



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/046

Judgment No.: UNDT/2012/031

Date: 29 February 2012

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Anne Coutin, Officer-in-Charge

O HANLON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Caroline Nicholas

Counsel for Respondent:

Marcus Joyce, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the decision of 2 February 2011 by which he was informed that his request for conversion of his fixed-term contract to a permanent appointment had been refused.

2. He requests that the contested decision be declared unlawful and that he be declared eligible for conversion of his contract to a permanent appointment.

Facts

3. On 4 March 2000, the Applicant was recruited by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA”) on an initial fixed-term contract of one year. His contract with UNRWA was extended until 19 November 2005, at which time he was recruited for a fixed-term P-4 contract, under the 100 series of the Staff Rules then in force, by the Department of Safety and Security at the United Nations Secretariat in New York pursuant to an inter-organization agreement under which he was transferred. On 1 July 2008, he was transferred to the United Nations Office at Vienna, where he is still employed as Chief of the Security and Safety Service.

4. On 29 April 2010, the Human Resources Management Service of the United Nations Office at Vienna informed all staff members that the first stage of the one-time review for possible conversion of contracts of all Secretariat staff members to permanent appointments, begun in 2009, was being finalized. The memorandum advised all staff members who believed that they met all the criteria for such a conversion and who had not received individual confirmation of their eligibility to contact the Service and submit the pertinent information and documentation.

5. On 3 March 2010, the Applicant contacted the Administration by email for the first time, and subsequently did so on several other occasions. On 2 February 2011 he received the contested decision informing him that he was not eligible for conversion to a permanent appointment.

6. On 1 April 2011, the Applicant filed his first request for a management evaluation of the decision of 2 February 2011. That request was incomplete. On 8 April 2011, he sent a complete request.

7. On 23 May 2011, the Applicant was advised that in response to his request for a management evaluation, the Secretary-General had decided to uphold the contested decision.

8. The Applicant submitted his application to the Tribunal on 19 August 2011 and the Respondent filed his reply on 21 September 2011.

9. By Order No. 171 (GVA/2011) of 7 October 2011, the Tribunal requested the Applicant to submit the document confirming his transfer from UNRWA to the Secretariat. On 13 October 2011, the Applicant submitted to the Tribunal a memorandum from the Director of Administration and Human Resources of UNRWA to the Office of Human Resources Management of the Secretariat in New York dated 25 September 2005 on his recruitment to United Nations Headquarters.

10. On 14 October 2011, the Applicant requested permission from the Tribunal to submit observations on the Respondent's reply.

11. On 13 December 2011, by Order No. 216 (GVA/2011), the Tribunal advised the parties that it deemed an oral hearing to be unnecessary and requested that they submit their comments on the matter.

12. On 16 December 2011, the Applicant submitted a motion seeking leave to file a skeleton argument. On 9 February 2012, he submitted observations on the Respondent's reply to the Tribunal.

Parties' submissions

13. The Applicant's contentions are:

- a. The application was submitted within the prescribed time limit, as the Management Evaluation Unit did not respond to his request until 23

May 2011, and he received the response the following day. The Statute of the Tribunal is clear on this point, and, as it was adopted by the General Assembly, it takes precedence over the Staff Rules;

b. According to the Secretary-General's bulletin on consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 June 2009 (ST/SGB/2009/10), he is eligible for conversion of his appointment as he meets the conditions set forth and, in particular, the condition of having completed five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules;

c. The principle of equal treatment of staff members, established in the Charter of the United Nations, gives him the right to be treated in the same way as other staff members. Moreover, according to the information that the Administration had conveyed to staff members regarding the conversion exercise, UNRWA was among the organizations that operated under the United Nations Staff Regulations and Rules;

d. Under Article 101.1 of the Charter and article 1.1(e) of the Staff Regulations, the Secretary-General appoints all staff members and the Staff Regulations apply to all staff at all levels, including staff of the separately funded organs;

e. UNRWA is an integral part of the Organization and UNRWA staff members are staff members of the Secretariat;

f. The distinction between the 100, 200 and 300 series of the Staff Rules reflects the difference between project-bound or short-term contracts and all others. The correct interpretation of section 1(a) of the Secretary-General's bulletin ST/SGB/2009/10 is that the staff member must have worked continuously for five years on a fixed-term appointment;

g. The Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations Applying the

United Nations Common System of Salaries and Allowances stipulates that service in the releasing organization will be counted for all purposes as if it had been made in the receiving organization.

14. The Respondent's contentions are:

a. The application is not receivable since the Applicant made his request for a management evaluation on 1 April 2011. Whereas, under staff rule 11.2(d), the response to his request should have been provided no later than 16 May 2011 and he had 90 days from that date—until 14 August 2011—to file his application, he did not file his application until 19 August 2011;

b. UNRWA was established as a subsidiary body of the United Nations by a General Assembly resolution of 8 December 1949. The Office has its own rules, which permit the Commissioner-General to promulgate the organization's own staff rules and regulations. The Secretary-General's administrative decisions and bulletins do not automatically apply to UNRWA, and it is the responsibility of the Commissioner-General to determine whether they will be applicable;

c. The Applicant is not eligible for conversion to a permanent appointment because he does not meet one of the requirements, that is, five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules;

d. The Applicant cannot invoke unequal treatment of staff members as he is not in the same situation as the staff members to whom he refers. In fact, while at UNRWA he did not hold an appointment under the 100 series of the Staff Rules, and UNRWA staff members are subject to their own rules. .

Consideration

15. The Tribunal considers itself sufficiently well informed to judge the present case without requesting additional documents or information.

16. With regard to the argument based on the irreceivability of the application, the Tribunal concluded in *Vangelova* UNDT/2010/179:

20. Staff rule 11.4 provides that:

a) A staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the United Nations Dispute Tribunal within ninety calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2(d), whichever is earlier.

21. Article 8, paragraph 1, of the UNDT Statute provides that:

1. An application shall be receivable if:

...

d) The application is filed within the following deadlines:

i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

22. On the assumption that the two above-mentioned legal instruments are contradictory, it cannot be challenged that the legal force of the Statute of the Dispute Tribunal is superior to that of the Staff Rules; thus, the Tribunal shall assess the receivability of the application only in light of its own Statute.

23. Although the above-mentioned provisions of the Statute require staff members to file their application with the Tribunal within 90 days of the expiry of the response period of 45 days for the management evaluation if no response to the request was provided, when the management evaluation is received after the deadline of 45 days but before the expiry of the next deadline of 90 days, the receipt of the management evaluation in this case will result in setting a new deadline of 90 days for challenging it before the Tribunal.

17. It follows that the present application was filed with the Tribunal within the relevant deadlines.

18. To dispute the decision of 2 February 2011 by which his request for conversion of his fixed-term contract to a permanent appointment was refused, the Applicant maintains that he meets all the conditions provided for under section 1 of the Secretary-General's bulletin ST/SGB/2009/10, cited below:

Eligibility

To be eligible for consideration for conversion to a permanent appointment under the present bulletin, a staff member must by 30 June 2009:

- (a) Have completed, or complete, five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules; and
- (b) Be under the age of 53 years on the date such staff member has completed or completes the five years of qualifying service.

19. It is not disputed that the Applicant was recruited for a fixed-term contract under the 100 series of the Staff Rules starting on 19 November 2005 to work in the Department of Safety and Security in New York under an inter-organization agreement, and that prior to that transfer he was employed at UNRWA starting on 4 March 2000 under a series of fixed-term contracts. Since the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations Applying the United Nations Common System of Salaries and Allowances stipulates that service in the releasing organization will be counted for all purposes as if it had been made in the receiving organization, the Applicant fulfils the condition of a minimum of five years of employment under fixed-term contracts.

20. However, the bulletin cited above also states that only fixed-term contracts under the 100 series of the Staff Rules are considered for the purpose of conversion to a permanent appointment. It is clear that UNRWA staff operate under different rules from those that apply to staff members of the Secretariat, and while contracts under the 100 series are covered in the Staff Rules of the Secretariat, this type of appointment is not referred to in the UNRWA Staff Rules and Regulations.

21. It is therefore apparent that the Applicant was not employed for five years under the type of contract required, and since it is not the role of the Tribunal to interpret provisions that are clear, the Tribunal can only conclude that the Applicant does not meet one of the eligibility criteria for conversion to a permanent appointment.

Conclusion

22. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 29th day of February 2012

Entered in the Register on this 29th day of February 2012

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry