



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

SHRIVASTAVA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for Applicant:**  
George G. Irving

**Counsel for Respondent:**  
Bart Willemsen, UNICEF

## **Introduction**

1. The Applicant, a former staff member of the United Nations Children’s Fund (“UNICEF”), contests her reassignment to a new post and the “limitation of contract extension to seven months following reassignment of post, constituting constructive dismissal”.

2. The Applicant submits that the limitation of her contract extension to seven months resulted in her separation from service as of 31 July 2011. She submits that this decision amounts to a constructive dismissal and that the contested decision

unfairly prejudices her legitimate expectation of continued employment, violates the terms of her non-reimbursable loan and the corresponding lien on the post formerly occupied by her, and is improperly influenced by retaliatory motives for having complained about unfair treatment and improper actions by her immediate supervisor.

3. The Applicant seeks, *inter alia*, a two-year fixed-term appointment and compensation for moral damages.

4. The Respondent submits, *inter alia*, that the contested decision did not directly impact the Applicant’s rights and thus is not receivable under art. 2.1(a) of the Tribunal’s Statute. The Respondent submits that the Applicant does not have a right to renewal of her contract for two years at a time and that it was within UNICEF’s discretion to offer her a seven-month extension, which she accepted. The Respondent further submits that the present case concerns only the limited extension of the Applicant’s contract, not her separation on 31 July 2011. With respect to the merits of the Applicant’s claims, the Respondent submits that the issue in this case is not about non-renewal of a contract, but about the duration of such contract, which determination can be made only by the Administration.

### **Procedural matters**

5. By Order No. 179 (NY/2013), dated 5 September 2012, the Tribunal proposed that it would first deal with the issue of receivability of the present application. The parties were directed to file submissions on receivability and to inform the Tribunal if they objected to the issue of receivability being decided on the papers. The parties' submissions were duly filed, with neither party objecting to the issue of receivability being decided on the papers.

### **Background**

6. The Applicant joined UNICEF in 1987 as a National Officer ("NO"). In 1992, she was promoted to NO level 3. She was 55 years old at the time of her separation in July 2011, and had served with the United Nations for some 24 years and six months. Up until 2008, her performance fully met and exceeded expectations.

7. In January 2008, the Applicant was promoted and appointed as Child Development Specialist at the NO level 4 against post no. 51964 in the Child Development and Nutrition ("CDN") Section of the UNICEF India Country Office.

8. The Applicant submits that following the appointment of a new Chief of Section at the end of November 2007, she experienced an increasingly hostile working environment, caused by a strained relationship with her new supervisor.

9. In 2008 and 2009, the Applicant's supervisor rated her performance as wanting with respect to several competencies.

10. The Applicant strongly disagreed with the ratings given to her in 2008 and 2009, and included comments to this effect in the performance evaluation reports. The Respondent submits, however, that the Applicant never formally contested her

performance ratings for 2008 and 2009 through the formal rebuttal procedure and instead filed complaints with the UNICEF Ombudsperson, alleging that she was subjected to negative environment and treatment.

11. On 1 January 2010, the Applicant's contract was renewed until 31 December 2010.

12. On 18 May 2010, the Secretary of the Planning Commission of the host Government of India requested from the UNICEF Representative the loan/secondment of the Applicant's services from 1 June 2010, initially for a one-year period extendable annually. The request was approved by the UNICEF Representative on 27 May 2010.

13. The Planning Commission's letter of 22 June 2010 stated that the Applicant would be on a loan basis initially for one year with effect from 1 June 2010. The personnel action form of 8 July 2010 recorded "secondment" effective 1 June 2010 with a lien on the post ("Lien on Post: Yes") then encumbered by her in the CDN Section, with an expiry date of 31 December 2010.

14. On 6 August 2010, the Applicant wrote to the Chief of the Human Resources Section ("HRS"), UNICEF India Country Office, seeking clarity on, *inter alia*, the contract duration, the lien on post, and whether "this arrangement is in any way compromising [her] right to complete 25 years of service or more with UNICEF".

15. The Applicant submits that, in September 2010, post no. 51964, encumbered by the Applicant and against which she had a lien, was advertised as a vacancy with changes in the job description/profile (effective June 2010), without notice to the Applicant.

16. The Applicant submits that she was removed from the 2011–2012 Office organigram and, in mid-August 2010, her name was deleted from the list of email distributees for UNICEF announcements. She submits that her name was only restored to the mailing list on 26 October 2010 after reminders by her to that effect. She states that she therefore did not receive the internal vacancy notices mailed to all staff during the prior two months, including the one for her own post.

17. Interviews for post no. 51964 were held on 8 November 2010, while the post was still encumbered by the Applicant.

18. On 10 November 2010, the Applicant received an email from HRS enclosing a letter dated 8 November 2010 from the Representative, UNICEF India Country Office, advising her that she was being reassigned with effect from 8 November 2010 to a new post (no. 68409) in the Office of the Deputy Representative Programmes with a new job description and that her fixed-term appointment would be extended for seven months, i.e., until 31 July 2011, and would thus expire without prior notice on that date. The letter stated:

I am delighted to inform you that you are re-assigned to the post of Child Development Specialist, NO-D. Post No. 68409 under the Office of the Deputy Representative, Programmes, with effect of 8 November 2010 and (copy of the Job Description is hereto attached).

Your contract will be extended until 31 July 2011 and it expires without prior notice on this date. As you know, a Fixed-Term appointment, irrespective of the length of service, does not carry any expectancy, legal or otherwise, or renewal or conversion to any other type of appointment with UNICEF. A Personnel Action and Letter of Appointment will be raised to reflect your move from CDN Section to the Front Office as well as the extension of your contract, and a copy will be sent to you by the HR Section.

19. However, the Applicant continued to report for work at the Planning Commission, Government of India, until 6 January 2011 without having received

the aforesaid contract. The Applicant states that a personnel action form and a letter of appointment, dated 14 and 15 December 2010, respectively, noting extension of appointment and a change of post were forwarded by HRS on 4 January 2011 and received by her on 6 January 2011. She signed the letter of appointment on 7 January 2011, adding a hand-written remark: "Received on 6/1/2011. Signed on the premise that this does not prejudice my right to appeal".

20. On 3 December 2010, the Planning Commission requested the Applicant's "expert services" through a continuation of the existing loan arrangement through 31 May 2012, noting her significant contribution and value to the work of the Planning Commission.

21. UNICEF replied on 13 December 2010 that "beyond the period of current secondment up to 31 July 2011, these services cannot be further available".

22. The Applicant submits that, although these communications related to the performance and contractual status of the Applicant, neither of these communications was shared with her by UNICEF, as required by its own rules.

23. On 7 January 2011, the Applicant requested a management evaluation of the decision to reassign her to a new post and to limit her contract extension to seven months. The Applicant's request for management evaluation stated:

I am writing to you to request for a management evaluation and reconsideration of the administrative decision of the Representative UNICEF India to offer me a Fixed Term appointment for a period of only 7 months i.e., 1 January 2011 to 31 July 2011, against a new post no. 68409, to which I have been reassigned.

...

This was communicated to me by an HRS email of 10 November 2010, enclosing a scanned copy of the letter dated 8 November 2010 from the Representative, UNICEF India.

24. By letter dated 24 February 2011, the Deputy Executive Director of UNICEF replied to the Applicant's request for management evaluation, stating that he saw no reason to rescind the contested decision. The letter stated, *inter alia*:

Accordingly, once the expiration date is reached, no further administrative decision is required for the separation from service to be effective. Therefore, at that time, in spite of the length of service with the Organization, there is no obligation to offer a staff member on a fixed term appointment an extension of his or her contract.

25. On 17 May 2011, the Applicant filed the present application with the Tribunal.

### **Consideration**

26. Article 2.1(a) of the Dispute Tribunal's Statute states that the Tribunal is competent to hear and pass judgment on an application against the Secretary-General appealing "an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment".

27. The Applicant is a former staff member of UNICEF. She submits that her reassignment and the limited extension of her appointment, with resultant separation at the end of the extension period, amounted to constructive dismissal and was contrary to her "legitimate expectation of continued employment" as well as "the terms of her non-reimbursable loan and the corresponding lien on the post formerly occupied by her". She further alleges that the decision was "improperly influenced by retaliatory motives for having complained about unfair treatment and improper actions by her immediate supervisor". The Applicant argues that she has a right to fair treatment as a career international civil servant approaching retirement age, one of the most obvious effects of her "forced" early retirement being the reduction of her pension benefits since she did not complete 25 years of service.

28. The Applicant's request for management evaluation of 7 January 2011, although predating the separation date, timeously raised the issue of limited duration of extension and, by that logic, the resultant subsequent non-renewal.

29. Further, the letter of the Deputy Executive Director of UNICEF, dated 24 February 2011 and sent in response to her management evaluation request, addressed the matters raised in the application before the Tribunal, including the Applicant's concerns that the decision constrained her ability to complete 25 years or more of contributory service with UNICEF and compromised her right to be considered for review for continuing or permanent appointment. In particular, para. 25 of the aforesaid letter of 24 February 2011 made specific reference to the Applicant's separation and encouraged her to apply for other positions to continue her career in UNICEF. Furthermore at para. 12, the Deputy Executive Director reiterated that, "once the expiration date is reached, no further administration decision [would be] required for the separation from service to be effected".

30. The administrative decision contested in this case was obviously not preparatory in nature and gave the Applicant a limited extension of time followed by her separation. The Applicant in this case clearly claims that the contested administrative decision was in breach of her legal rights. This case is plainly receivable under art. 2.1(a) of the Tribunal's Statute. Whether the Applicant's claims are substantiated is a matter for determination on the merits.

31. In the Tribunal's considered view, the present case is amenable to amicable resolution. The Tribunal is of the firm view that if both parties take a reasonable, pragmatic, and fair-minded approach, amicable resolution of all outstanding matters is within their reach. The parties are to consider seriously whether informal dispute resolution is possible, and promptly advise the Tribunal in the event they wish to attempt it.



**Conclusion**

32. In all the circumstances, the Tribunal finds that this application is receivable.

33. By Wednesday, 11 December 2013, the parties are ordered to file a joint submission stating whether they agree to attempt resolving this case informally. If the parties are unable to reach an agreement, they will be ordered to file further submissions.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 27<sup>th</sup> day of November 2013

Entered in the Register on this 27<sup>th</sup> day of November 2013

*(Signed)*

Hafida Lahiouel, Registrar, New York