



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2012/091

Judgment No.: UNDT/2013/045

Date: 8 March 2013

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

OUMMIH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Chenayi Mutuma, ALS/OHRM, UN Secretariat

Introduction

1. By application filed with the Registry of the United Nations Dispute Tribunal on 20 November 2012, the Applicant requests rescission of the decision whereby her contract was renewed for a period limited to one year, through 11 June 2013.

2. She asks that her contract be renewed for two years, as from 11 June 2012, be awarded EUR50,000 for moral damages and a ruling that her immediate supervisor should be held accountable.

Facts

3. The Applicant was recruited on 1 September 2009 as a Legal Officer at the Office of Staff Legal Assistance of the Office of Administration of Justice at the United Nations Secretariat.

4. On 1 July 2011, the Applicant filed a complaint against her immediate supervisor, Mr. Brian Gorlick, Chief of the Office of Staff Legal Assistance.

5. On 22 August 2011, Mr. Gorlick recommended non-renewal of the Applicant's contract, which was due to expire on 31 August 2011, on the ground of underperformance. Her contract was then renewed several times; her current contract expires on 11 June 2013.

6. On 27 April 2012, the Applicant filed another complaint against her immediate supervisor.

7. On 18 May 2012, the Applicant was informed that her contract would be renewed for a period limited to one year.

8. On 5 July 2012, the Applicant submitted a request for management evaluation of the decision to renew her contract for only one year. On 22 August 2012, the request was rejected.

9. On 21 September 2012, the Executive Director of the Office of Administration of Justice informed the Applicant that an investigation concerning the substance of her complaints was to be initiated.

10. On 23 January 2013, by Order No. 10 (GVA/2013), the Judge examining the case informed the parties that he intended to raise on his own motion the question of the receivability of the application on the grounds that the contested decision was in the Applicant's favour and had not adversely affected her rights.

11. On 5 February 2013, both the Respondent and the Applicant submitted their comments on Order No. 10 (GVA/2013) of 23 January 2013.

12. On 12 February 2013, the Tribunal held a hearing in which the Applicant participated in person and Counsel for the Respondent participated via videoconference.

13. Following the hearing, on 19 February 2013 the Applicant submitted additional comments. The Respondent submitted his response to comments on 1 March 2013.

Parties' submissions

14. The Applicant's contentions are:

- a. The decision to renew her contract for just one year is illegal as it constitutes a discriminatory and retaliatory measure against her;
- b. Her application is receivable because the normal term of a new contract should have been for two years. She was therefore subject to an adverse decision, as she did not receive the same treatment as the other staff at the Office of Staff Legal Assistance;
- c. She is not contesting the decision itself, but rather the reasons for the decision, as set out in the response to her request for management evaluation. First of all, her performance evaluation for the period 2011-2012

is completely illegal and cannot constitute a reason for the contested decision;

d. The Under-Secretary-General for Management is not in a position to determine whether the rebuttal panel upgraded her performance rating ordered for procedural reasons and not owing to a revised assessment of her performance. Only the Secretary-General has this authority. In addition, the rebuttal panel conducted a substantive review of her performance evaluation;

e. The contested decision was also motivated by the fact that the Applicant is not similarly situated to her colleagues at the Office of Staff Legal Assistance due to her behaviour. However, a staff member's behaviour can be assessed only by means of lawful evaluations, which were not carried out in this case.

15. The Respondent's contentions are:

a. The request for management evaluation applied only to the decision to renew the Applicant's contract for one year. Therefore, that is the only decision that is receivable by the Tribunal. The contested decision was not taken into account by the Management Evaluation Unit; the Respondent is therefore not obligated to respond to the Applicant's claims against the Unit's reasoning;

b. The decision was made in accordance with rule 4.13 of the Staff Rules, which grants the Secretary-General the authority to renew a fixed-term appointment for any period up to five years at a time. The Applicant had no right to a two-year renewal of her contract;

c. The Applicant's performance evaluations were upgraded by the rebuttal panel because of procedural issues and not because the Applicant's performance was satisfactory. The contested decision was a result of the Applicant's performance and of her poor working relations with her

colleagues and supervisors; this justified her being treated differently from her colleagues;

d. The Applicant did not provide any evidence that she was subject to retaliatory or discriminatory measures;

e. The Applicant did not suffer any damage as a result of the contested decision as she is still employed by the Office of Staff Legal Assistance;

f. The Tribunal should reject the Applicant's request to remove her name from the Judgment, as there are no exceptional circumstances that would justify such action;

g. The Tribunal is requested to call as witness the Officer-in-Charge of the Office of Administration of Justice at that time and to award the Respondent the costs of the proceedings.

Consideration

16. Article 2 of the statute of the Tribunal reads:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

...

17. The Judge examining the case informed the parties that he intended to raise on his own motion the question of the irreceivability of the application on the grounds that the contested decision to renew the Applicant's contract was in her favour and did not violate her rights. It follows from the aforementioned article of the statute that the Tribunal is competent to rule only on the legality of decisions

taken by the Administration that affect the rights of staff members as derived from their status or contract.

18. Article 2 of the statute thus requires the Tribunal, before considering whether a decision is legal, to verify its competence, which is limited by said article and to determine whether the decision, by its very nature, adversely affects the staff member's rights.

19. First, it is not disputed that prior to the contested decision being taken, the Applicant's appointment was due to expire on 10 June 2012 and that the terms of that fixed-term appointment contained no provisions for its renewal. Accordingly, the decision to renew her contract for one year did not adversely affect the contract that she previously held.

20. Second, rule 4.13(c) of the Staff Rules, concerning fixed-term appointments, states that:

Rule 4.13

Fixed-term appointment

...

(c) A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14 (b).

21. In its Judgment of 20 July 2012 in *Applicant* UNDT/2012/110, the Tribunal found that while there is no automatic entitlement to contract renewal for any term, decisions that extend a contract, even on a short-term basis, are in the staff member's favour and do not adversely affect their rights as derived from their status. The Tribunal is therefore not competent to rule on the legality of such decisions.

22. To support her claim that the Tribunal is competent, the Applicant alleges that the decision to offer her a contract of only one year is a discriminatory and retaliatory measure, since other similarly situated colleagues were issued two-year contracts. The Applicant is thus confusing the decision with the reasons for the

decision. Before ruling on the legality of the reasons for a decision, the Tribunal must consider whether it is competent to rule on the decision.

23. The Applicant claims that, like her colleagues in the Office of Staff Legal Assistance, she was entitled to a two-year renewal of her contract. However, there is no legal provision regarding the length of renewals of fixed-term appointments. Only regulation 4.5 of the Staff Regulations mentions the length of such renewals and expressly states that they may not exceed five years.

24. It follows from all of the foregoing that the decision to renew a fixed-term appointment, even for a term that the staff member finds unsatisfactory, cannot be contested before the Tribunal. It is only if a contract expires and is not renewed that the Applicant may contest the decision not to renew it, as that would clearly constitute an adverse decision.

25. While the Respondent requested the Tribunal to call as witness the then Officer-in-Charge of the Office of Administration of Justice, the foregoing justifies why she was not heard.

26. Lastly, the Applicant has requested that her name should be redacted from the present judgment. Such motions have been filed in previous applications by the same Applicant and granted by the Tribunal on the grounds that the publication of her name in a judgment could be detrimental to her work as a staff member in the Office of Staff Legal Assistance and could have a negative impact on the proper functioning of the Office.

27. The Tribunal considers that while, in exceptional cases, it may decide to redact the name of the Applicant or other persons in a published judgment, in this case there are no valid reasons to grant special treatment to the Applicant relative to other staff members filing applications with the Tribunal. The current dispute is a case of conflict between a staff member and her supervisor, which can in no way be considered exceptional before this Tribunal. Consequently, there are no grounds to grant anonymity and the motion is rejected.

28. The Respondent requested that costs should be awarded against the Applicant in accordance with article 10.6 of the statute. The Tribunal finds that in this case, there was no manifest abuse of the proceedings and it therefore rejects the Respondent's request.

Conclusion

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

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 8th day of March 2013

Entered in the Register on this 8th day of March 2013

(Signed)

René M. Vargas M., Registry, Geneva