



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2010/076

Judgement No.: UNDT/2011/007

Date: 12 January 2011

Original: French

**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

**NDJADI**

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGEMENT**

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**Counsel for Applicant:**

Litigant representing himself

**Counsel for Respondent:**

UNDP

## Application

1. The Applicant was recruited as an Expert in National Capacity Building by the Office of the United Nations Development Programme (UNDP) in Kinshasa (Democratic Republic of the Congo), on a fixed-term service contract from 26 March 2009 to 15 April 2010. The Applicant carried out the duties of that position from 16 April 2009 to 20 August 2009 (four months and four days). He then took long-term sick leave.
2. On 3 March 2010 the Applicant was paid the remainder of his compensation in the amount of US\$ 1,207.
3. In an e-mail dated 10 March 2010, the Applicant wrote to UNDP seeking renewal of his contract on his return from sick leave. The same day, the administration replied that contract renewal could only be based on a performance appraisal.
4. On 11 March 2010, the Applicant sent his performance appraisal form, signed on 10 March 2010, for the period from 16 April to 20 August 2009, during which time he had carried out the duties of above-mentioned position.
5. In a letter dated 16 March 2010, the Applicant was informed by the Deputy Country Director (Operations) of UNDP in Kinshasa that his contract would not be renewed beyond its expiration date.
6. On 22 March 2010, the Applicant wrote to the Office of the Ombudsman for the United Nations Funds and Programmes, asserting that the decision not to renew his contract had been made arbitrarily and asking for payment of his “fees” for the month of September 2009 in the amount of US\$ 1,207.
7. On 8 April 2010, the Applicant wrote to the Deputy Country Director to challenge the non-renewal of his contract and demand the payment of “fees”.
8. In response, the Applicant was informed in a letter dated 12 April 2010 that the administration could not accept the appraisal form or make a recommendation to renew the contract because the data in his self-assessment, relative to his individual work plan and the period of his employment, did not constitute a “reasonable basis for giving an objective opinion or recommendation”.
9. On 22 April 2010, the Applicant wrote to the legal department of Management and Operations Support to challenge the decision of 16 March 2010 not to renew his contract. The legal department responded the same day saying it was not competent to deal with disputes concerning persons employed on service contracts.
10. On 22 April 2010, the Applicant asked for payment of his “fees” for the period from 16 September 2009 to 15 April 2010. In response, the legal department of Management and Operations Support reiterated that it took no part in disputes concerning persons employed on service contracts. However, the case was referred to another lawyer in the same department.
11. On 4 June 2010, the legal department of Management and Operations Support advised the Applicant that his application had no contractual or legal basis because, under the statute rights and obligations of the fixed-term service contract he had signed, he had not been granted the status of an international civil servant. However, in view of his health problems and a possible confusion over the rules, the administration offered the Applicant the sum of US\$ 5,000 to resolve the dispute amicably.
12. On 13 August 2010, the Applicant agreed to sign a transactional agreement with UNDP putting a final end to the dispute in consideration of the sum of US\$ 9,593.

13. In a letter dated 26 August 2010, the Applicant received a copy of the transactional agreement signed on 13 August 2010 and confirmation of payment of the sum of US\$ 9,593 into his bank account on 18 August 2010.

14. After approaching the UNDP offices in Cotonou, Kinshasa, Geneva and New York, the petitioner contacted the registry of the United Nations Dispute Tribunal (“Tribunal”) at Nairobi on 4 November and 3 December 2010, seeking to file a motion to institute proceedings.

15. On 3 December 2010, the Registrar of the Tribunal provided the Applicant with the technical details he needed to look up, on the United Nations website, the Statute of the Tribunal, the Rules of Procedure and the forms to be completed by anyone wishing to initiate proceedings.

16. On 4 December 2010 the Applicant filed his claim challenging the decision of 16 March 2010 not to renew his expert’s contract. The Applicant then wrote to the Geneva office on 7 December 2010 to challenge the same decision.

## **Considerations**

### ***Standing***

17. The Tribunal must first rule on the question of admissibility. Article 3 (1) of the Statute of the Tribunal states that:

An application under article 2, paragraph 1, of the present Statute may be filed by: (a) any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes; (b) any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes ...

18. In other words, the Tribunal is competent to hear complaints filed by United Nations staff members (international civil servants) under Article 3 of the Statute above. What must be determined, therefore, was whether, contractually speaking, the Applicant had the status of an international civil servant.

19. In his application, the Applicant stated that he had been hired by UNDP on a service contract as a National Expert in Capacity Building. The rules in this case, in particular Article 2.2 (a), (d) and (g)<sup>1</sup> indicate that persons recruited under this type of contract are not subject to the Staff Rules and do not have international civil servant status. Further, it is clear from the model service contract form<sup>2</sup> that the contract is actually a memorandum of understanding between UNDP and the signatory to the service contract, Article 3 whereof clearly states that the signatory [to the service contract] is not a staff member within the meaning of the United Nations Staff Rules or an “official” within the meaning of the Convention of 13 February 1946 on the Privileges and Immunities of the United Nations.

20. In view of the foregoing, the Tribunal observed that the Applicant had no standing before the Tribunal under Article 3 (1) of its Statute.

### ***Abuse of process***

21. In the light of the evidence on file, the Tribunal observed that the Applicant had signed a settlement agreement with the Respondent in which he promised to finally resolve the dispute in exchange for a payment of US\$ 9,593, which sum was in fact paid to him on 18 August 2010.

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<sup>1</sup> “Service Contract Users Handbook” of 1 January 2008.

<sup>2</sup> Ibid., Annex I – Model service contract form.

22. Notwithstanding the fact that the Tribunal has no jurisdiction to review this case, it considers that a transactional agreement whose terms have been executed does put an end to a dispute. The Applicant had nevertheless contacted the registries of Geneva, Nairobi and New York to bring a motion challenging the non-renewal of his contract, although he had been amply compensated under the said agreement.

23. The Tribunal considers that in his efforts to challenge a decision to which he was a party, the Applicant acted ill-advisedly and in bad faith. Even though the Tribunal has no jurisdiction to hear the complaint, it considers the Applicant clearly guilty of an abuse of process, for which the Tribunal has ordered him to pay the sum of US\$ 500 for abuse of process under Article 10.6 of its Statute, which reads as follows:

Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.

### **Judgement**

24. For these reasons, the Tribunal declares that it does not have jurisdiction to consider the request and orders the Applicant to pay the sum of US\$ 500 for abuse of process.

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Judge Vinod Boolell  
So ruled this 12th day of January 2011

Entered in the Register on 12 January 2011

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Jean-Pelé Fomété, Clerk, UNDT Nairobi

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