

*Translated from French*

United Nations Dispute Tribunal

Case No.: UNDT/GVA/2009/10

Judgment No.: UNDT/2009/093

Date: 22 December 2009

English

Original: French

**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** Victor Rodriguez

SYED

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS  
**JUDGMENT**

**Counsel for Applicant:**

Maurizio Giuliano

**Counsel for Respondent**

Ivan Koulov, HRMS/UNOG

## **Application**

1. In an appeal filed on 26 July 2008 with the Geneva Joint Appeals Board and transferred to the United Nations Dispute Tribunal on 1 July 2009, the Applicant:

(a) Appealed the decision dated 29 May 2008 whereby the Human Resources Management Service (HRMS) of the United Nations Office at Geneva (UNOG) did not extend his appointment as Associate Finance Officer;

(b) Challenged the fact that he did not receive a special post allowance.

2. In a fax sent to the Joint Appeals Board on 16 June 2009, the Applicant also requested:

(a) Appointment to a post as Finance Officer at the P-3 level in Geneva;

(b) Entitlement to full pension;

(c) Compensation for the damages resulting from his having had to rent a house in Geneva for his family;

(d) Financial compensation in the form of a special post allowance at the P-3 level for duties performed from January 2006 to June 2008;

(e) Payment of a special operations living allowance for the period of his assignment to the Sudan and reimbursement of his family's travel expenses;

(f) Reimbursement of the expenses he incurred by using his personal vehicle for two years and three months.

## **Facts**

3. In 2002-2003, the Applicant worked for the Office for the Coordination of Humanitarian Affairs (hereinafter OCHA) in Pakistan and Afghanistan as a General Service (G-6) staff member under contract with the United Nations Development Programme.

4. On 1 January 2004, the Applicant was hired as an Associate Finance Officer (L-2) in the OCHA office in Kabul, Afghanistan, for technical assistance projects (200 series of the Staff Rules). On 26 January 2005, the Applicant was reassigned to Khartoum, Sudan, on a one-year appointment, again as an Associate Finance Officer (L-2) for technical assistance projects. This contract was extended several times until 29 October 2007.

5. Effective 30 October 2007, the Applicant was given a fixed-term appointment for six months (100 series of the Staff Rules) as Associate Finance Officer (P-2) in the Administrative Office of OCHA Geneva. This contract was subsequently extended for two months to 30 June 2008.

6. By e-mail dated 29 May 2008, a Finance Officer from the Administrative Office of OCHA informed the Applicant that his contract would not be renewed beyond 30 June 2008.

7. On 27 June 2008, the Applicant wrote to the Secretary-General requesting review of the decision not to renew his contract.

8. The Applicant separated from service with the United Nations on 30 June 2008.

9. On 26 July 2008, the Applicant filed an appeal before the Geneva Joint Appeals Board.

10. By e-mail dated 31 July 2008, the Secretary of the Board informed the Applicant that his appeal was premature.

11. By letter dated 27 August 2008, the Applicant's request for review was rejected by the Secretary-General.

12. By e-mail dated 13 October 2008, the Applicant again filed an appeal before the Geneva Joint Appeals Board.

13. Under the transitional measures set out in General Assembly resolution 63/253, the appeal was transferred to the United Nations Dispute Tribunal on 1 July 2009.

14. The Tribunal held a hearing on 18 December 2009. The Applicant took part in the hearing by telephone, while his counsel attended in person. Counsel for the Respondent was represented by a member of his service who appeared in person.

### **Applicant's submissions**

15. The Applicant is contesting the decision of 29 May 2008 not to renew his contract, which he considers contrary to staff rule 104.12 then in effect, and is requesting a "long-term contract" against a vacant post in the United Nations. He points out that he worked for OCHA for one year and eleven months before receiving the appointment to Kabul in January 2004, and that he has two children.

16. The Applicant explains that he returned to Pakistan on 3 September 2008 and that he was unable to access a secure Internet connection until 10 October 2008, owing to the situation in Pakistan and family problems with one of his children and his wife. That was the reason why he was unable to file the appeal until 13 October 2008.

17. The positive job performance appraisals he received for the years 2003 to 2007 should have been taken into consideration, together with the recommendations by OCHA New York to regularize the contracts of staff members transferred from Pakistan to Afghanistan.

18. The Applicant contends that while he was under contract, he informed his superiors of issues that might involve violations of the financial regulations and the rules of financial management of the United Nations, violations that might constitute misconduct. He was unable to raise these issues with the Ethics Office owing to his heavy workload.

## **Respondent's observations**

19. The time limit for filing an appeal against the Secretary-General's decision to reject the Applicant's request for review expired on 27 September 2008. The application is not receivable, therefore, because the appeal was not filed until 13 October 2008.

20. The Applicant initially filed an appeal before the Joint Appeals Board on 26 July 2008. On 31 July 2008, the secretary of the Board informed him that his appeal was premature because the time allowed for the Secretary-General to reply to his request for a review had not yet ended. The Applicant received the Secretary-General's reply on 27 August 2008 but did not file his appeal until 13 October 2008, which was too late. Staff rule 111.2 (f) then in effect concerning exceptional circumstances does not apply, since it was possible for the Applicant to send his appeal by e-mail from Islamabad.

21. The application is also not receivable in that it contests the fact (i) that the Applicant did not obtain another post after five years of service, under staff rules 104.12 (b) (iii) and 104.13 then in effect; and (ii) that he did not receive a special post allowance during his assignment to the Sudan, because the Applicant did not write to the Secretary-General to request a review of these decisions.

22. Under the Staff Rules, the staff member has no right to the renewal of a fixed-term appointment. A memorandum of 8 August 2007 specified quite clearly to the Applicant that his appointment to the Geneva office of OCHA was temporary, with no possibility of renewal.

23. The decision not to renew the Applicant's contract was based on the lack of funding for the specific project on which he was working.

24. If the Applicant is contending that the non-renewal of his contract is connected to the fact that he informed his superiors of actions that could constitute misconduct, there is nothing to substantiate these allegations.

## **Judgment**

25. Counsel for the Applicant raised an issue at the start of the hearing on which the Tribunal must make a preliminary judgment before it proceeds to examine the application.

26. He contends that the Applicant's rights were not respected in that, while counsel was appointed by the Office of Staff Legal Assistance to represent the Applicant at his request, by an e-mail of 19 November 2009, the assigned counsel confirmed to the Applicant that he declined to represent him before the Tribunal on the grounds, firstly, of his caseload, and secondly, of the fact that his application had no merit. The Applicant's counsel, who was finally appointed only two days before the hearing, contends, firstly, that General Assembly resolution 62/228 on administration of justice at the United Nations, which established the Office of Staff Legal Assistance, stipulates that "staff at all duty stations shall continue to have access

to legal assistance”, and secondly, that this resolution places an obligation on the Office to represent any staff member who requests its services.

27. The Tribunal finds that the General Assembly resolution must be interpreted as creating a right for staff members to request legal counsel from the Office, which has an obligation to provide proper advice, including on the merits of the case. The Office is therefore entitled to advise applicants not to file an application before the Tribunal and may therefore legally refuse to appoint counsel for an applicant on the grounds that his application has little chance of success.

28. As outlined above, the Applicant received advice from the Office of Staff Legal Assistance on the merits of his application and was subsequently represented before the Tribunal by counsel of his choice, and he therefore cannot contend that his right to a fair trial was not respected.

29. The Applicant is contesting several administrative decisions before the Joint Appeals Board and the Tribunal. The judge is required to rule only on those administrative decisions that were subject to a request for review submitted to the Secretary-General under staff rule 111.2 (a) then in effect. The details set forth above show that the only decision challenged by the Applicant before the Secretary-General was the decision of 29 May 2008 not to renew his contract. The sections of his application pertaining to the fact that he did not receive a special post allowance, which is a separate dispute, and to the various requests set out in paragraph 2 above, must therefore be declared inadmissible.

30. While there is no need to rule on the admissibility of the application *ratione temporis*, the judge must indeed make a ruling on the merits of the dispute within the limits set out above, that is, solely with respect to the decision not to renew the Applicant’s contract.

31. Staff rule 104.12 (b) (ii), which was in effect on the date of the impugned decision, provides that “The fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment”. The Applicant, after holding two fixed-term appointments as from 30 October 2007, did not receive a renewal at the end of the second contract, which expired on 30 June 2008. As shown by the text quoted above, the Applicant cannot claim an entitlement to renewal of a fixed-term appointment.

32. The Tribunal must, however, examine whether the Administration gave the Applicant any assurance that his contract would be renewed. On the contrary, it is clearly stated in a memorandum dated 8 August 2007 from the chief of the Administrative Office of OCHA in the Human Resources Management Service of UNOG to the Applicant that his six-month contract against a post in Geneva would not be renewed. Neither this document nor any other document in the record could have left the Applicant with the impression that he had any serious chance of having his contract in Geneva extended.

33. Lastly, the Applicant contends that the decision not to renew his contract was prompted by the Administration’s desire to remove him from OCHA because of information that he claimed to have obtained as part of his work that could reveal cases of misconduct. However, the Applicant’s claims are not upheld by any piece of evidence in the record. On the contrary, it can be seen that, although the

Applicant made the allegations of misconduct in 2007, he was nevertheless granted renewals of his contract until June 2008. Furthermore, the Respondent states, with no rebuttal by the Applicant, that the contract was not renewed because the projects for which he was employed could not continue for lack of funding. The Applicant has thus failed to establish that the grounds for the non-renewal of his contract are unlawful.

34. In view of the foregoing, the Applicant has failed to establish the unlawfulness of the impugned decision and therefore his application is rejected in its entirety.

35. For these reasons, the Tribunal DECIDES:

The application is dismissed.

---

Judge Jean-François Cousin  
Dated this 22nd day of December 2009

Entered in the Register on this 22nd day of December 2009

---

Victor Rodriguez, Registrar, UNDT, Geneva

---