Judgment, para. 66
[59] The Applicant mistakenly referred to this letter as dated 30 November 2023
[60] Ibid.
[61] Ibid, para 68

the Respondent did accede to such a request, then unless the terms were to his satisfaction, then "the contract status quo ante retained."[62]

60. He asserted that the Respondent was obligated to provide him with actual notice of its decision not to renew his contract, between six months and one year prior to the expiration of his contract, and that it was not permitted to compensate him in lieu of notice. The Respondent had no discretion to terminate his employment contract outside the parameters of Staff Regulations 16, 17 and 18.[63]

61. The Applicant further contended that the fact that the proposed Cyber Resilience Section and the new role of Advisor and Head Cyber Resilience were never established proved that the Respondent's conduct was "tainted" by "mala fides and improper motives". The Applicant complained that, in order to establish a new role and section, the Respondent was required, but failed, to comply with Staff Regulation 16 and the Lateral Transfer Policy, produce a business case for the establishment of a new section and role, engage the Applicant in the establishment of the new section, and consult with all affected staff, the staff association, and the Executive Board of Governors. The Respondent's failure to do so demonstrated that the non-renewal decision was not made to meet the Respondent's business needs.[64]

62. The Applicant also averred that, as cyber resilience constituted only 25% of his role in the Rule of Law Section, the new role could not hold the same status as his Rule of Law role and was an "effective demotion".[65]

63. The Applicant also asserted that the Respondent had not produced any admissible evidence and/or witness statements in support of its submissions; therefore, its case should be rejected.[66]

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[62] Ibid, para. 69
[63] Ibid, para. 70
[64] Ibid, para. 71
[65] Ibid.
[66] Ibid, para. 72

(iv) The Respondent's Rejoinder

64. The Respondent filed its Rejoinder on 22 April 2024 (summarised at paras 74-77 of the Judgment). It contended that the Applicant's interpretation of the HR Director's letter of 20 November 2023 was incorrect. The Respondent clarified that the renewal decision, based on the New Contract Offer, was made on 9 August 2023 and communicated orally to the Applicant by the HR Director on 15 August 2023. The decision not to renew the Applicant's contract was made on 30 August 2023, after he had rejected the New Contract Offer.[67]

65. The Respondent also denied that the ASG had made any recommendation that the Applicant's contract should not be renewed. Thus, the Applicant's reliance on paragraph 17 of the 20 November 2023 letter was misplaced, as that paragraph did not say that the ASG had made a formal (or any) recommendation not to renew.[68]

66. The Respondent contended that the offer of a new role complied with the Lateral Transfer Policy because there was a vacant post, although the details had yet to be finalised. The offer of a new role in a new section never progressed beyond the embryonic stages, as the Applicant rejected it. Accordingly, there was no opportunity to make a recommendation pursuant to the Lateral Transfer Policy. The Applicant's contract terminated by effluxion of time, since he did not accept the offer of the new role. Therefore, there was no basis for the Applicant's contention that there was a "conspiracy" on this issue or that his due process rights were infringed.[69]

67. The Respondent also denied that the proposed new role was not of equal status to the Applicant's old role and represented a demotion. The new post was an "Advisor and Head" role, at the same remuneration level, reporting to a senior director, and similar to his previous role. The fact that the new role only overlapped with his previous role by 25% merely demonstrated that they covered different areas.[70]

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[67] Tribunal's judgment, ibid, para. 74
[68] Ibid
[69] Ibid
[70] Ibid, para. 76

68. The Respondent contended that it was not able to give notice until after the non-renewal decision had been made, and it was entitled to pay the Applicant salary in lieu of notice. This gave the Applicant the benefit of an extra five and a half months' pay beyond the expiry of his contract.[71]

VII. THE TRIBUNAL'S DECISION

69. The Tribunal, by order issued on 13 May 2024, outlined what it considered to be the main issues in the case for resolution and in respect of which the parties were required to file "written skeletons of their oral arguments", as follows:[72]

> "a. First, whether the Respondent's conduct in August 2023 breached the Applicant's legitimate expectation of the renewal of his contract of employment for a second and final three-year term. This entails consideration of two sub-issues:
>
> i. First, whether as a matter of law the doctrine of legitimate expectation of contract renewal incorporates an entitlement to continue to encumber the same role; and
>
> ii. Second, if so, whether as a matter of fact the Applicant possessed a legitimate expectation that he would be offered a contract renewal in respect of the same role.
>
> b. Second, whether the Respondent's conduct in August 2023 breached the Applicant's contract in any other way. This entails consideration of the Applicant's allegations that the Respondent's conduct was unlawful for failure to give reasons or lack of a legal basis, constituted an unlawful breach of an acquired right, was tainted by due process violations or was ultra vires Staff Regulations 13 or 16-18.
>
> **c.** Third, whether the Respondent's conduct in August 2023 constituted victimisation or retaliation for the Applicant's complaints, including his whistleblowing complaints.

[71] Ibid, para. 77
[72] Tribunal's Judgment, paras. 79 and 80

d. Fourth, what, if any, remedy or relief the Applicant is entitled to."

70. In determining the legal issues it identified for resolution, the Tribunal clearly instructed itself on its jurisdiction, the parameters of its role, and the exercise of its jurisdiction in reviewing the decision of the Respondent. The Tribunal's expression of the standard and scope of review to be applied to the Respondent's decision reflects the application of the CSAT governing statutory regime, case law, and principles of administrative law relevant to the exercise of its functions as a first-instance tribunal.[73]

71. After considering the case and the arguments from both parties, and informing itself to the extent deemed necessary regarding the facts and the law, the Tribunal ruled against the Applicant on all identified issues and dismissed the application without awarding costs to either party.

72. As far as necessary at this stage, the Tribunal's critical findings and conclusions are summarised below to provide the background to the grounds of challenge presented in the Review Application.

1) Breach of legitimate expectation

73. The Respondent had good reason not to renew the Applicant's contract for a second three-year term and instead offer a new contract in a different role. This was necessary for the effective functioning of the Rule of Law Section and the GPD, requiring the Applicant to be moved out and managed by someone else. Thus, the Respondent complied with Staff Regulation 13 and the Rotation Policy without breaching or "disapplying" those provisions. Consistent with ***Ojiambo*** at paragraph 51, the Respondent properly exercised its discretionary powers affecting this employee's employment and for a proper purpose.[74]

[73] Tribunal's Judgment, paras. 89-91 referencing Article II of the CSAT Statute; ***Olijambo v CSAT***, paras. 49-53 and the Second Order of the Tribunal issued on 20 February 2024 (para. 74 of the Tribunal's Judgment.
[74] Tribunal's Judgment, para. 108

74. Having conducted an objective analysis of the communications between the parties, the Applicant could not have had any legitimate or reasonable expectation that he would be offered a new contract in respect of the same role.[75]

75. The Applicant's own communications with the Respondent indicated his desire to stop working with the ASG, and he wanted to be moved and to have a different line manager. In those circumstances, it must have been obvious to the Applicant that the possibility of a second three-year term in the same role reporting to the same line manager was untenable.[76]

76. The Respondent's conduct in August 2023 did not breach any legitimate expectation that the Applicant's contract of employment would be renewed for a second and final three-year term. Specifically, the Applicant could not reasonably have had any legitimate expectation that he would be offered a renewal of his contract concerning the same post. When he failed to accept the offer of a new contract in a new role by the deadline of 31 August 2023 (which was extended to 1 September 2023), his fixed-term contract was not renewed and, accordingly, came to an end on 1 September 2023.[77]

2) Breach of contract by other means

77. The Respondent's conduct in August 2023 did not breach the Applicant's contract in any other way, namely:[78]

(i) The Respondent did not fail to provide reasons for the non-renewal, the Respondent gave the Applicant sufficient and clear reasons to understand why his contract was not going to be renewed.

(ii) The decision did not lack legal basis. When the Applicant failed to accept the offer of a new contract, the Respondent was entitled to decide not to renew his contract of employment.

[75] Tribunal's Judgment, para. 109
[76] Ibid, para. 110
[77] Ibid, para. 111
[78] Ibid, paras. 112 - 135

(iii) The Applicant had no acquired right to have his initial three-year contract renewed. Any entitlement to renewal of his contract was displaced by the needs or requirements of the organisation at the time of renewal. Therefore, there was no breach of acquired rights.

(iv) The non-renewal decision was not tainted by due process violations. There was no evidence before the Tribunal that the ASG was involved in the decision-making not to renew the Applicant's contract and when the Applicant failed to accept that offer, the Secretary-General, who is naturally, a part of senior management, chose not to renew his contract when he failed to accept the New Contract Offer.

(v) The Respondent did not breach its duty of candour or engage in any conspiracy not to disclose the ASG's recommendation from the Applicant. The Applicant's due process rights were not violated.

(vi) There was no breach of Regulation 13 or of the Rotation Policy; the Respondent's actions complied with both Regulation 13 and the Rotation Policy.

(vii) The non-renewal decision was not *ultra vires* Staff Regulations 16, 17, and 18. It was unnecessary for the Respondent to rely on those Regulations, and it did not purport to do so. The Respondent's power to terminate the contract derived from the express terms of the contract and Staff Regulation 13, read together with the Rotation Policy.

3) Breach due to retaliation or victimisation for protected acts

78. The Respondent's conduct in August 2023 did not constitute retaliation or victimisation for the Applicant's complaints. It was the Applicant's rejection of the offer that led to the non-renewal of his contract of employment.[79]

79. The Tribunal considered it unnecessary to have regard to the Whistleblowing Report dated 13 October 2023, which post-dated the relevant decisions to offer the Applicant a new

[79] Ibid, para. 138

contract in a new position and not to renew his contract of employment once he failed to accept that offer.[80]

80. The Applicant had not established that the Respondent violated his contract of employment in any respect. Therefore, he is not entitled to any relief.[81]

VIII. PROCEEDINGS BEFORE THE REVIEW BOARD - THE REVIEW APPLICATION

81. The gravamen of the Applicant's grievance with the Tribunal's decision is articulated in paragraph 6 of the Review Application. Essentially, he contends that the decision "sets a bad precedent and, if not set aside, will upend the [Respondent's] internal law and the CSAT's reputation among tribunals that apply rules of international law." According to the Applicant, there are "[s]ome … shocking conclusions and implications of the [decision] regarding fixed term contracts due for renewal (as his was) regarding the requirements of the Respondent to comply with principles of administrative law and Part 9 of the CSAT Staff Regulations and related policies that regulate terminations of contracts of employment." The Applicant argues that the decision, in essence, has established that, in respect of fixed-term contracts, an international organisation is not required to:

a) give employees any **actual advance notice** of its intention to not renew and to terminate their contracts of employment;
b) give employees a **valid legal basis** and a **valid reason** for and in its decision not renewing and terminating their contract of employment;
c) **avoid relying on** grievances and other protected acts when taking the decision not to renew and to terminate employees' contracts of employment;
d) **rely on and comply** with **Part 9 of the Staff Regulations** and related staff policies that regulate terminations of contracts of employment;
e) **give employees any facility to internally challenge** non-renewal and termination decisions made in the lead up to the contract end date although this right is expressly

[80] Ibid, para. 142
[81] Ibid, para. 143

provided for in its Staff Rules and under principles of international administrative law;

f) discharge, **in legal proceedings before the CSAT,** its duty of candour and explanation or discharge its onus on its pleaded defences or **provide any admissible evidence or witness statements** explaining its decision(s) not to renew and to terminate a contract of employment and may rely **solely** on its lawyers' unsubstantiated submissions as evidence of its decisions and decision-making processes. (Emphasis as in original.)

82. In support of the foregoing contention, the Applicant raises numerous grounds of complaint in sections C (grounds in brief) and D (grounds in detail) of the Review Application. These complaints are encompassed within four broad grounds on which he based his application, namely: (i) the termination ground, (ii) the non-renewal ground, (iii) the ruling on the *ultra vires* plea ground, and (iv) the failure to rule on the pleaded cause of action and victimisation ground.

83. The review of the Tribunal's decision is conducted within the framework of the broad headings under which the Applicant has presented the grounds for review, with due consideration given to the Respondent's response that these grounds are devoid of merit.

A. THE SCOPE AND STANDARD OF REVIEW

84. It must be stated that the consideration of the Review Application has been conducted within the framework of the applicable standard and scope of review that the Review Board is obliged to deploy in treating with the decision of the Tribunal. The scope and standard of review are in accordance with the CSAT statutory regime, the principles of international administrative law and the persuasive guidance from case law, which are summarised below.

85. The basis for challenging a first-instance judgment of CSAT is defined by the CSAT Statute, Article XI(5), as previously detailed. CSAT case law has confirmed that for the challenge to be justiciable before the Review Board, it must be based on four grounds in accordance with the provisions of the CSAT Statute. The grounds that must be successfully

established are that the Tribunal: (i) exceeded or failed to exercise its jurisdiction or competence as attributed by the CSAT Statute; (ii) erred in its judgment on a controversy of fact or law, or both, before it; (iii) perpetrated a fundamental error of procedure that must have resulted in a failure of justice; or (iv) acted unreasonably, considering the documentary and oral evidence presented before it. This means that for the Review Application to succeed, at least one of the four permitted grounds of challenge to the first-instance decision must be established.

86. Furthermore, the jurisprudence of the CSAT Review Board, emanating from decided cases, has revealed the following conventions regarding the application of Article XI (5) of the CSAT Statute:[82]

(i) CSAT Statute, Article XI (5) is the exhaustive basis for challenging a first-instance judgment.

(ii) The Review Board's role is to examine only the elements of the first-instance judgment that have been specifically challenged, rather than reviewing it in its entirety or embarking on a retrial of the case.

(iii) A challenge must pertain to a finding of fact or law established by the first-instance judgment, and the Review Board cannot consider an issue that was not presented to the first-instance Tribunal.

(iv) The challenger bears the burden of proof to convince the Review Board that one or more of the grounds for challenge under the CSAT Statute, Article XI.5, are made out.

87. The Review Board also endorses the views of the President, as stated in paragraph 10 of the Order dated 20 February 2024 in an application for production of documents in the

[82] See [43] REVIEW BOARD ***Venuprasad vs The Commonwealth Secretariat*** (2019); [39] REVIEW BOARD ***Shah vs The Commonwealth Secretariat*** (2016) ; [22(2)] REVIEW BOARD ***Carmaline Bandara vs The Commonwealth Secretariat*** (2015); [20(2)] REVIEW BOARD ***Julius Ndung'u Kaberere vs The Commonwealth Secretariat*** (2014); and [16(3)] REVIEW BOARD ***Monica Oyas vs The Commonwealth Secretariat***)

instant case, as being equally applicable to the role of the Review Board in considering the Respondents' decision. The President stated, in so far as is material for present purposes:

> "…the Tribunal's function is not to conduct its own investigation. Rather, consistent with the principles of international administrative law, the role of the Tribunal is to undertake a limited review of the impugned decision in order to determine whether it (i) was taken by a competent authority; (ii) was taken in accordance with the applicable procedure established by the Respondent; and (iii) was not arbitrary or abusive".[83]

88. The jurisprudence of the International Court of Justice (ICJ) also holds significant persuasive value regarding similarly worded statutory provisions under the United Nations' historic administrative regime, which allowed appeals from the now discontinued United Nations Administrative Tribunal ('UNAdT') to the ICJ. In the ICJ's Advisory Opinion, ***Application for Review of Judgment No. 158 of the UNAdT*** (1973), the court addresses (i) deference to first-instance judgment, (ii) failure to exercise jurisdiction, (iii) error in procedure that has occasioned a failure of justice, and (vi) adequacy of reasons.

89. Given the issues at the heart of the Applicant's challenge and the Applicant's prolix, overlapping, and what the tribunal described as "unnecessarily complex" pleas, the Review Board has duly considered the ICJ's guidance on the following matters, which have been extracted in part from the Advisory Opinion:

> *(i) Deference to first-instance judgment*
>
> "[…] the task of the Court is not to retry the case but to give its opinion on the questions submitted to it concerning the objections lodged against the Judgement. The Court is not therefore entitled to substitute its own opinion for that of the Tribunal on the merits of the case adjudicated by the Tribunal. Its role is to determine if the circumstances of the case, whether they relate to merits or procedure, show that any objection made to the Judgement […] is well founded […].
>
> Furthermore, […] a challenge to an administrative tribunal judgment on the ground of unauthorized assumption of jurisdiction

[83] Order Re. CSAT Rules 9 & 16 Production of Documents, 20 February 2024

cannot serve simply as a means of attacking the tribunal's decisions on the merits."

(ii) Failure to exercise jurisdiction

"56. […] The test of whether there has been a failure to exercise jurisdiction with respect to a certain submission cannot be the purely formal one of verifying if a particular plea is mentioned eo nomine [i.e., 'under that name'] in the substantive part of a judgment: the test must be the real one of whether the Tribunal addressed its mind to the matters on which a plea was based, and drew its own conclusions therefrom as to the obligations violated by the respondent and as to the compensation to be awarded therefor. Such an approach is particularly requisite in a case such as the present one, in which the Tribunal was confronted with a series of claims for compensation or measures of relief which to a considerable extent duplicated or at least substantially overlapped each other and which derived from the same act of the respondent. […]"

(iii) Procedural error occasioning injustice

"92. It may not be easy to state exhaustively what is involved in the concept of 'a fundamental error in procedure which has occasioned a failure of justice'. But the essence of it, in the cases before the Administrative Tribunal, may be found in the fundamental right of a staff member to present his case, either orally or in writing, and to have it considered by the Tribunal before it determines his rights. An error in procedure is fundamental and constitutes 'a failure of justice' when it is of such a kind as to violate the official's right to a fair hearing as above defined and in that sense to deprive him of justice. To put the matter in that way does not provide a complete answer to the problem of determining precisely what errors in procedure are covered by the words of [the UNAdT Statute]. But certain elements of the right to a fair hearing are well recognized and provide criteria helpful in identifying fundamental errors in procedure which have occasioned a failure of justice: for instance, the right to an independent and impartial tribunal established by law; the right to have the case heard and determined within a reasonable time; the right to a reasonable opportunity to present the case to the tribunal and to comment upon the opponent's case; the right to

equality in the proceedings vis-à-vis the opponent; and the right to a reasoned decision."

(iv) Adequacy of reasons

"While a statement of reasons is thus necessary to the validity of a judgement of the Tribunal, the question remains as to what form and degree of reasoning will satisfy this requirement. The applicant appears to assume that, for a judgment to be adequately reasoned, every particular plea has to be discussed and reasons given for upholding or rejecting each one. But neither practice nor principle warrants so rigorous an interpretation of the rule, which appears generally to be understood as simply requiring that a judgment shall be supported by a stated process of reasoning. This statement must indicate in a general way the reasoning upon which the judgment is based; but it need not enter meticulously into every claim and contention on either side. While a judicial organ is obliged to pass upon all the formal submissions made by a Party, it is not obliged, in framing its judgment, to develop its reasoning in the form of a detailed examination of each of the various heads of claim submitted. Nor are there any obligatory forms or techniques for drawing up judgments: a tribunal may employ direct or indirect reasoning, and state specific or merely implied conclusions, provided that the reasons on which the judgment is based are apparent. The question whether a judgment is so deficient in reasoning as to amount to a denial of the right to a fair hearing and a failure of justice, is therefore one which necessarily has to be appreciated in the light both of the particular case and of the judgment as a whole."

90. The grounds for review have been examined with the aforementioned scope and standard of review firmly in mind.

B. THE REVIEW GROUNDS – DISCUSSION AND FINDINGS

91. The Review Board has thoroughly considered the case presented by both parties before the Tribunal and in these review proceedings. However, due to inherent constraints, it is impossible for the Board to examine every aspect of the case presented by each party in its

analysis of the issues raised in the Review Application. Therefore, it is deemed prudent to indicate from the outset that, while the entire case has been taken into account, only the key aspects of the parties' contentions will be highlighted and discussed in this judgment. The Review Board intends no disrespect to the parties by adopting this approach. The grounds will now be examined.

i. **The termination grounds**[84] together with,

ii. **The renewal grounds**[85]

92. Given the overlapping grounds for review and the commonalities in the facts of the case and the Tribunal's reasoning that need to be considered in resolving them, the Review Board deems it fitting to consider together the issues raised under the termination and renewal grounds to the extent necessary and practicable.

93. Under the termination grounds, the Applicant contends that he was denied a fair hearing on each of his asserted causes of action, amounting to procedural unfairness and irrationality. According to him, the Tribunal, without reasons, "disregarded/ignored" his pleas regarding the termination of his contract. He maintains that the one-day formal written notice given by the Respondent of its decision to terminate his contract did not fulfil the legal requirements for termination regarding adequate notice, reasons for the decision and the legal basis for the decision. He was also not given any opportunity to challenge internally the decisions not to renew his contract and to terminate his employment, given the short notice provided on 30 August 2023. He made reference to para 79 of the Tribunal's judgment in support of his argument that his pleas were disregarded without the provision of reasons.

94. The Applicant's overarching contention regarding the termination grounds under review is that, without providing reasons for doing so, the Tribunal disregarded his pleas concerning the Respondent's duties under its statutes and the principles of international administrative law. These duties (or legal requirements) are categorised and discussed under three sub-headings, namely, the requirement for the Respondent to (i) give actual advance notice of

[84] paras. 8, 12 and 13 of the Review Application
[85] paras. 9,14 and 15 of the Review Application

the decision to terminate the contract of employment ("termination decision"); (ii) provide reasons for the termination of the contract; (iii) provide the legal basis for the termination decision; and (iv) respect due process rights in the decision-making process. According to the Applicant, the tribunal's failure to consider his pleas on these matters and to provide a reasoned decision has rendered its decision procedurally unfair and a breach of the right to a fair hearing.

95. The gravamen of the Respondent's response is that the Tribunal did not ignore the pleas highlighted by the Applicant under the termination grounds, but rather had "simply ruled" against him on those grounds. There was no breach of his right to a fair hearing, as the Tribunal considered his argument regarding the summary termination of his employment and rejected it for clear and cogent reasons outlined in several paragraphs of the Judgment.

96. The Review Board notes that from the very outset, the Tribunal identified the issues to which the pleas had given rise for consideration. It noted the extensive pleadings of the Applicant and those in response from the Respondent and distilled from them, in broad terms, the pertinent issues for its consideration as detailed in paragraph 79 of the Judgment.

97. The second issue, drawn from the pleadings, as expressed in paragraph 79 of the Judgment, is the relevant one. As framed by the Tribunal, the question is whether there were other bases on which it could be argued that the Respondent, by its conduct in August 2023, had breached the contract of employment. In addressing that issue, the Tribunal highlighted the allegations that gave rise to several sub-issues, including the absence of reasons and a legal basis for the decision, the violation of due process and acquired rights, and that the decision is *ultra vires* Staff Regulations 13, 16, 17, and 18.

98. It is true that the Tribunal made no mention of the Applicant's grievance concerning the absence of actual notice and did not expressly formulate the issue, or any other, by reference to the termination of the contract, which is the focus of the termination ground. The question, however, is whether the Tribunal's failure to specifically address the pleaded matters as they relate to the termination of the contract, distinct from the renewal of the contract, and its omission to identify the pleading regarding notice at para 79, has rendered its decision erroneous and liable to be set aside.

99. Having considered the Tribunal's reasoning, the Review Board concludes that the Tribunal's decision is not impeachable on the issues raised in the termination grounds to justify interference with it. The contract was for a fixed term that ended on 1 September (by virtue of an extension) without any interruption. It was then not renewed. As a matter of law, the non-renewal of a fixed-term contract is not the same as the termination of it.

100. C.F. Amerasinghe, in his most helpful work[86] explains that termination of an appointment by an administrative authority occurs when, as a result of its deliberate act, the employment relationship is brought to an end. He specifically noted that, in the case of a fixed–term contract, termination would occur before the contract period expires. In looking at the issue of procedural irregularities, the learned author relevantly made this point:

> "In other areas of the law as where probationary appointments are not confirmed or appointments are terminated for unsatisfactory service, international administrative tribunals have held that requirements of due process to be found in the written law or in general principles of law must particularly be followed in the taking of decision. **Where <u>fixed-term contracts are not renewed</u>, <u>the situation is different, partly because the expiration of such a contract does not constitute a termination of service</u>**…"[87] (Emphasis added.)

101. Thus, given the separate treatment in international administrative law of termination and non-renewal of employment contracts, as well as the different grounds on which they can occur, they are distinct and are to be treated accordingly. Therefore, the non-renewal of the fixed-term contract in this case cannot be considered to be termination of the contract, even though the employment relationship was brought to an end due to the non-renewal. The crucial fact is that the contract was not prematurely brought to an end by the Respondent or the Applicant (for that matter) before its contractual expiration date.

102. Thus, as will be demonstrated in the reasoning that follows, no issue regarding the termination of the contract arose for the Tribunal's consideration, as the contract was not terminated; rather, it was not renewed. Consequently, the Tribunal's duty was to consider the issues raised by the Applicant within the context of the non-renewal of the contract,

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[86] C.F. Amerasinghe, The Law of the International Civil Service as Applied by International Administrative Tribunals, Volume II, Chap 2, p.17
[87] Ibid, p. 109

which it duly did. It cannot be faulted for doing so. However, despite the absence of a termination issue properly arising in respect of the contract, the Review Board has still evaluated the grounds presented by the applicant as termination grounds due to their inextricable connection to the non-renewal grounds and the need to ascertain whether, indeed, the Tribunal erred in addressing the matters raised by the Applicant that relate to the non-renewal decision.

(i) Lack of actual advance notice of termination / non-renewal

103. The Review Board notes that the Respondent did not provide the Applicant with actual advance notice of non-renewal of his contract, a fact that the Respondent admitted and the Tribunal accepted. The Applicant contends that this admission means that the Respondent breached the requirement of the Rotation Policy as well as international administrative law that he be given six months' to one year's notice of the decision not to renew his contract.

104. The Review Board further notes that, although no explicit mention was made in paragraph 79 of the Judgment regarding the requirement for actual notice for 'termination' of the contract in the framing of the issues, the Tribunal nevertheless considered the Applicant's plea and argument concerning the notice to be given at several points in its Judgment. This conclusion is supported by the Tribunal's explicit recognition of the pleas in paragraphs 57, 64, 70, and 77 of the Judgment, as well as its reasoning and conclusions in paragraphs 133 and 135. The former set of paragraphs is reproduced below.

> "57. The Applicant also contended that his employment was **summarily terminated** by letter dated 30 August 2023, **without notice**, contrary to the requirements of Staff Regulations 16, 17 and 18.
>
> […]
>
> 64. The Respondent denied that the Applicant's contract of employment was **summarily terminated without notice**. The Respondent accepted that, following **In re Tebouri** ILOAT Judgment NO. 2104, it was required to give the Applicant 'reasonable notice' of non-renewal and that para 2.5.1 of the Rotation Policy required it to give the Applicant at least six months'

notice. The Respondent complied with its notice obligations because the Applicant was given notice, from 15 August 2023, that the continuation of his tenure depended on him accepting a new role. He was paid up until 1 September 2023, and the balance of six months' notice from 16 August 2023 was paid in lieu, as the Respondent was entitled to do pursuant to Part 3, Section 3, paragraph 1.5 of the Staff Handbook. Therefore, the Applicant had the extra benefit of serving out the entirety of his contract (plus one day, extending his tenure to 1 September 2023) plus five and a half months' payment in lieu of notice thereafter. **The Respondent argued that Staff Regulation 16 did not concern summary termination** and that Regulations 16, 17 and 18 were irrelevant because the non-renewal decision was not taken pursuant to those Regulations. The Respondent says that the Applicant's contract expired by the effluxion of time.

[…]

70. **The Applicant argued that the Respondent was required to give him actual notice of its decision not to renew his contract**, between six months and one year before the expiry of his contract and that it was not entitled to pay him in lieu of notice. **The Respondent had no discretion to terminate his contract** outside the parameters of Regulations 16-18.

[…]

77. **The Respondent contended that it was not able to give notice** until after the decision not to renew his contract had been made, **and it was entitled to pay the Applicant in lieu of notice**, which gave the Applicant the benefit of an extra five and a half months' pay beyond the expiry of his contract." (Emphasis added.)

105. The Tribunal then set out its findings regarding the issue of notice in paragraph 133 of its Judgment. There, it stated that it did not accept that the Applicant's employment contract was summarily terminated without notice. After reviewing the provisions of paragraph 2.5 of the Rotation Policy and the Respondent's explanation regarding its inability to reach a decision about the renewal of the contract at the time the decision became due, it found that the Applicant was formally notified on 16 August 2023 that the continuation of his

tenure depended on him accepting the offer of a new contract with a new role. It then concluded that:

> "…When the Applicant did not accept the offer by the deadline of 31 August 2023 (extended to 1 September 2023), the Respondent paid the Applicant the balance of six months' notice from 16 August 2023, in lieu of working out his notice period, which the Tribunal considers it was entitled to do under paragraph 1.5 of Part 3, Section 3 of the Staff Handbook."[88]

106. Then, in paragraph 135, it continued, in part:

> "**As the Respondent had the power not to renew the Applicant's contract of employment** by virtue of the express provisions of the contract and Staff Regulation 13 read together with the rotation Policy, **it was unnecessary for the Respondent to rely on Regulations 16-18 in order for the Applicant's contract of employment to terminate lawfully (and the Respondent did not purport to rely on those provisions when deciding not to renew the Applicant's contract)**…" (Emphasis added.)

107. It is evident from the preceding extracts from the Tribunal's reasoning at paragraphs 103 and 104 above that the Tribunal examined the complaint before it by looking broadly at what led to the termination of the employment relationship. Having done so, it viewed the non-renewal of the contract, and not termination, as bringing an end to the employment relationship. It is, therefore, for this reason that it framed the issues for consideration in paragraph 79 within the context of non-renewal rather than termination. Therefore, the Tribunal's position on the issue for consideration relates to the non-renewal of the contract, not its termination, which is clear beyond question.

108. Essentially, the Tribunal's reasoning highlighted above reflects the parties' pleas and arguments before it. It is evident from the Respondent's Answer and submissions that it presented its case within the framework of a non-renewal decision rather than a termination decision. The Tribunal rightly accepted that perspective and cannot be faulted for doing so.

[88] The Tribunal's Judgment, para. 133

109. In the Review Board's view, the Tribunal thoroughly considered the views of both sides, as demonstrated in its reasoning and conclusions in paragraphs 133 and 135 of the Judgment. The Review Board is satisfied that the Tribunal remained cognisant of the conflicting positions of the parties regarding the notice requirement for non-renewal of the contract of employment, particularly after it determined that the Applicant could not reasonably have had a legitimate expectation that his contract would have been renewed. This finding was based on the Tribunal's examination of the communication between the Respondent and the Applicant up to 30 August 2023, just before the contract was due to expire.

110. The Tribunal accepted the Respondent's explanation regarding what it stated was its inability to provide the requisite notice at the relevant time due to the issues surrounding the Applicant's complaint against his line manager, his request for a change in line management, and the efforts made to resolve the issues he had raised about his line manager. The Tribunal also considered that the Respondent made a payment of salary in lieu of notice, which it determined the Respondent was entitled to make. Ultimately, it rejected the Applicant's position that the Respondent had breached the applicable law concerning the notice requirement for terminating his contract of employment. This conclusion was open to the Tribunal based on the facts before it when viewed within the framework of the applicable law, including the principles of international administrative law.

111. The Review Board finds that although the Tribunal did not specifically address the issue of providing actual notice for the termination of the contract as a distinct matter from its non-renewal, it did not err in law. The overall reasoning and findings of the Tribunal clearly demonstrate that it did not overlook or disregard the Applicant's pleas that the Respondent failed to provide adequate advance notice for non-renewal.

112. The Tribunal also recognised the Respondent's admission of failing to provide the required notice but accepted the Respondent's justification for this. It viewed the Respondent's payment of salary in lieu of notice as a reasonable alternative to giving actual notice. In this regard, the Tribunal accurately noted in paragraph 133 of its judgment that:

> "The Applicant received an advantage in comparison with employees given six months' notice of non-renewal because he was able to serve out the entirety of his contract and receive five and half months' payment (of money) in lieu of notice thereafter."

113. There is no legitimate basis on which to interfere with these factual findings of the Tribunal, which are not shown to constitute an error of fact or law or to be unreasonable.

(ii) Absence of actual notice of intention not to renew

114. The Applicant raises similar arguments regarding notice under the renewal ground as he did under the termination ground. Firstly, he contends that the Tribunal did not consider and rule on his alternative plea that the Respondent's failure to give him actual advance notice of its intention not to renew his contract of employment prior to making its decision of 9 August 2023 was unlawful. This failure of the Tribunal, he argued, is irrational and breaches his right to a fair hearing, and consequently, its decision is liable to be set aside on the grounds of irrationality and unreasonableness.[89]

115. As previously indicated, the Respondent's overarching response to the complaints concerning the failure to provide notice is that the Tribunal did not dismiss the Applicant's pleas but instead ruled against him. The Review Board agrees with this perspective for the reasons outlined below.

116. The Tribunal noted that the Applicant's interpretation of the course of dealing between him and the Respondent was that 9 August 2023 was the date when the decision was made not to renew his contract. The Tribunal viewed this interpretation as erroneous. It reasoned that the decision of 9 August 2023, expressed in the letter of 16 August 2023, was to offer the Applicant a new contract in a new position. This decision, it reasoned, was not a decision against renewing the Applicant's existing contract at that time, because the Applicant had not failed or refused to accept the offer of a new contract. The Tribunal opined that the non-renewal decision only occurred later, when the Applicant failed to accept the offer of the new contract by the deadline of 1 September 2023.[90]

[89] paras. 9.1 of the Review Application
[90] Ibid, para. 111

117. The Tribunal also rejected the Applicant's interpretation that the 9 August 2023 decision involved a formal recommendation by the ASG against renewal of his contract. Instead, it found that the ASG did not make any recommendation regarding renewal, and that the Secretary-General made the decision to offer a new contract after considering the organisation's needs.

118. The record shows that the Tribunal considered the meaning and significance of the 9 August 2023 decision and ruled on it. Based on its reasoning, it would not have deemed it necessary to address whether there was an intention not to renew the contract before 9 August 2023, thus necessitating actual notice of such an intention. However, even if the Applicant's argument that the decision not to renew his contract was made before 9 August 2023 is accepted, there was nothing inappropriate about the Respondent notifying him of the decision they would have reached to offer him a new contract, which was done formally by email on 16 August 2023. The matter of renewal was obviously connected to the offer of the new contract. In any event, the Review Board finds that the Tribunal's findings and conclusions in paragraph 133 concerning the requirement for notice and payment of salary in lieu of notice, retroactively dated to 16 August 2023 (when the 9 August decision was communicated in writing), are sufficient to address this ground.

119. It is sufficient to say that the Tribunal did not disregard the pleas relating to the 9 August decision conveyed to the Applicant orally on 15 August 2023 and in writing on 16 August 2023. It found that the Respondent acted lawfully and reasonably in the circumstances and rejected the Applicant's contrary position. The Tribunal had cogent evidence to support its conclusion, which cannot be faulted as an error of fact or law or as being unreasonable. This complaint of the Applicant regarding the 9 August 2023 decision does not provide a compelling basis for rescission of the Tribunal's decision. Therefore, no interference with the decision is warranted.

120. The Review Board finds that the Tribunal fully considered the matters on which the pleas regarding notice were based, and it was within its sole purview to determine the relevant factual issues within the framework of the applicable law. There is no error of fact or law, nor any procedural unfairness, in the Tribunal's treatment and resolution of this issue. The

Review Board finds no justifiable basis on which to conclude that the Tribunal's Judgment is irrational, unreasonable, and in breach of the Applicant's right to a fair hearing on the grounds alleged.

(iii) No reasons and legal basis in and for the '30 August 2023 decision' for termination/non-renewal of the contract

121. The Applicant complains under the termination grounds that, without providing reasons, the Tribunal disregarded his plea that the Respondent did not offer any or any valid contemporaneous reasons "in and for the 30 August 2023 decision" terminating his contract.[91] In detailing the ground, he further complains that the Respondent, at no point in its decisions of 9 and 30 August 2023, provided him "any valid reasons detailing the facts and legal basis upon which it took its termination decision."[92]

122. The Respondent's failure to provide him with reasons, he avers, breached the "well-established rules of international administrative law and Staff Regulation 16 that require staff members to be given reasons for an administrative decision." He submits that the failure to communicate an administrative decision in unambiguous terms constitutes a breach of the organisation's duty of good faith and the rule of international administrative law concerning the duty to provide contemporaneous reasons for administrative decisions. In support of his arguments, he cites ***In Re Ansorge (No. 3)***[93]; ***A v ICC***[94] and ***N.K. v ESO***.[95]

123. The Review Board reiterates its earlier declaration that the Tribunal's treatment of the case as one involving non-renewal of contract rather than termination of the contract is unobjectionable. Consequently, it cannot be held to be incorrect for failing to consider a plea regarding reasons for termination as separate and distinct from reasons for non-renewal. The Tribunal, as required, had to examine whether reasons were provided for non-renewal, as this was necessary since it led to the severance of the employment relationship. There was nothing else that evidenced the cessation of the employment relationship.

[91] para. 12.6 of the Review Application
[92] Ibid
[93] ILOAT Judgment No. 1911
[94] ILOAT Judgment No. 3903
[95] ILOAT Judgment No. 2124

Simply put, there was no termination of the contract. Thus, the Tribunal's consideration of the reasons for the non-renewal of the contract was sufficient. Consequently, there is no fatal omission in the Tribunal's reasoning expressed in paragraph 79 of the Judgment when it examined the pleas as they relate to non-renewal only and not termination of the contract.

124. There can be no doubt that the Tribunal considered the principles of international administrative law as they relate to the duty of an international organisation to provide adequate and clear reasons to an affected employee when severing their relationship. It explicitly referred to this principle and its rationale in paragraph 112 of the Judgment. Citing ***Ayeni v Commonwealth Secretariat***[96] and three cases from the ILOAT, referenced by the Applicant, the Tribunal noted the rationale for providing adequate and clear reasons, which is "so that the staff member has an adequate opportunity to evaluate whether the decision should be challenged." (See ***N.K. v European Southern Laboratory***[97], ***In re Tebourbi***[98], and ***AA v International Criminal Court***.[99]). The foregoing statement illustrates that the Tribunal recognised and was sensitive to the fair hearing rights of the Applicant.

125. In paragraph 113 of the judgment, the Tribunal proceeded to note what it considered to be the Applicant's contention that the "Respondent's '30 August 2023 decision' did not provide any reason or any good reason for not renewing his contract." It then opined:

> "**But the Respondent's letter of 30 August cannot be looked at in isolation. It is necessary to have regard to the entire chain of communications starting from 15 August 2023**, when the Respondent first raised the suggestion of offering the Applicant a new contract in a different role, up until the Applicant filed his Application on 15 November 2023." (Emphasis added.)

126. Then, in paragraph 114, the Tribunal concluded that, having considered the communication as a whole between the parties up to the filing of the application in November 2023, the Applicant was provided with sufficient and clear reasons to understand why his contract

[96] CSAT APL/12
[97] ILOAT Judgment No. 2124
[98] ILOAT Judgment No. 2104
[99] ILOAT Judgment No 3903

would not be renewed. The Tribunal examined, in detail, the communication between the Applicant and the Respondent during the relevant period, as outlined in paragraph 115 of the Judgment.

127. The Review Board again notes that the Tribunal addressed the reasons for the non-renewal of the contract, rather than its termination. However, as previously indicated, there was no requirement for the Tribunal to separately investigate reasons for termination from those for non-renewal. Consequently, the Applicant's formulation of his grounds by distinguishing between termination and non-renewal of the contract is merely a matter of semantics and lacks any substance that could materially undermine the Tribunal's evaluation of the facts and its decision.

128. The Review Board concludes that there is no merit in the Applicant's complaint that the Tribunal's failure to consider or rule on the plea that the Respondent failed to provide reasons for the termination of his contract has rendered its decision procedurally unfair.

129. The Review Board forms the view that the more pertinent question for consideration would be the accuracy and reasonableness of the Tribunal's finding that the Applicant was given adequate and valid reasons for the non-renewal of his contract. This is, therefore, considered below.

(iv) Lack of reasons and legal basis for non-renewal

130. The Applicant's complaint regarding this aspect of the renewal grounds mirrors that which he put forward under the termination ground, namely, that he should have been provided with reasons for the non-renewal of his contract and the legal basis for it when the decision was communicated to him on 30 August 2023, and that the Tribunal failed to consider those pleas. The Review Board has already addressed these issues in the context of the termination ground. Having established that the termination and non-renewal decisions essentially constitute one occurrence, the Review Board's findings regarding the question of reasons and legal basis discussed in relation to the termination ground also apply with equal force to the renewal ground. In summary, despite the absence of contemporaneous notification of the reasons and legal basis for the non-renewal decision in the email of 30

August 2023, the Applicant was acutely aware of the reasons for the decision and the legal basis for it prior to and after that date.

131. The evidence before the Tribunal of the parties' communication was that the Respondent provided reasons for its non-renewal decision on at least six occasions from 15 August 2023 to 7 September 2023.[100] This led the Tribunal to conclude in paragraph 114 of the Judgment that the Respondent provided sufficient and clear reasons for its decision not to renew the Applicant's contract. It reasoned that, "on the communication as a whole," the Respondent had explained to the Applicant on several occasions that he was being offered a new contract in a new role, reporting to a different line manager. This evidence indicates that the Respondent's decision was influenced by the Applicant's request for a change of line manager and the Respondent's need for an effective working relationship between the Applicant and his line manager. The reasons were conveyed through multiple pieces of correspondence[101], which made it clear to the Applicant the reason for the non-renewal of his contract.

132. The Review Board concludes that it cannot reasonably be contended that the Tribunal erred in its findings regarding the provision of reasons by the Respondent for the non-renewal decision or the Applicant's awareness of those reasons concerning the non-renewal of the contract. The Applicant cited several cases concerning the giving of notice, but it is safe to say that those authorities would have offered him no assistance, primarily because they are not binding on the Tribunal and would have only persuasive value, at best.

133. The Review Board further notes that regarding the effect of the absence of a statement of reasons for the termination of a contract, there is equally persuasive authority from other international administrative tribunals that have reportedly upheld principles consistent with the Tribunal's reasoning and conclusion in this case. C.F. Amerasinghe, in addressing the issue of contract termination under the heading "Statement of reasons,"[102] noted that the

[100] Paras. 55.1 to 55.6 of the Respondent's Answer with reference to documentary evidence
[101] Annex AA /08; Annex AA/09; Annex AA/14; Annex AA/22; Annex AA/23; Respondent's Response to Review Application 22.2.1 – 22.2.4; paras. 55.1 to 55.6 of the Respondent's Answer.
[102] Op. cit. pp. 41-42

United Nations Arbitral Tribunal (UNAdT) in ***Restrepo***[103] and the World Bank Arbitral Tribunal (WBAT) in **Suntharalingham**[104] have demonstrated in case law that failing to disclose the reason for termination in the communication of the decision to terminate an appointment is a procedural irregularity that does not justify rescission of the termination decision in each case. These administrative tribunals reportedly opined that rescission was unwarranted because it was evident from the evidence that the applicants "were fully aware"[105] or "not kept unaware" [106]of the reasons for the termination of their contracts, and were not deprived of the opportunity to challenge the decision. The Review Board also notes that, conversely, there are at least two cases recorded by Amerasinghe[107] in which the UNAdT held that the failure to provide specific reasons for the premature termination of a contract had tainted the decision.[108]

134. The case law of international administrative tribunals cited above is simply to illustrate that, in the absence of an obligatory statutory duty to provide reasons, there is no hard and fast rule or principle of international administrative law that has established that a termination decision is necessarily null and void if the reasons for it were not given contemporaneously with or in the decision. Accordingly, even if the Tribunal were considering the issue regarding termination of the contract, it would not have been obliged to apply the principles enunciated in the cases cited by the Applicant regarding the duty to give reasons. Similarly, it was not obliged to apply them to the question regarding the giving of reasons for the non-renewal of the contract.

135. Accordingly, the Tribunal's failure to follow cases cited by the Applicant is not fatal to its decision, as it did not fail to adhere to binding precedents. Moreover, the decision would not be unlawful because the Applicant would have been fully aware of the reasons for the non-renewal of his contract before the end of his first three-year period, even though it was not stated in the correspondence of 30 August 2023. This was the unassailable finding of

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[103] UNAT Judgment No. 131 [1969]
[104] WBAT Reports [1982] Decision No 6 at p. 13
[105] ***Restrepo***
[106] ***Suntharalingam***
[107] Op.cit. p. 41
[108] ***Mirza*** UNAT Judgment 149 [1971] (ICAO) JUNAT Nos. 114-116 p. 284 and ***Senghor*** UNAT Judgment No. 169 [1973], JUNAT Nos. 167-230 p. 13

the Tribunal. Therefore, it cannot be fairly stated that the Tribunal erred in law because it failed to apply international administrative law, as claimed.[109]

136. In conclusion, the Review Board has found no meritorious grounds on which the Tribunal's decision can justifiably be rescinded, based on claims of a lack of reasons, contemporary reasons, or good reasons for the termination and non-renewal of the contract. Furthermore, it cannot be argued that the Tribunal breached the Applicant's right to a fair hearing. The applicable standard of review has led the Review Board to conclude that these grounds must fail.

(v) Ruling on plea regarding lack of legal basis for termination/non-renewal

137. The Applicant's challenge to the Tribunal's decision extends to the Tribunal's treatment of his pleas that the termination/non-renewal of his contract of employment was unlawful due to the lack of a valid legal basis. He maintains that the Tribunal denied him a fair hearing for this pleaded cause of action, and by doing so, its decision was irrational and unreasonable and should be set aside.[110] In detailing this grievance, the Applicant specifically targets the Tribunal's conclusion that the Respondent was entitled to terminate his contract without having to base its decision on Part 9 of the Staff Regulations, particularly Staff Regulation 16.[111] He argues that the Tribunal's conclusion is internally contradictory, perverse, and wrong in law.

138. The specific challenge presented by the Applicant concerns the Tribunal's treatment of his plea regarding non-compliance with Staff Regulation 16, as stated in paragraph 135 of the Judgment. In that paragraph, the Tribunal concluded that Staff Regulations 16, 17, and 18 did not apply to the circumstances of the Applicant's case, which involved the non-renewal of a contract. He argued that this was legally incorrect because, contrary to the Tribunal's decision, the Secretary-General's authority to terminate employment contracts is strictly governed by Part 9 of the Regulations, which includes Regulations 16, 17, and 18. According to the Applicant, this encompasses the Secretary-General's authority to

[109] Para. 12.6(c) of the Review Application.
[110] Paras. 13 - 13.16 of the Review Application
[111] Tribunal's Judgment, para. 135

terminate contracts pursuant to non-renewal decisions specifically governed by Staff Regulations 16(a) and (c).

139. The Applicant contends that any termination resulting from a contractual renewal decision, not based on Staff Regulations 16(a) and (c), is "unlawful per se". He asserts that the Respondent's concession in its Answer at paragraphs 119-120, which states that it did not terminate the contract of employment pursuant to Part 9 of the Staff Regulations, means that the decision made on or around 9 August, of which he was informed on 30 August 2023, was unlawful. He requests the Review Board to make several rulings as detailed in paragraph 13.15 of the Review Application, which will not be reproduced at this juncture but which have been duly considered.

140. The Respondent refutes the Applicant's claim that unless a fixed-term contract terminates by operation of law, then it must be terminated on the basis of Staff Regulation 16(a) or 16(c) in order to be lawful. The Respondent states that the Tribunal is correct in its conclusion that Staff Regulations 16, 17, and 18 are not concerned with grounds for non-renewal.

141. The Review Board acknowledges that in the decision of 30 August 2023, the Respondent did not explicitly detail the legal basis for terminating or not renewing the Applicant's employment contract. This means that while a factual basis for the decision was provided in that email, no reference was made to the law governing the decision. However, it is noted that in the email dated 16 August 2023, the Respondent stated that the New Contract Offer was made pursuant to the Rotation Policy. This was not reiterated in the communication of 30 August 2023. Consequently, there was no contemporaneous indication of the legal basis for the termination in the latter correspondence between the parties. Nonetheless, this is insufficient for the Review Board to deem the Tribunal's decision erroneous and to overturn it. The legal basis for the decision would have been brought home to the Applicant in the email of 16 August. Furthermore, once the legal basis for the Respondent's decision is evident from the facts, properly grounded in law, and does not lead to unfairness, then the Respondent's failure to indicate the legal basis in the

correspondence of 30 August 2023 cannot be considered detrimental to the non-renewal decision.

142. Even if the Tribunal had incorrectly examined whether there was a legal basis for the decision rather than investigating whether actual notice of the legal basis was given in the communication of the decision on 30 August 2023, it nevertheless found that between the time of the discussion regarding the New Contract Offer and non-renewal of the contract (15 August 2023) and when the complaint was brought by the Applicant before the Tribunal (November 2023), the Respondent had disclosed its reasons for considering the non-renewal of the contract. By that time, the legal basis would have been evident to the Applicant. Thus, the Respondent's omission to provide the legal basis for the decision concurrently with the decision of 30 August 2023 is not of such gravity as to result in unfairness or a failure of justice.

143. Even more crucially, in paragraph 118 of the Judgment, the Tribunal sets out its reason for rejecting the Applicant's complaint that the Respondent lacked a legal basis not to renew his contract for a second and final three-year term. According to the Tribunal, the basis was that the "express provisions of the contract of employment, and Staff Regulation 13, read together with the Rotation Policy, permitted the Respondent not to renew the contract of employment…for a second and final three-year term."[112]

144. In reference to the contractual provisions, the Tribunal explicitly examined two pertinent express terms of the Applicant's contract at the very outset of its discussion on the issues for resolution. Those provisions read:

> "**Please note that this contract is for a period of three years, which may be renewed subject to satisfactory performance and the organisation's requirement at that time.**
>
> **Appointments are on limited term contracts of usually three years. Contracts may be renewed** by mutual agreement **subject to** fully satisfactory performance, **the organisation's requirements at that time** and availability of funds. **The Secretary-General will**

[112] Tribunal's Judgment, para. 118

> **retain flexibility to approve or decline extensions as circumstances warrant**."[113] (Emphasis added.)

145. The express provisions of the contract, cited above, demonstrate that the Applicant had no automatic right to renewal under the terms of the contract. Renewal remained at the sole discretion of the Secretary-General. Therefore, the Tribunal correctly reasoned and concluded that the express terms of the contract precluded its automatic renewal.

146. The Tribunal also accurately noted, in agreement with the Applicant's contention, that case law and practice have established that these contractual provisions, as they apply to fixed-term contracts of senior staff members, do give rise to a legitimate expectation of renewal for a second three-year term.

147. The Tribunal also had regard to Staff Regulation 13[114], which reads:

> "The Secretary-General may make appointments of varying duration. **Appointments in the diplomatic and professional grades (CS1-7) will be for not more than 3 years and will be subject to the Secretariat Rotation Policy**." (Emphasis added.)

148. Finally, in this context, the Tribunal drew its attention to the Respondent's Rotation Policy, noting its applicability to the Applicant as an employee in the diplomatic and professional grades. Paragraph 2.5 is noted as providing:

> "Employees do not have the right to an automatic renewal of a contract. In particularly (sic) the granting of a new contract is subject to fully satisfactory performance and the needs of the Secretariat."

149. Insofar as it relates to the applicability of Staff Regulation 16, the Tribunal stated that it was not necessary for the Respondent to have relied on Regulations 16, 17 and 18. It concluded that Regulation 16 (like Regulations 17 and 18) had no applicability to the renewal of the contract, but instead, regard must be had to the contract of employment, the Rotation Policy, and Staff Regulation 13.[115]

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[113] Offer letter, Annex AA/01.
[114] Ibid. para. 93
[115] The Tribunal's Judgment, para. 135

150. Having closely examined the relevant provisions of the Applicant's contract of employment, Staff Regulation 13, and the Rotation Policy (para. 2.5), all concerning the renewal of contract, the Review Board concludes that the Tribunal cannot be said to have erred in law in its reasoning and conclusion that Staff Regulation 16 provides no legal basis for what the Applicant regarded as the termination of his contract through non-renewal. The Tribunal, therefore, did not disregard or ignore the Applicant's assertion that Staff Regulation 16 was applicable to the termination of his contract. As the Respondent contended, it simply ruled against him. The Review Board concludes that the Tribunal did not err in law or fact or was irrational when it ruled against the Applicant on this issue.

(a) Whether the Respondent failed to plead the powers of the Secretary-General to terminate contracts outside Part 9 of the Staff Regulations

151. The Applicant also requests the Review Board to rule that the Respondent did not plead that the Secretary-General had any power to terminate any contracts of employment on grounds outside Part 9 of the Staff Regulations, and, consequently, it was not open to the Tribunal to hold that the Secretary-General had such power.

152. Once again, the Respondent strongly disagrees with the Applicant's argument. The Respondent asserts that the Applicant is incorrect to claim that it had failed to plead reliance on its efficient and effective functioning, particularly the efficient and effective functioning of the Rule of Law Section, as mentioned in paragraph 138 of the Judgment. The Respondent highlighted paragraph 55 of its Answer, in which it specifically referenced the effective functioning of the organisation and the Rule of Law Section "no less than" five occasions.[116]

153. The Review Board is satisfied, upon a careful perusal of the Respondent's Answer, that the Respondent had averred in its pleas that it was entitled to not renew the Applicant's contract based on the efficient functioning of the organisation and, more particularly, the Rule of Law Section. It repeatedly indicated that the New Contract Offer was in its interests for these reasons. Indeed, as the Respondent pointed out in paragraph 22.2.3 of its Response to the Review Application, there was, among other things, email correspondence between

[116] see paras. 22.2.1- 22.2.5. of the Respondent's Response to the Review Application

the Applicant and the HR Director on 28 August 2023, in which it was indicated to the Applicant that the change to his job description was "made to serve the business needs of the organisation…". This was based on the assertion that "It [was] simply not possible for [him] to continue in [his] existing position serving one directorate and report to another."[117] The Respondent also highlighted other instances where it stated that the Applicant transitioning to a new role would be beneficial for both him and the organisation, given the difficult relationship between him and his line manager.[118]

154. Accordingly, there is indisputable evidence that it was clearly and consistently conveyed to the Applicant that the offer of a new post, which he did not accept within the allotted time, was based on the needs, requirements, and interests of the Respondent. The Tribunal understood this to have been the case from the terms of its discussion in paragraphs 107 and 108 of the Judgment. Based on the Respondent's pleas and arguments, the Tribunal concluded that the Respondent had a valid reason not to renew the Applicant's contract and to offer a new contract. It noted, as a valid reason, that it was necessary for the effective functioning of the Rule of Law Section and the GPD, generally, for the Applicant to be moved out of that directorate and to be supervised by someone else.

155. The Tribunal, at various points in its analysis under different headings, made certain fundamental findings that led to its ultimate conclusion that the Respondent did not fail to provide the legal basis for the non-renewal decision. It found that (a) "renewal" means continuation in the same role, not a new position, (b) the Applicant had a legitimate expectation for renewal unless there was a good reason not to renew, (c) the Applicant could not reasonably have held a legitimate expectation that his contract would be renewed, (d) the Respondent did not argue the Applicant's performance was unsatisfactory but rather indicated a desire to retain him, and (e) the Respondent's need for an effective working relationship between the Applicant and his line manager justified not renewing the Applicant's contract.

[117] Annex AA 14
[118] Annex AA/08; Annex AA/09; Annex AA/23

156. The needs of the Respondent for greater efficiency, as the Tribunal reasonably found, constituted a justifiable basis for non-renewal. The fact that the Respondent might have used a basis that resembles a Staff Regulation 16 ground is not sufficient and effectual in bringing the case within the provisions of that Regulation. All it means is that a ground for non-renewal of the contract for the purpose of the Rotation Policy (for the needs of the organisation) is similar to a ground for termination under Staff Regulation 16(a). The fact is that para. 2.5 of the Rotation Policy is sufficiently broad to encompass matters that will impact the efficiency and other requirements for the smooth and harmonious operation of the organisation. In this vein, in paragraph 102 of the Judgment, the Tribunal recognised the "expansive" ambit of the "needs" or "requirements" of the Respondent as "encompassing any factor reasonably related to the achievement of the Secretariat's objects and purposes". The Review Board finds this to be a flawless statement of principle.

157. Additionally, in paragraph 104 of the Judgment, the Tribunal further expressed its viewpoint that the Respondent has "a broad discretion" to manage its workforce in the way it considers best meets its organisational "requirements" or "needs", including fostering a productive and collaborative work environment to effectively achieve its goals. The fact is that even though the Respondent relied on those grounds, it did so in the context of establishing that the decision was taken based on its needs to justify non-renewal under the Rotation Policy. Once the efficient functioning of the organisation could be considered as fulfilling the needs of the organisation in accordance with the requirements of the Rotation Policy, which it could, then the Respondent's reliance on it did not mean it was invoking Staff Regulation 16. It was establishing the legal basis under paragraph 2.5 of the Rotation Policy, the applicable provision, for non-renewal of the contract.

158. The Review Board further observes that some of the documents upon which the Respondent relied to establish its case concerning the legal basis for the non-renewal decision were annexed to the Applicant's application and were before the Tribunal. It does not matter that some of the material evidence on which the Tribunal relied may have come from the Applicant's case. This is because the documents annexed to the application originated from the Respondent itself or were sent to the Respondent by the Applicant. Therefore, they were within the knowledge of both parties and would have spoken for

themselves as available and undisputed evidence for the Tribunal's consideration. It cannot be said, then, that the Tribunal lacked evidence upon which to reach a determination regarding the legal basis for the decision.

159. The Tribunal was mindful, as reflected in paragraph 72 of the Judgment, that the Applicant had asserted that the Respondent had produced no admissible evidence and/or witness statements to support its contention, and, therefore, its case should be rejected. The Tribunal recognised that it must find and be satisfied of supporting information and proof of the Respondent's assertions in the case placed before it, which it clearly and properly did. There is no requirement in the rules, practice or procedure of the Tribunal for affidavit evidence or witness statements to be provided by any party in support of the pleas.

160. The Review Board is satisfied that the Tribunal did not rely on grounds neither asserted in the pleas nor proved to justify the Respondent's decision not to renew the Applicant's contract as alleged.

161. To conclude on this matter, the Review Board finds that although the Tribunal might not have specifically addressed the fact that the decision of 30 August 2023 did not provide a contemporaneous indication of the legal basis for the decision, this does not constitute a sufficient basis for the decision to be set aside. The legal basis on which the Respondent made its decision was a valid one and would have been clear to the Applicant by 1 September 2023, when his contract was not renewed. Accordingly, the rulings sought in paragraphs 13 to 15 of the Review Application cannot be granted.

(b) Whether the Tribunal's decision is perverse due to an error in the Tribunal's finding regarding the 'termination' date of the contract

162. The Applicant also criticises the Tribunal's conclusion as being "plainly perverse", when it stated the 'termination date' of his contract to be 1 September 2023. The Review Board concludes, however, that whether the contract ended on 31 August 2023 or 1 September 2023, the Applicant did not accept the New Contract Offer before or by any of those dates. So, even if there were an error regarding the time his contract ended, that would not have made the decision legally flawed.

163. Furthermore, and in any event, by the express terms of his contract, the Secretary-General had the 'flexibility' to approve the extension of his contract. It is clear from the Applicant's position, which was indicated to the Respondent in early August 2023, that he did not want to cease working on 31 August 2023. However, the Respondent did not grant him three more years to continue in its employ as he desired, but only one day. The grant of a one-day extension was within the sole discretion of the Secretary-General and lawful because by accepting his contract with those terms, the Applicant would have accepted that the Secretary-General could extend his contract even by a day. His concurrence was not required by virtue of the terms of his contract coupled with his indication that he required an extension to his employment beyond 31 August for a new three-year term. Against this background, the Tribunal's reasoning that the contract ended on 1 September 2023 cannot be deemed perverse. There was adequate evidence to support it, and so it stands as reasonable.

(vi) Whether the Tribunal disregarded the Applicant's plea regarding violation of his due process rights

164. In paragraph 12.2(c) of the Review Application concerning the grounds for termination, the Applicant reiterates the allegations against the Tribunal regarding his assertion that the Respondent did not uphold his due process rights, including those provided for in Staff Rule 6.1. The Rule states:

> "Employees will have available to them a mechanism for appealing recommendations for termination of employment or not granting a new contract. These will be addressed through the Appeals Procedure as set out in Part 5, Sections 12-14 and forms part of these Rules."

165. According to the Applicant, the relevant due process right in this context was to provide him with an opportunity to make representations regarding the decision to terminate his contract, which was directly connected to his right to actual advance notice. He contends that the Respondent's failure to observe these rights is fatal, and the only appropriate remedy is to set aside the termination decision on the grounds of that illegality.

166. The Review Board does not accept the Applicant's argument regarding the alleged breach of his due process rights. As the Tribunal reasoned in paragraph 110 of its Judgment, the

Applicant was never informed that he could expect a renewed contract for the same role. From 15 August 2023 until his contract ended on 1 September 2023 (as extended), he was aware that there was a recommendation (approved by the Secretary-General) for him to be offered a different contract, along with the rationale for the offer. As the Tribunal opined, the Applicant was "obviously free to reject the offer". He had ample time to challenge the decision pursuant to Staff Rule 6.1 between 15 August 2023, when he was advised of the proposed arrangement to offer him a different contract, and the moment he sent his pre-action letter on 19 September 2023. Indeed, it is noted that in his response to the New Contract Offer, in his email of 3 August 2023, he indicated that if his contract could not be renewed, he would be open to entering into without-prejudice discussions regarding the termination of his contract on mutually acceptable terms. At no point thereafter did he express an intention or desire to appeal the recommendation or decision to offer him a new contract rather than to renew his existing one.

167. Additionally, the Tribunal considered the principle of international administrative law in relation to the Applicant's contention regarding due process. The principle is that the employee must be afforded an adequate opportunity to assess whether the decision not to renew or terminate their contract should be challenged; hence, the requirement for reasons for non-renewal. The Applicant had sufficient information to evaluate whether to contest the decision not to renew his contract. Accordingly, his due process right, as provided under Staff Rule 6.1, was not infringed as alleged, and the Tribunal cannot be faulted for failing to so find.

168. When the core issue regarding violation of the Applicant's due process rights is considered against the background of the Tribunal's treatment of the Applicant's complaint under this head, it cannot fairly be said that the Tribunal erred. There is no deficiency in the Tribunal's reasoning on all the matters raised by the Applicant under the termination and renewal grounds, which would amount to a denial of the right to a fair hearing or a failure of justice.

169. For all the preceding reasons, there is no basis for the Review Board to find that the Tribunal's decision is erroneous, in fact or law, irrational or procedurally unfair for the reasons advanced by the Applicant. Accordingly, these grounds of review fail.

(vii) Whether the Tribunal failed to enquire into the validity of reasons for non-renewal, which constituted detrimental treatment for protected acts

170. The Applicant's attack on the Tribunal's reasoning and decision did not cease with the grounds discussed above. He raised another complaint under the renewal ground, titled, "(b) Lack of Enquiry into validity of reasons for non-renewal, which constituted detrimental treatment for protected acts." Thus, this represents a more targeted challenge relating to his plea of retaliation, detrimental treatment, or victimisation for protected acts.

171. The Applicant contends that the Tribunal failed to inquire into and rule on whether it was permissible for the Respondent to use the protected acts he referenced in his Explanatory Statement, which he identified as the basis for the Respondent's decision made on or around 9 August 2023. He noted that the Respondent had admitted in writing that it had penalised him for protected acts by not renewing his contract. The protected acts he has summarised for our benefit are (a) filing a grievance against his line manager, (b) requesting an investigation into potential wrongdoing by his line manager, and (c) seeking protection from retaliation.[119]

172. Before the Tribunal were the Applicant's case and the Respondent's response to it. The Tribunal also had documentary evidence before it that would have spoken for itself. While the Applicant alleged that the Respondent's decision not to renew his contract was made for an improper purpose, including retaliation for protected acts, the Respondent provided its response to those allegations. In doing so, the Respondent outlined several reasons for not renewing the Applicant's contract, which were communicated to him through various methods, including meetings and emails. The reasons advanced by the Respondent, broadly speaking, relate to, first, the breakdown in the working relationship between the Applicant and his line manager, which it contended would have impacted the efficient functioning of the Rule of Law Section and the organisation. Second, the Applicant had requested to be moved and managed by a different line manager, necessitating a change in his role and department. The Respondent concluded, in the light of the prevailing circumstances above, that its needs would have been best served by transferring the Applicant to a different

[119] Paras. 15.4 and 15.7 of the Review Application

directorate and offering him a new role rather than renewing his contract in the same position.

173. The Tribunal extensively addressed the reasons advanced by the Respondent for its refusal or failure to renew the Applicant's contract. It did so while considering the two issues identified for its resolution. Admittedly, there is some overlap in its reasoning and findings, which is expected given the overlapping complaints in the Applicant's case before it. However, in paragraph 19 of the Judgment, the Tribunal explicitly referred to the allegations of victimisation for protected acts in what it regarded as a "significant email in the context of the case" sent by the Applicant to the HR Business Partners on 3 August 2023. In that email, the Applicant alleged, inter alia, that the ASG's conduct violated his right to be treated with dignity and respect and that, "[he] asked HR and the DSG to have [him] moved and be managed by a different line manager to protect [him] from this and other egregious violations of the organisation's policies…".[120]

174. In paragraph 20 of the Judgment, the Tribunal again recorded a second example of alleged retaliation related to the renewal of the Applicant's contract, expressed in that email. He stated that he was not given the six months' to a year's notice of termination/renewal to which he was entitled, and that no decision was made on his renewal while all his colleagues in his division had their contracts renewed. He indicated, as noted by the Tribunal, that "[t]here can be no doubt that there is more at play. In the absence of a clear and reasonable explanation, there is no doubting that my direct line manager is penalising me for raising workplace grievances and lodging a whistleblowing report against him."[121]

175. The Tribunal thoroughly reviewed the communication between the parties, which included the Applicant's request to be moved and to have a change in line management. It also noted that the HR Director had explained in an email dated 7 September 2023 that the Applicant's position was not comparable to those of other Advisers and heads whose contracts had been renewed, as they did not request a change in line management.[122] Additionally, the HR Director's assertion to the Applicant in the email of 7 September 2023 was recorded by the

[120] Annex AA/06
[121] Ibid
[122] Tribunal's Judgment, para. 47

Tribunal, stating, "[t]he Secretariat considered that it was in the interests of the organisation to offer another role, which was done".[123]

176. The Tribunal also noted the Applicant's assertion in his Reply that the proposed offer for him to take on a new role, which was never established, proved that the Respondent's conduct was "tainted by mala fides and improper motives".[124]

177. In paragraph 65 of the Judgment, the Tribunal focused closely on the Respondent's response to the allegations of victimisation for protected acts. The Respondent's contention before the Tribunal, among other things, was that the Applicant did not suffer any adverse treatment because of his complaints. Rather, the Respondent sought to accommodate his request for a change of line management after the Applicant himself had identified that he had a difficult relationship working with his line manager. According to the Respondent, a change of line manager would have necessitated a move out of GPD because the ASG was a Senior Director in charge of GPD. Therefore, the Respondent contended that the non-renewal decision was informed by the Applicant's own conduct in rejecting the offer of a new role under a new contract. The Tribunal expressly noted those pleas in response and treated with them as it considered fit. That was its exclusive role as the tribunal of fact.

178. The Tribunal also rejected several critical aspects of the Applicant's case, including his denials that he did not have an effective working relationship with the ASG, or that their relationship had broken down; that he had asked for a different line manager; and that he had requested to be moved out of his section. The Tribunal found his denials regarding his working relationship with the ASG "impossible to maintain in light of the contemporaneous evidence," which it proceeded to detail in paragraph 107 of the Judgment. The Tribunal also did not accept the Applicant's contention that the two emails of 5 and 7 September 2023, which post-dated the termination of his contract, included *ex post facto* reasons for non-renewal of his contract, which should be rejected.[125]

[123] The Tribunal's Judgment, para. 47
[124] Ibid, para. 71
[125] Tribunal's Judgment, para. 116

179. There is no doubt that, in arriving at the decision of 30 August 2023, the Respondent would have had to consider and did consider the complaints made by the Applicant against his line manager and its handling of those complaints. There was also evidence of the Applicant's request to change from the directorate of the ASG, all stemming from his grievance with the ASG. There was also evidence that mediation had taken place, without success, along with a referral to an external investigator. The breakdown in the relationship was a clear and indisputable inference from all the facts and circumstances presented in this case, which the Respondent and the Tribunal could have reasonably drawn in the absence of direct evidence of the breakdown in the relationship. In light of all this evidence, the Applicant's argument that there was no breakdown in the relationship was rightly rejected by the Tribunal.

180. The Review Board observes that from the outset of its Judgment, the Tribunal established the main features of the case before it and chronicled the communication and conduct of the parties up to September 2023, when the contractual relationship ended. It was not required by law to repeat every fact presented before it in its analysis. The facts it recited were sufficient to demonstrate its awareness of the issues between the Applicant and the ASG, prior to August 2023, even though it primarily focused on the Respondent's conduct in August 2023.

181. Having conducted a thorough analysis of the evidence, the Tribunal concluded that the Respondent had a valid reason not to renew the Applicant's contract in the same role for a second three-year term.[126] The reason the Tribunal accepted was that the effective functioning of the Rule of Law Section required the Applicant to be moved out of the directorate and assigned a different line manager due to the breakdown in his working relationship with the ASG. It further opined:[127]

> "The Applicant's own communications with the Respondent indicated that he did not want to continue to work with the ASG, and he wanted to be moved and to have a different line manager. **In those circumstances, it must have been obvious to the Applicant**

[126] Tribunal's Judgment, para. 108
[127] Para. 110 of the Judgment

> **<u>that the possibility of a second three-year term in the same role reporting to the same line manager was untenable</u>**."(Emphasis added.)

The Tribunal found that the Respondent acted properly and for a legitimate purpose, complying with Staff Regulation 13 and the Rotation Policy.

182. Then, in paragraph 136 of the Judgment, the Tribunal frontally addressed the allegation of victimisation/retaliation for protected acts. After direct reference to the relevant principle of administrative international law established in ***<u>Ojiambo</u>***[128] that the decision-maker must make the decision for a proper purpose and not for an improper purpose, it stated:

> "It follows that an international organisation must not act in a manner which is arbitrary or abusive in relation to an employee who makes complaints about his employer and therefore that it must not retaliate against an employee in those circumstances."

The Tribunal then came to the ultimate finding expressed thus:

> "The Tribunal does not accept that the Respondent's conduct in August 2023 constituted retaliation (or victimisation as the Applicant says) for the Applicant's complaints. On the basis of the evidence before the Tribunal, we consider that the Respondent had two main objectives: first, to retain the Applicant within the organisation, and to give him a role which would utilise his skills and knowledge in an appropriate way; and second, to ensure the efficient and effective functioning of the organisation and in particular, the efficient and effective functioning of the Rule of Law Section."[129]

183. The Tribunal's reasoning and findings indicate that it considered the core question of whether the Respondent's conduct in August 2023 (not any specific date), which led to the decision not to renew the contract, stemmed from victimisation, retaliation, and an improper purpose. It found no evidence supporting the Applicant's allegations on this matter. The Tribunal regarded the decision of 30 August 2023 as the operative decision

[128] Para. 51
[129] The Tribunal's Judgment, para. 138

indicating the non-renewal of the contract after 1 September 2023, if the Applicant failed to accept the New Contract Offer. The Tribunal's reliance on that final email as the key document for evaluating the legality and propriety of the Respondent's non-renewal decision is neither unreasonable nor incorrect. Therefore, its focus on the actions or conduct of the Respondent in its treatment of the Applicant's contract of employment "in August 2023" cannot be criticised by the Review Board with any reasonable justification.

184. It was a question of fact for the Tribunal to determine whether it would accept the Applicant's case that the Respondent acted from improper motives, including victimisation, for the reasons advanced by the Applicant or for a proper purpose as advanced by the Respondent. It accepted the Respondent's case and rejected the Applicant's case on this issue, which it was entitled to do as the fact finder. It cannot be fairly argued that the Tribunal was wrong, unreasonable or irrational in arriving at those factual conclusions. There was also no violation of the Applicant's right to a fair hearing by the Tribunal in coming to its findings on this issue.

185. The Review Board finds no legal basis on which it could justifiably state that the Tribunal erred in its conclusion that the non-renewal contract was for a proper purpose, which means not as a result of retaliation, victimisation for protected acts or anything else. This was a finding of fact supported by evidence before the Tribunal and so cannot be said to be wrong or unreasonable. This conclusion, therefore, forecloses all other arguments raised by the Applicant challenging the Tribunal's decision on grounds relating to what he calls detrimental treatment for protected acts.[130]

186. Accordingly, the Review Board does not accept that it should interfere with the Tribunal's decision on the basis, alleged by the Applicant, that it had omitted to inquire into and rule on the reasons for non-renewal of his contract, which constituted detrimental treatment for protected acts.

(viii) Failure to cite case law

[130] The Review Application, paras. 15.3 -15.10.

187. The Applicant further complains that the Tribunal did not provide any reason for failing to consider and apply the case law he cited regarding the need for a valid reason for the Respondent's decision and the justification for that requirement. However, as already indicated, the Tribunal, in addressing the failure to give notice for non-renewal, spoke to an international organisation's duty under international administrative law concerning the provision of notice.[131] It specifically stated the reason for this, which is to allow the affected staff member an opportunity to challenge the decision. It cited cases, including ***In re Tebourbi***, which were relied on by the Applicant.[132]

188. In the Review Board's view, there was no legal duty on the Tribunal to cite or rely on the cases presented by the Applicant, as they did not constitute binding authority. Additionally, it was not obliged to expressly outline every detail of its reasoning, every argument from the parties, or cite every case they relied on. The Tribunal was mindful of its responsibilities and evaluated the facts before it within the relevant legal framework and applicable scope of review. Ultimately, it rejected the Applicant's arguments concerning the legal basis for the non-renewal. There was no error of law or irrationality in its conclusion regarding the issue.

189. The Review Board, having applied the standard of review concerning the adequacy of the Tribunal's reasons for the decision, cannot reasonably declare that the Judgment is deficient in reasoning on this issue as to constitute an error of fact or law, a denial of the right to a fair hearing, or a failure of justice.

190. The Review Board has already concluded that there is no error of fact or law, nor any irrationality or unreasonableness in the Tribunal's treatment of and decision on this issue regarding the requirements for contemporaneous notification to the Applicant of the reason and legal basis for the non-renewal decision in the correspondence dated 30 August 2023. Accordingly, the Review Board cannot accede to the Applicant's requests that the rulings he proposed in paragraphs 15.10 and 15.22 of the Review Application be made in his favour.

[131] The Tribunal's Judgment, para. 112
[132] Para. 124 above.

iii. The *ultra vires* plea ground[133]

191. In paragraph 10 of the Review Application, the Applicant contends that the Tribunal's conclusion that the renewal and termination decisions were taken by Senior Management, which it concluded "naturally includes the Secretary General",[134] was based on "improper supposition". He further maintains that the Tribunal did not address his express plea that the Respondent was required but failed to demonstrate that these decisions were, indeed, taken by the Secretary-General or by Senior Management acting on lawfully delegated authority. The Applicant asserts that the Tribunal's decision is incorrect as a matter of international administrative law and should be set aside on the ground of irrationality.

192. The Applicant provided details for this ground in paragraphs 16 of the Review Application, which disclose two issues arising from his challenge: namely, (a) whether it was appropriate for the Tribunal to determine that the decision made by Senior Management included the Secretary-General, and (b) whether it was proper for the Tribunal to hold this view in the absence of evidence from the Respondent indicating that the Secretary-General or an authority acting under lawful delegation did so.

193. The Respondent, he contends, bore the onus of proof, and, therefore, the Tribunal improperly reversed the burden of proof and absolved the Secretary-General from fulfilling her duty of candour and explanation.

194. The Respondent maintains that the Tribunal's conclusion was not an "improper supposition" because it was clear that the Secretary-General was the leader of, and thus part of, Senior Management. Additionally, it should have been clear to the Applicant from the 16 August 2023 offer letter that the Secretary-General herself was involved in the decision-making. The first paragraph of that letter indicated that the Secretary-General had approved the arrangement conveyed to the Applicant that, upon the expiry of the existing contract, he would be offered a new contract for a further period of three years.

195. The Respondent also highlighted paragraph 40 of the Judgment, where the Tribunal noted that the Applicant had indicated in his email dated 29 August 2023 to the HR Director that

[133] The Review Application, paras. 10 and 16
[134] The Tribunal's Judgment, para. 122

he interpreted the 16 August 2023 offer letter to "mean that the **Secretary General** had agreed to renew his current contract of employment" (Emphasis supplied). He stated that if this was not the case, the Respondent should "give him reasons why the organisation had decided not to renew his current contract".[135]

196. The Tribunal, in the conduct of its inquiry, noted that the Applicant was told that the decision was taken by "Senior Management". The question is whether it was improper for the Tribunal to conclude that the reference to "Senior Management" included the Secretary-General because it was, according to the Applicant, a fact not proved by the Respondent.

197. The Review Board disagrees with the Applicant's contention that the Tribunal's conclusion that Senior Management included the Secretary-General is an "improper supposition", in the face of the undeniable involvement of the Secretary-General in the decision-making, as reflected in the email dated 16 August 2023. This email stated that the Secretary-General had approved the offering of a new contract to the Applicant upon the expiration of his existing contract. Correspondence between the Applicant and the Respondent reveals that the Respondent had repeatedly informed him about this approved arrangement. Finally, the arrangement that the Secretary-General was reported to have approved, as expressed in the email of 16 August 2023, was confirmed in the email of 30 August 2023.

198. Furthermore, as the Respondent pointed out, the Applicant himself did not challenge or question the involvement of the Secretary-General in the decision-making process when advised of the New Contract Offer. In fact, he had indicated in his email of 29 August 2023, that he had interpreted the 16 August 2023 email to mean that the Secretary-General had agreed to renew his current contract.[136] The Tribunal itself addressed the letter of 16 August, again, in sub-paragraphs 115b and 115d of the Judgment. It then stated, in part, at 115d as follows:

> "…We note the Applicant's reply email dated 29 August 2023 indicated that he understood that this was an offer of a new contract in a new position. We consider that the Applicant's further assertion in that email - that he understood the 16 August 2023 offer letter to

[135] Annex AA/15
[136] The Tribunal's Judgment, para. 40

> mean that the Secretary General had agreed to renew his current contract of employment and that the issue of renewal of his current contract should be regarded as separate from his acceptance of the new contract - as wilfully obtuse. We consider that the Applicant should have realised, at the latest by this point, that if he did not accept the new offer, the organisation would not renew his current contract."[137]

199. The explicit declaration of the Applicant that the Secretary-General had renewed his contract (as erroneous as it may have been) can be interpreted as nothing less than a tacit acceptance by him of the Secretary-General's involvement in the decision regarding the renewal of his contract.

200. Significantly, the authority of the HR Director to communicate the Secretary-General's decision to senior staff under his responsibility, including the Applicant, regarding matters of staff appointment, termination, and/or renewal of contract was never in doubt. Clear evidence of this practice is found in the letter of offer dated 23 June 2020, written by the HR Director under the authority of the Secretary-General and accepted by the Applicant without question. Therefore, this was the method of communication employed by the contracting parties to enter into the contract, and it was maintained in subsequent correspondence exchanged between them regarding the non-renewal of the employment contract and the offer of a new contract. Accordingly, proof of the authority of the Secretary-General given to the HR Director to make the employment offer to the Applicant was unquestionable from the very beginning of the Applicant's employment, and the same practice and authority can be inferred regarding the non-renewal of the contract.

201. In any event, in light of the even clearer direct evidence that the Secretary-General approved the adopted course and the confirmatory decision expressed in the communication of 30 August 2023, the Review Board finds that the Tribunal's decision that the Respondent's non-renewal decision was made by Senior Management, which "naturally" included the Secretary-General, remains unassailable.

[137] Ibid, para. 115d

iv. The Tribunal's treatment of and decision on the victimisation plea (detrimental treatment in response to protected acts[138]

202. Under his fourth major ground for review, the Applicant challenges the Tribunal's decision concerning his plea of detrimental treatment in response to protected acts, which is closely linked to his plea regarding the Tribunal's failure to adequately investigate the reasons for the decision as they pertain to the detrimental treatment for protected acts.[139]

203. The Applicant contends that the Tribunal's decision breached his right to a fair hearing and is irrational, as it ignored or failed to address all the pleaded causes of action concerning detrimental treatment for protected acts without providing reasons. He pointed to five aspects of his pleas that he claims the Tribunal disregarded without justification. These include his claims that the Respondent deferred the decision on the renewal of the contract because (i) he had initiated informal dispute resolution procedures against his line manager, who is a member of the SMC; (ii) of the failure of mediation; (iii) of the reports he lodged on 13 March, 20 March, and 17 April 2023, in which he requested investigations into alleged wrongdoings against the ASG; (iv) of the request he made in the 17 April report for consideration to change his line management from the ASG to another directorate pending the investigation of his Whistleblowing Report; and (v) the report he made in the 3 August 2023 email regarding additional acts of retaliation by the ASG.[140]

204. The Applicant contends that the Tribunal had a duty to consider each of his pleas under this head and provide reasons for its decision, however brief. Consequently, its decision to limit the consideration of his pleas of detrimental treatment to "whether the Respondent's conduct in August constituted victimisation or retaliation" and its failure to analyse any of the pleaded acts and causes of action was irrational and unfair. He asks the Review Board to uphold all his pleas on detrimental treatment for protected acts.[141]

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[138] The Review Application, paras. 17 and 18
[139] Paras. 170-185 above
[140] Para. 17.1 of the Review Application
[141] Para 17.2 of the Review Application

205. The Review Board cannot justifiably accede to the Applicant's request to uphold his pleas, which he stated were disregarded. The Review Board finds it difficult to accept the Applicant's arguments on this issue primarily for the reasons summarised below.

206. The Tribunal recognised the unnecessary complexity of the Applicant's pleaded case and isolated for its resolution what it perceived as the crucial issues necessary to resolve the controversy between the parties, which, in its view, would have been dispositive of the application. The sole dispositive question relates to the conduct and decision of the Respondent in ending the employment relationship on 1 September 2023, by virtue of the non-renewal of the fixed-term contract of employment. There was no duty on the Tribunal to separate from that enquiry, for analysis and findings, whether the decision to defer the consideration of renewal of the contract was for an improper purpose. The decision to defer the decision to consider renewal would have been part and parcel of the inquiry into whether the non-renewal decision, which ultimately resulted, was for an improper purpose.

207. In its judgment, the Tribunal outlined the material pleas that disclosed the issues regarding the complaint brought by the Applicant to the Respondent about the ASG, which commenced as far back as January 2023. This led to the Respondent's efforts at dispute resolution. Consequently, when the Applicant raised his query about the renewal of his contract, there was an ongoing investigation into his complaints against his line manager. As the Tribunal found, and as the Review Board would affirm, there was a management relationship issue in the Rule of Law Section to which he was assigned, involving both him and his supervisor, that needed resolution before the matter concerning the renewal of his contract could be settled.

208. The deferral of the consideration regarding the renewal of his contract was integral to the Tribunal's enquiry into the legality of the final decision not to renew it. The decision to defer consideration of the renewal was a crucial part of the narrative, vital for assessing the validity and legal basis for the non-renewal decision that was ultimately arrived at. The Tribunal took into account the Applicant's assertion concerning the reports he had made against his ASG and the Respondent's failure to reach a decision about it as early as March 2023, when the Applicant made enquiries about the matter.

209. Since the Tribunal found no improper motive behind the non-renewal decision, it logically follows that it found no improper motive involved in the Respondent's failure to decide on the renewal of the contract in March 2023. This is pellucid from its conclusion stated in paragraph 138 of the Judgment. In short, the Tribunal stated categorically that it did not accept that the Respondent's conduct in August 2023 constituted retaliation or victimisation for the Applicant's complaint. It set out the reason for so finding, which was, in essence, an acceptance of the Respondent's case as to the two bases on which it decided not to renew the contract. The bases were: "first, to retain the Applicant within the organisation, and to give him a role which would utilise his skills and knowledge in an appropriate way; and second, to ensure the efficient and effective functioning of the Rule of Law Section."

210. The Tribunal went on to say in paragraphs 138 and 139, in so far as is relevant for present purposes:

> "138. …The Respondent offered the Applicant a new contract in a new position not in retaliation for the Applicant having made complaints, but to accommodate the Applicant's own request for a move and change of line manager, and to resolve the problems that the Applicant had himself identified with his working relationship with the ASG …
>
> 139. …The Respondent gave the Applicant the opportunity to help craft his own job description, which the Applicant never took up. In the Tribunal's view, the Applicant could not have reasonably expected to retain all of the responsibilities of his role in the Rule of Law Section if he was to be moved out of GPD and into a different directorate."

211. In light of the reasoning above, among others, the finding that there was no improper purpose for the non-renewal decision related to protected acts or otherwise was reasonably open to the Tribunal to make on what it described as "the basis of the evidence" before it. The ultimate finding was that the Respondent's decision not to renew the contract was neither motivated by nor informed by the Applicant's acts of expressing grievances against the ASG or the Respondent. The Review Board concludes that the Tribunal's finding and the reasons it has provided that led to it are supported by the evidence before it and are,

therefore, reasonable and unassailable. There is nothing to warrant the interference of the Review Board with this conclusion.

v. The Tribunal's treatment of other grievances relating to the proposed role change[142]

212. The Review Board has had regard to the Applicant's grounds for review regarding the Tribunal's decision on the issue of the overlap of the two roles by 25%, his assertion that he was being demoted, and his other grievances in paragraph 18 of the Review Application. In short, nothing in these complaints is sufficient to materially undermine the crucial and dispositive finding of the Tribunal regarding the non-renewal decision.

213. In disposing of these matters, the Review Board finds it necessary to emphasise that in analysing the crucial issues in the case, the Tribunal was not obligated to repeat every single point made and every fact asserted by the parties. In particular, it was not required to restate those facts and arguments in its analysis that did not materially assist in deciding the ultimate issue. The Tribunal's duty was to closely examine the body of facts (including documentary evidence) presented before it that would aid in resolving the real issues in controversy between the parties, having regard to the applicable law and the requisite standard and scope of review. The Review Board cannot conclude that the Tribunal failed to satisfactorily perform its task in determining the germane issues raised by both parties for consideration.

214. In the circumstances, the grounds for review outlined in paragraphs 17 and 18 of the Review Application are not accepted as providing any meritorious basis on which to disturb the Tribunal's decision.

C. CONCLUSION

215. Upon consideration of the record of the proceedings before the Tribunal and the contentions of both parties in these proceedings against the background of the applicable law, the Review Board concludes that the Applicant has presented no justifiable grounds for it to determine that the Tribunal's decision, which refused to grant the reliefs he sought in his

[142] Paras. 18-18.5 of the Review Application

application before it, should be set aside. The Board is also of the considered view that the Tribunal correctly applied the law established in ***Ojiambo***, recognising the well-established principle of international administrative law that it is not the role of the Tribunal to review the merits of a decision made by the Secretariat on employment matters, provided that the decision has been made in accordance with the terms (expressed and implied) of the relevant staff member's contract of employment, the internal law of the organisation, and the relevant principles of international administrative law.

216. Furthermore, it is a well-established principle of international administrative law that there exists an implied term in employment contracts, which mandates that discretionary powers affecting an employee's employment must be exercised appropriately, and the decision-maker must possess the necessary authority to make that decision. In this case, the renewal of the Applicant's contract was a discretionary matter, subject to the requirement that discretion be exercised lawfully, fairly (both procedurally and substantively), rationally and for a valid purpose. The Tribunal, having assessed these stipulations of international administrative law, concluded that there was no lack of authority or improper exercise of discretion in the decision-making process.

217. The Review Board is of the considered view that the Tribunal is correct in its conclusions, namely, (a) that the Respondent was entitled to take the position that the Advisor and Head of the Rule of Law Section should maintain an effective working relationship with his direct line manager, the Senior Director of the GPD, for the effective delivery of the Rule of Law portfolio, and (b) that this was no longer feasible as the relationship between the two employees had broken down. Furthermore, as previously noted, the job description of the Applicant's position itself required him to report to and support the ASG. There is evidence from which it could be reasonably concluded that, at the point where the relationship between the Applicant and the ASG had deteriorated, this harmonious working relationship was no longer achievable.

218. Additionally, the Applicant's contract explicitly stated that the Secretary-General retained the discretionary authority to approve or decline extensions or renewals as circumstances warranted. In the instant case, the Secretary-General gave the requisite approval for the

non-renewal of the Applicant's contract as well as a one-day extension. This was a finding that was available to the Tribunal on the evidence before it.

219. In assessing the Respondent's decision regarding the Applicant's contract renewal, the Tribunal made no error of law or fact that was demonstrably or plainly wrong, and its decision was neither unreasonable, procedurally unfair, nor irrational, as alleged. Therefore, the Tribunal correctly concluded that nothing was done in violation of the express provisions of the terms of the Applicant's employment contract, the internal law of the Respondent, or international administrative law when the Respondent refused to renew his contract.

220. Consequently, there is no legal or justifiable basis for the Review Board to interfere with the Tribunal's decision and, by extension, that of the Respondent, given the established scope and standard of review it is obliged to apply and has indeed applied.

221. For all the reasons detailed above, the Review Board finds that the Review Application brought for the rescission of the Tribunal's decision and for several rulings to be made and reliefs granted in favour of the Applicant must be dismissed.

D. COSTS

222. The remaining question for determination concerns the award of costs for these proceedings. The Respondent has sought an order for costs in its favour on the ground of what it describes as the Applicant's "relentless pursuit of two claims simultaneously against the Respondent, which have both been determined by the Tribunal to be without merit"[143]. The Respondent contends that the "unreasonable conduct in continuing to pursue these claims, including the Review Application, despite their evident lack of substantive merit, has caused the Respondent to incur unnecessary and disproportionate legal costs."[144]

223. The Review Board acknowledges that the award of costs is within its jurisdiction and is discretionary. The Review Board also appreciates the concerns expressed by the

[143] Respondent's response to Review Application, paras. 29,
[144] Ibid, para. 30

Respondent regarding the nature and substance of the case brought by the Applicant, in which he has not been successful.

224. However, the Review Board has taken into account all the circumstances, including the stance of the CSAT and other international administrative tribunals regarding costs when an employee is unsuccessful in their case against the organisation. After serious consideration of the matter, the Review Board is not convinced to adopt an approach different from that of the Tribunal concerning costs in this case.

225. Accordingly, the Review Board will order that each party shall bear its own costs.

E. ORDER

226. The Review Board makes the following formal orders:

1. The Application for Review filed on 25 August 2024, is dismissed.

2. Each party to bear its own costs of the Review Application.

Delivered on 20 June 2025

/S/ Marva McDonald-Bishop
Judge Marva McDonald-Bishop (Chair)

/S/ K.S.P. Radhakrishnan
Judge K.S.P. Radhakrishnan

/S/ Judith Levine
Judge Judith Levine

/S/ Sir Salamo Injia
Judge Salamo Injia

/S/ Habibu Idris Shall

Judge Habibu Idris Shall

And

/S/ Peter Quayle

Peter Quayle, Executive Secretary