



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/006
Judgment No.: UNDT/2013/175
Date: 19 December 2013
Original: English

Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Eric Muli, Officer-in-Charge

BELHACHMI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Me. Ben Aberrazik

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM

Introduction and Facts

1. The Applicant joined the United Nations Operation in Côte d'Ivoire (UNOCI) as a Senior Civil Affairs Officer, on 21 April 2007 under a 300-series Appointment of Limited Duration for a period of six months to 21 October 2007. Her contract was then extended for a further month to 20 November 2007.

2. On 22 August 2007, the Applicant made a complaint of harassment to the Chairman of the Field Staff Union Committee at UNOCI.

3. According to the Applicant, on 13 September 2007, following a meeting with the Deputy Special Representative of the Secretary-General (DSRSG), Mr. George Charpentier, she was advised by confidential email that her contract would not be renewed.

4. On 14 September 2007, the Applicant states that she received a "written notification package" to be completed by herself and the DSRSG. At the Applicant's request, a meeting was held with the DSRSG on 20 September 2007, where the Applicant was advised by the DSRSG that the decision not to renew her contract "was final." The Applicant asserted that she was not provided with proper justification for the non-renewal decision, but that it was on the grounds of misconduct. In the following weeks, the Applicant wrote to the DSRSG a number of times requesting justification for the non-renewal of her contract and completion of her performance evaluation.

5. On 22 September 2007, the Applicant complained to Ms. Jane Lute, then Under-Secretary-General for Field Support, about what the Applicant described as gender abuse, abuse of authority, and violation of due process.

6. On 24 September 2007, the Applicant sent an email to the Conduct and Discipline Unit of UNOCI, complaining of “abuse of authority, harassment and rumour mongering...leading to the unjust termination of my contract (October 20, 2007).” The complaint makes reference to “the DSRSG’s ‘announcement’ on September 16 that my contract will not be renewed.”

7. On 8 October 2007, the Applicant received an email from the UNOCI Check-Out Operator, providing details of the check-out procedure and requesting the Applicant to comply with it.

8. On 16 October 2007, the Applicant went on sick leave.

9. On 24 October 2007 the Applicant’s contract was extended for one month, effective 21 October 2007. This short extension was reflected in a letter addressed to the Applicant and dated 5 November 2007. The letter stated:

Please be advised that your appointment is extended beyond its expiry date of 21 October 2007 for a period of one month through 20 November 2007. Please note that this extension is final.

10. There is no evidence on file to indicate why the Applicant’s contract was extended for a month in this way. However, it seems that the Applicant was sick for several months, during which time she wrote again to the DSRSG requesting justification for the non-renewal of her contract. The Applicant claimed that it was not until 1 February 2008 that she received formal notification of the non-renewal of her contract beyond 20 November 2007. It was then, she said, that she received the letter referred to in paragraph 15 above, as an attachment to an email (the 1 February 2008 email) from Mr. Philip Cooper, Director, Department of Field Support, which stated, *inter alia*:

ONUCI informed you in writing last November why your appointment was not extended. As I have been informed, on 11 November 2007, Ms. Rose Gonzales delivered an explanatory letter, together with your performance appraisal, to your residence. Because you were not there

she slid the envelope that contained both of them under the door. I attach a copy of each document for ease of reference.

Consequently, since 20 November 2007, you no longer have been a United Nations staff member...Should you wish to contest the decision not to extend your appointment then you may submit an appeal to the UN Joint Appeals Board, United Nations Secretariat, Room S-2110, New York, NY 10017.

11. Also included was the Applicant's performance appraisal for the period 21 April - 20 October 2007, in the form of a Special Report, apparently completed by the DSRSG, dated 3 November 2007, and indicating that the Applicant's performance was "not satisfactory."

12. Upon receipt of the documents attached to the 1 February 2008 email, the Applicant immediately protested that the performance evaluation was fraudulent because it was not signed by the Applicant's supervisor, but by somebody else. She also demanded payment of her salary for the months of November 2007 - January 2008 and until she received "genuine written notification about [her] contractual status" and a performance evaluation bearing the authentic signature of her supervisor.

13. In late February 2008, on the recommendation of the Field Staff Union, the Applicant contacted the Ombudsman's office for assistance in resolving her disputes with UNOCI. It seems that there were on-going discussions and communications between the parties with the assistance of the Ombudsman's office until July 2009.

14. The Tribunal has not seen the correspondence from the Ombudsman. But it seems from the Management Evaluation letter of 28 December 2010 that the Ombudsman advised the Applicant that all attempts at informal resolution had then failed, and the case was closed.

15. It seems that the Applicant discussed her case with the Office of Staff Legal Assistance (OSLA), and brought it again to the attention of the Field Staff Union.

16. She also wrote to the Under-Secretary-General for Field Support again in February 2008 and in 2009.

17. The Applicant also complained to the Office of Internal Oversight Services (OIOS) in March 2009, referring to “Systemic Gender Abuse and the instrumentalisation [sic] of the medical for profession gain.”

18. On 25 November 2009, Counsel from OSLA wrote to the Applicant advising that:

As repeatedly communicated, our Office has identified the most efficient and effective avenue(s) for you to address your multiple concerns and we have obtained confirmation from the Department of Field Support that it would waive the time-limits that govern these avenue(s). We therefore repeatedly requested you to provide draft submissions for our review. Despite our advice, however, you persist in both request(s) and claims which we assessed as either ineffective or without identifiable merit.

[...]

Please be assured that should you require evidence that the Department of Field Support agreed that time-limits would be waived should you wish to bring the matter to the attention of the Management Evaluation Unit – as well as in relation to the performance report – we will provide the same.

19. On 2 October 2010, the Applicant sent a letter to the Under-Secretary-General for Management, requesting three separate management evaluations in respect of the non-renewal of her contract; gender abuse and discrimination and a ‘medical component.’

20. On 28 December 2010, the Management Evaluation Unit (MEU) responded to the Applicant advising her at length that her request was not receivable. The MEU based this conclusion on the fact that the Applicant was notified of the non-renewal of her contract on 5 November 2007, and that, in accordance with the rules applicable

at that time, any request for review should have been submitted by 5 January 2008.

The MEU wrote:

This was an indispensable condition precedent to bringing an appeal against the decision not to renew your contract, and any other decision, express or implied, which you felt violated the terms of your employment contract with the United Nations. Insofar as you did not, your submission under former Staff Rule 111.2(a) is time-barred.

21. The MEU went on to consider whether there were exceptional circumstances in the Applicant's case warranting a waiver of the rules. The MEU concluded that the delay in submitting the request for review "was the result of a choice you freely made on the basis of your own assessment of the situation and the pertinent Rules. That this assessment was mistaken does not constitute a circumstance beyond your control."

22. Having received the MEU letter, the Applicant did not approach the Dispute Tribunal until 31 May 2011, some five months later, at which point she requested an extension of time to file her Application on the Merits.

Procedural History

23. On 31 May 2011, the Applicant filed an Application dated 24 May 2011, requesting extension of time to file her substantive application.

24. On 9 June 2011, the Applicant applied for extension of time in which to file her Application. By Order No. 60 (NBI/2011), the Tribunal granted the Applicant an extension of two months, until 15 August 2011, to file her Application.

25. On 15 August 2011, the Applicant filed an Application with the UNDT which was served on the Respondent on 17 August 2011. On 19 August 2011, following further correspondence with the Tribunal, the Applicant indicated that she had in fact three separate applications to file with the Tribunal. In view of the apparent difficulties her counsel was experiencing in filing these three claims, the Tribunal

granted the Applicant until 24 August 2011 in which to complete the filing of her three applications.

26. On 24 August 2011, the Respondent filed an Application for Leave to Reply on Receivability and attached a Reply on Receivability.

27. The Tribunal considered the Respondent's Application and issued Order No. 111 (NBI/2012), rejecting the Respondent's Application.

28. On 15 November 2011, the Applicant filed a single Application on the Merits which was served on the Respondent on 16 November 2011.

29. On 17 November 2011, a status conference was held and was attended by the Applicant and Counsel for the Respondent.

30. On 17 April 2012 the Tribunal rejected the application on the ground that it was not receivable *ratione temporis*.¹

31. On 17 May 2012, the Applicant filed a formal recusal request against the Judge handling the case.

32. The Applicant filed a request for correction of the receivability Judgment UNDT/2012/051 on 11 June 2012. In that application the Applicant requested that in the interest of justice and equity the request for revision should be referred to another division of the Tribunal.²

33. The decision on the request for recusal was rendered on 4 March 2013 by a panel of three judges. The panel rejected the request on the ground that it was not

¹ UNDT/2012/051.

² Dans l'intérêt de la justice et de l'équité. Le déplacement du jugement à un autre TCANU [Tribunal du Contentieux Administratif des Nations Unies] est nécessaire pour rendre un jugement impartial.

receivable. The panel added however that even if the request was receivable it had no merits to ground a decision for recusal.

34. In its decision the panel also referred to the recusal in the matter of correction of the receivability judgment. The panel went on to observe that even assuming that the recusal request dated 17 May 2012 also encompassed a request for recusal in the matter of correction, it would be premature to make any pronouncement on that recusal request as the matter was not at the time within the jurisdiction of the judge whom the Applicant was seeking to recuse.³

35. That recusal request was deemed not be receivable at that stage.

Considerations

36. The present application which is in French is titled “rectification” and is in compliance with the French texts of the Statute and Rules of Procedure of the Tribunal. The English texts use the word correction but the two words have the same meaning.

37. The first issue that the Tribunal has to decide is whether there is a proper recusal request before it and whether it is receivable so as to warrant a referral to the President of the Tribunal for a determination under article 28.2 of the Rules of Procedure.

38. Recusal is governed by articles 27 and 28 of the Rules of Procedure. Article 28 prescribes:

³ A supposer que la demande de la requérante du 17 mai 2012 puisse être considérée comme tendant aussi à la récusation du juge Boolell pour une demande en rectification de jugement, qu'elle n'a présentée que le 11 juin 2012, le college de trois juges ne peut que rappeler qu'un requérant ne peut récuser un juge pour une affaire tant qu'elle ne lui a pas été affectée. Ainsi la demande de récusation liée à la demande en rectification présentée ultérieurement est irrecevable comme prématurée.

1. A Judge of the Dispute Tribunal who has, or appears to have, a conflict of interest as defined in Article 27 of these Rules shall recuse from the case and inform the President.
 2. A party may make a reasoned request for the recusal of a Judge, on the grounds of a conflict of interest, to the President of the Dispute Tribunal who, after seeking comments from the Judge, shall decide on the request and shall inform the party of the decision in writing. A request for recusal of the President shall be referred to a three-Judge panel for decision.
39. Conflict of interest is defined in article 27 of the Rules of Procedure:
1. The term “conflict of interest” means any factor which may impair or reasonably give the appearance of impairing the ability of a Judge to independently and impartially adjudicate a case assigned to that Judge.
 2. A conflict of interest arises where a case assigned to a Judge involves any of the following:
 - (a) A person with whom the Judge has a personal, familiar or professional relationship;
 - (b) A matter in which the Judge has previously served in another capacity, including adviser, counsel, expert or witness; or
 - (c) Any other circumstances which would make it appear to a reasonable and impartial observer that the Judge’s participation in adjudication of the matter would be inappropriate.

40. From a reading of the definition of conflict of interest in article 27.1, it is clear that a conflict pertains to the ability, impartiality and independence of a judge to adjudicate a case. The adjudication of a case means “the legal process of resolving a dispute; the process of judicially deciding a case.”⁴

41. The correction of a judgment does not involve or require any form of adjudication of a dispute between parties. The request for recusal is therefore not receivable and does not warrant a referral to the President of the Tribunal for determination.

42. In a long list of particulars, the Applicant through her Counsel lists a number of matters that should, according to him be rectified. The Tribunal does not intend to set out all these details. Suffice it to say that they are all of a substantive nature and would be more appropriately dealt with by an appellate Tribunal. What the Applicant is asking this Tribunal to do is to sit on appeal on its own decision.

43. Correction or rectification of a judgment is strictly limited to “arithmetical mistakes or errors arise therein from any accidental slip or omission” as provided for in article 12.2 of the Statute of the Tribunal and article 31 of the Rules of Procedure.

44. None of the particulars listed out in the application are related to any of the errors provided for by the above-quoted provisions, so that there is nothing to rectify or correct in the present Application.

Conclusion

45. The Application is hereby **DISMISSED**.

⁴ Black’s Law Dictionary Eighth Edition.

(Signed)

Judge Vinod Boolell

Dated this 19th day of December 2013

Entered in the Register on this 19th day of December 2013

(Signed)

Eric Muli, Officer-in-Charge, UNDT, Nairobi