



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/98

Judgment No.: UNDT/2010/027

Date: 10 February 2010

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

CALVANI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

François Lorient

Counsel for Respondent:

Susan Maddox
Administrative Law Unit
Office of Human Resources Management
United Nations Secretariat

Introduction

1. On 2 December 2009, the applicant, through counsel, filed an application with the United Nations Dispute Tribunal contesting the 8 June 2009 decision to extend his appointment by only three months.

2. In that application, the applicant also requested the Tribunal to grant him an extension of time to supplement his application.

Facts

3. On 1 July 2007, the Secretary-General appointed the applicant to the post of Director (L-7) of the United Nations Interregional Crime and Justice Research Institute with a one-year technical assistance project contract (200 series of the Staff Rules then in effect). The contract was later extended for one year, from 1 July 2008 to 30 June 2009.

4. By e-mail dated 1 June 2009, the applicant sought information from the Chief, Human Resources Management Service, United Nations Office on Drugs and Crime (UNODC), on the extension of his contract, which was to expire at the end of that month.

5. By e-mail dated 8 June 2009, the Chief, Human Resources Management Service, UNODC, replied to the applicant that his contract would be extended for three months, ending on 30 September 2009.

6. By letter dated 24 July 2009, the applicant submitted to the Under-Secretary-General for Management a request that the decision to extend his contract for three months only, instead of one year, should be submitted to a management evaluation; that the decision should be rescinded; and that he should be given a one-year contract.

7. By letter dated 4 September 2009, the Under-Secretary-General for Management informed the applicant that the Administration had decided to extend his appointment for an additional nine-month period as from 1 October 2009, bringing the duration of his appointment to one year. She

added that, in the light of that decision, the applicant's request for a management evaluation had become moot.

8. On 1 October 2009, the applicant's appointment was converted to a D-2 fixed-term appointment, pursuant to the provisional Staff Rules that came into effect on 1 July 2009, and was extended for a nine-month period ending on 30 June 2010.

9. On 2 December 2009, the applicant, through counsel, filed an application with the United Nations Dispute Tribunal contesting the 8 June 2009 decision to extend his appointment by only three months. In that application, the applicant also requested the Tribunal to grant him an extension of time to supplement his application. That case, which is the subject of this judgment, was entered in the Register as No. UNDT/GVA/2009/98.

10. On 9 December 2009, the applicant also filed an application with the United Nations Dispute Tribunal requesting it to suspend execution of the decision to place him on administrative leave without pay pursuant to provisional staff rule 10.4. That case was entered in the Register as No. UNDT/GVA/2009/104 and was the subject of Order No. UNDT/2009/092.

11. By Order No. 35 (GVA/2009) of 9 December 2009, the Tribunal, on its own motion, addressed the issue of the receivability of the application insofar as it contested the decision to renew the applicant's contract for three months. The Tribunal noted that the decision had not caused the applicant any harm, i.e., that it had not violated his rights or the terms of his appointment, and invited the applicant to submit his comments by 19 December 2009.

12. On 18 December 2009, the applicant submitted his comments on Order No. 35 (GVA/2009).

13. By letter dated 23 December 2009, the Tribunal asked the respondent to submit his response to the application and to the applicant's comments on the aforementioned Order by 22 January 2010.

14. On 26 and 27 January 2010, a few days late, and without having requested the Tribunal to grant an extension of time, the respondent submitted observations concerning the applicant's comments on Order No. 35 (GVA/2009), as well as a further submission on the case, and requested that the application should be denied.

15. By e-mail dated 26 January 2010, counsel for the applicant forwarded to the Tribunal a letter dated 22 January 2010 from the Management Evaluation Unit, United Nations Secretariat, informing the respondent that the Deputy Secretary-General had agreed to refer his case for mediation. The letter did not specify explicitly the nature of the case in question.

16. By e-mail dated 27 January 2010, counsel for the applicant pointed out that both of the cases submitted to the Tribunal by his client had been referred for mediation.

17. By letter dated 27 January 2010, the Tribunal, noting the inconsistencies between, on the one hand, the statements made by the applicant's counsel and, on the other, the letter dated 22 January 2010 from the Management Evaluation Unit and the respondent's submission urging the Tribunal to reject the applicant's requests in the case to which this judgment refers, requested the parties to clarify, by 3 February 2010, whether they had agreed to seek mediation with respect to the application.

18. As at the date of the present judgment, neither of the parties has responded to the aforementioned letter.

Parties' contentions

19. The Applicant's contentions are as follows:

- a. The applicant's contractual status exempts him from the rule whereby holders of fixed-term appointments have no expectancy of renewal of their appointment. The applicant had a legitimate expectancy of a 12-month renewal and could not have a three-month renewal imposed on him;

- b. When he was appointed to serve at the United Nations Interregional Crime and Justice Research Institute (UNICRI), the applicant was given the assurance that his contract would continue to be renewed for one-year periods, as is customary at the United Nations for all internationally recruited staff members who satisfy the conditions for a permanent appointment;
 - c. The Administration had recognized the applicant's right to a 12-month contract by rescinding, by letter dated 4 September 2009, the decision to extend his contract for three months only;
 - d. The decision to extend the applicant's contract for only three months constituted punishment and had caused him harm;
 - e. The key question is to identify the persons who took the contested decision and their reasons, even though the decision has, in fact, been rescinded by the respondent.
20. The Respondent's arguments are as follows:
- a. The decision to extend the applicant's contract was reviewed and modified such that his contract was ultimately renewed for a total of 12 months, making his application moot;
 - b. The Tribunal rightly pointed out in its Order No. 35 (GVA/2009) that the contested decision has not caused the applicant harm because the applicant had no expectancy of renewal of his appointment;
 - c. The applicant was entitled to reject the offer of a three-month appointment if he was not satisfied as to its validity or its bona fides; however, he did not, nor did he reject the subsequent offer of a nine-month appointment;
 - d. The applicant did not provide sufficient reasons to justify disclosure of the identity of the person who took the contested decision.

Judgment

21. Before ruling on this application, the Tribunal must first answer the preliminary question of whether the parties agreed to refer this case to mediation.

22. Article 15, paragraph 3, of the rules of procedure of the Tribunal provides that where parties on their own initiative decide to seek mediation, they shall promptly inform the Registry in writing. In this case, only counsel for the applicant maintains, despite documents to the contrary contained in the file, that the case was referred to mediation. These allegations were not corroborated by the respondent, who not only requested the Tribunal to reject the applicant's requests on their merits, but also did not reply to the Tribunal's letter of 27 January 2010. As the case stands, the Tribunal can only construe the respondent's silence as an implicit refusal to refer the case for mediation.

23. In light of the foregoing, the present proceedings are not suspended and the Tribunal can issue the present judgment.

24. The Tribunal notes that, following the applicant's request for a management evaluation of the decision to renew his contract for three months only, and even before the applicant submitted the present application to the Tribunal, the administration had rescinded its decision and had extended the applicant's appointment for an additional nine months, bringing the duration of his appointment to one year and satisfying his express request in the process.

25. Consequently, without the need to rule on the applicant's requests for additional time to supplement his application and for disclosure of information about the motives and identity of the person who took the decision, the Tribunal notes that the application was moot as at the date on which it was submitted to the Tribunal and that it is therefore not receivable.

Decision

26. For these reasons, the Tribunal DECIDES:

The application is rejected.

(signed)

Judge Jean-François Cousin

Dated this 10th day of February 2010

Entered in the Register on this 10th day of February 2010

(signed)

Víctor Rodríguez, Registrar, UNDT, Geneva