



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

JANSEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Simon Buettner, UNOG

Introduction

1. By application filed on 11 October 2013, the Applicant contests the decision of the Executive Officer, United Nations Economic Commission for Europe (“UNECE”), not to renew his fixed-term appointment beyond 31 May 2013.

Facts

2. The Applicant joined the UNECE on 23 September 1996, as an Expert at the L-4 level, funded by extra-budgetary sources under the Trust Fund project *Improving Trade Finance and Investments for the Russian Timber Section*. The project was temporarily frozen between August 1997 and January 1998 and the Applicant’s appointment expired on 31 July 1997. However, on 16 February 1998, the Applicant was reappointed within UNECE and resumed work on the project.

3. On 1 November 2001, he was promoted to the post of Project Manager, at the L-5 level, of the same project. He was moved from the Trade Division to the Technical Cooperation Unit, UNECE, in June 2005. His appointment was extended until 31 December 2006 and from 1 January to 30 June 2007, under the Trust Fund project *Industry – Structural Change and Development*. From 1 July 2007 to 30 September 2008, his post was charged to different projects.

4. In July 2008, the UNECE Executive Committee approved the project *Development of Sustainable Biomass Trade and Export Opportunities for selected regions of the Russian Federation* (hereinafter “the project”), on the basis of a proposal from the Russian Government. The project was based in Russia and exclusively funded by the Russian Government (extra-budgetary).

5. The Applicant’s appointment was further extended from 1 October 2008 through 31 May 2013, as Project Manager (L-5), within the project. In the framework of the human resources reform of 1 July 2009, the Applicant received a fixed-term appointment (“FTA”) as Senior Project Manager, at the P-5 level, UNECE, Economic Cooperation and Integration Division (“ECID”).

6. By letter of 5 June 2012, from the Russian Permanent Mission to the United Nations in Geneva, the UNECE was informed about the intention of the Russian Federation to revise the concept of the project to have it managed by the existing staff of the Sustainable Energy Division (“SED”).

7. In an email dated 26 June 2012, from the Russian Permanent Mission to the United Nations in Geneva to the Director, Programme Management Unit, Office of the Executive Secretary, UNECE, it was stressed that the Russian Mission would be ready “to continue the funding of an [extra-budgetary] staff member for the duration period of an approved project with the understanding that at this moment, until the project [was] revised by the Russian respected ministries, the only expenses the Russian side [would] be covering [was] the salary. All other previously agreed activities should be stopped until further notice”. It was further stressed that “the intention of the Russian side [was] not to resume the project after 2013”.

8. By memorandum of 26 July 2012, the Officer-in-Charge, Executive Office, UNECE, informed the Applicant that in view of the fact that the donor no longer supported the funding of the project, the UNECE was no longer in a position to extend his appointment beyond 30 November 2012.

9. On 21 September 2012, the Applicant filed a first request for management evaluation, against the decision of 26 July 2012, requesting the Management Evaluation Unit (“MEU”) to put his case in abeyance until 15 November 2012, in view of ongoing efforts to solve the matter amicably via the Ombudsman.

10. Upon receipt of confirmation that the Ombudsman was actively involved in the informal resolution of the case, the MEU informed the Applicant that it would put the case in abeyance.

11. By letter dated 27 September 2012, from the Russian Permanent Mission to the United Nations in Geneva, the Executive Secretary, UNECE, was informed that the Russian government agreed to continue to provide financial resources to cover the salary and related benefits for the Applicant as Project Manager, during the implementation period of the project. In the letter, the Ambassador stressed

that in view of existing capacities at the national level in Russia, the Russian government had decided to discontinue the project by 1 June 2013.

12. The Applicant signed his letter of appointment, effective 1 December 2012, on 9 November 2012. It reads under “Tenure of Appointment” that “it ... expires without prior notice on 31 May 2013” and under “Special conditions” that “[the] appointment is limited to the department and post”.

13. By email of 13 November 2012, an Administrative Assistant, UNECE, sent the Applicant a memorandum of the Executive Secretary, UNECE, dated 2 November 2012, informing him that since the Russian Federation had confirmed its decision to discontinue the project by 1 June 2013, his FTA would not be extended beyond 31 May 2013. On 15 November 2012, the Applicant forwarded said memorandum to the MEU, referring to his pending case, and asking the MEU “to incorporate the annexed letter in [his] current case and hold [his] MER in abeyance till 28 February 2013 as informal resolution efforts [were] ongoing”.

14. By email of 26 November 2012, the MEU responded to the Applicant that it would keep his case in abeyance until 28 February 2012 (sic), and asked the Applicant to inform the MEU by that date whether any progress had been achieved with respect to the informal resolution of the case.

15. By letter dated 30 January 2013, the Dutch Ministry for Foreign Affairs informed the UNECE of its decision to support the proposed UNECE project *Sustainable Development of the Biomass Sector* and requested guidance on the administrative aspects of such cooperation.

16. On 19 February 2013, the Applicant asked the MEU to continue to hold his case in abeyance until 31 May 2013, since he had secured some funding for the extension of his contract beyond 31 May 2013, but that the finalisation of the funding process was taking time. By email of the same day, the MEU responded to the Applicant that:

Upon a review of your case, we noted that your original request for management evaluation challenged the decision of 21 September 2012 (sic) not to extend your contract beyond

30 November 2012. We then noted that on 2 November 2012, you were notified that your contract will be extended until 31 May 2013. Your email of 19 February 2013 confirms this information. Thus, the decision of 2 November 2012 supersedes the decision of 21 September 2012 (sic), and renders your entire case MEU/708-12/R moot. Therefore, we will proceed to close your file, related to the 21 September 2012 (sic) decision since it no longer stands.

However, this is without prejudice to your ability to submit another request for management evaluation challenging future non-extensions of your contract or any other administrative decisions that you think violate your rights as a staff member.

17. On 22 March 2013, the Applicant met with the Director, SED, UNECE, in order to discuss the possibility of alternative assignments.

18. By letter dated 25 March 2013, MEU, referring to the Applicant's correspondence of 21 September 2012 to the MEU, noted that:

- a. while the MEU—upon the Applicant's request—had put the case in abeyance on 27 September 2012, he had received, on 2 November 2012, notification that his FTA would be extended until 31 May 2013; and
- b. he had notified MEU on 19 February 2013 that he had secured new funding hence a solution to his case had been found.

19. In the same letter, MEU further stated that “since the decision to extend [the Applicant's] appointment until 31 May 2013, superseded the decision to terminate [his] appointment on 30 November 2012, the MEU considered that [his] current request for management evaluation [was] moot”; in closing, the MEU advised the Applicant that it would “thus [proceed] to close [the Applicant's] file.

20. On 25 April 2013, the Applicant met with the Executive Secretary and the Officer-in-Charge, ECID, to discuss his situation. Thereafter, on 10 May 2013, the Executive Secretary, UNECE, requested the Chief, Human Resources Management Service (“HRMS”), United Nations Office at Geneva (“UNOG”), to approve the exceptional extension of the Applicant's FTA through 31 August 2013, against the post of Chief, Energy Industry Section (P-5) in the

SED, in view of the ending of the project on 31 May 2013 and the need for the Applicant to finalise the project results.

21. The Chief, HRMS, UNOG, responded to the Executive Secretary, UNECE, by memorandum of 28 May 2013, stating that according to a recent memorandum from the Officer-in-Charge, Department of Management (“DM”), “regular budget posts should not be used to subsidize extra-budgetary activities, such as by charging extra-budgetary personnel to vacant regular budget posts” and that any exception to this policy should be addressed to the Under-Secretary-General (“USG”), DM.

22. In a meeting between the Applicant and the Officer-in-Charge, ECID, and the Executive Officer on 29 May 2013, the Applicant was informed that, after having exhausted all possible options, his contract would not be renewed beyond 31 May 2013.

23. The same was reiterated by email to the Applicant of 30 May 2013, in which the UNECE Administration, referring to the memoranda of 26 July and 2 November 2012, informed the Applicant that since all possibilities with respect to his contractual situation had been exhausted, and in view of the fact that the funding of the project came to an end, his FTA could not be extended beyond 31 May 2013. In this email, it was stressed that UNECE had always been “transparent with [the Applicant] about it”, referring to the memoranda of 26 July 2012 and of 2 November 2012. It was also stated that the response of the Chief, HRMS, on the approval of an exception was negative and that UNECE did not think it had concrete evidence to seek an exception from United Nations Headquarters.

24. On 31 May 2013, the Applicant requested management evaluation of the decision not to renew his appointment beyond 31 May 2013 or, alternatively, of “the decision not to request [his] exceptional placement on a TVA against a vacant P-5 post in the [SED] ... in line with assurances provided to [him]”. He was separated the same day.

25. By letter of 15 July 2013, the USG for Management informed the Applicant that the Secretary-General had decided to accept the recommendation of the MEU to uphold the contested decision.

26. The Applicant filed the present application on 11 October 2013 and the Respondent filed his reply on 25 November 2013. On 5 December 2013, the Applicant filed a request to file comments on the Respondent's reply, which was granted by Order No. 17 (GVA/2014) of 27 January 2014. The Applicant filed those comments on 21 February 2014, and on 27 February 2014, the Respondent submitted a motion to comment on the Applicant's latest submission. The latter was granted by Order No. 39 (GVA/2014) of 28 February 2014 and the Respondent filed his additional comments on 14 March 2014.

27. By Order No. 100 (GVA/2014) of 27 June 2014, the parties were convoked to a hearing on 23 July 2014. During the hearing, the Tribunal requested the Applicant to submit additional information with respect to the timeliness of his request for management evaluation and of the application, and the Respondent to file comments on the Applicant's submission once received by the Tribunal. The Applicant filed his submission in compliance with the Tribunal's order on 5 August 2014; the Respondent filed his comments on the Applicant's filing on 19 August 2014.

Parties' submissions

28. The Applicant's principal contentions are:

- a. The application is receivable, he did everything he could to contest the non-renewal of his FTA within the statutory time-limits;
- b. The non-renewal decision was motivated by extraneous considerations, particularly undue political pressure from the Russian government;
- c. He successfully worked for UNECE for more than 16 years; the project benefited from widespread support amongst donor governments,

member states, beneficiaries and third parties and had been described as a flagship UN project in the area of renewable energy sources;

d. In any event, the Russian government had agreed to fund the post between 2011 and 2013; thus, the Applicant had a legitimate expectation that his contract be renewed and his salary be paid until the end of 2013; the Donor's withdrawal of funds was therefore not a legitimate reason not to extend the Applicant's contract beyond 31 May 2013;

e. The Deputy Executive Secretary, UNECE, had assured him that if he were to find alternative funding, the project would continue and his contract would be extended; the Government of the Netherlands had agreed to continue funding the project after 31 May 2013, but UNECE failed to provide it with the requested administrative guidance on how to implement the cooperation; hence, no such funds could be disbursed by the Dutch government;

f. The memo of 10 May 2013, by which UNECE requested UNOG, HRMS, to approve the extension of his appointment, created a legitimate expectancy that the previous pattern of contract renewals would again be approved, as it had been the case over the last 15 years;

g. The Executive Secretary, UNECE, had verbally approved that the Applicant be laterally moved to one of the three P-5 positions available within SED; one of these posts had been vacant since 1 January 2013 and was extra-budgetary, as such not falling under the restrictions provided for in the Controller's memorandum of 15 March 2012; this post is of the same type as the one he occupied at the time of his separation on 31 May 2013;

h. According to sec. 2.5 of ST/AI/2010/3 (Staff Selection system), lateral moves within a Department are within the discretionary authority of Heads of Department, in this case the Executive Secretary, UNECE;

i. UNECE failure to request the USG, DM, to make an exception to allow that the Applicant be charged against a regular budget post,

constitutes a violation of its duty to use its best efforts to try to find the Applicant another post; he was not provided with a proper explanation why such an exception was not sought;

j. Anyways, under the terms of the Controller's memorandum of 15 March 2012, as the holder of a FTA, he could have been temporarily charged against an available regular budget post of the same duty station (Geneva), for which he could have temporarily performed the full functions; therefore, no exception from the policy contained in that memorandum was needed;

k. The UNECE was required to take steps to regularize all its former 200-series staff members by 31 December 2014, including him, but failed to do so;

l. In view of his long service and the fact that he served on several projects of limited duration with different funding in his career, the Administration cannot simply rely on the lack of funding to justify his non-renewal: since his post had become of unlimited duration, he had an expectation that his contract be renewed or that he be found another post; in fact, after the contractual reform of 2009, his FTA was not limited to his post, but only to the level and department;

m. The Applicant requests reinstatement and extension of his contract until his normal retirement age (62) or that UNECE be ordered to pay him compensation for lost income and pension until 31 July 2015; compensation for moral damages suffered as a result of him being excluded from the project and for severe hardship and emotional distress; legal fees to file his application of at least CHF6,000.

29. The Respondent's principal contentions are:

a. The application is not receivable *ratione temporis*; the decision of 29 May 2013 is a confirmative decision of the initial decision of 2 November 2012, hence it does not reset the clock for management

evaluation; the Applicant failed to submit an application within the statutory deadline of 90 days under staff rule 11.4(a) once he received the MEU response of 25 March 2013 to his initial request for management evaluation; also, even under staff rule 11.4(c) his application was time-barred, since the Administration stated at the latest on 30 May 2013 that any efforts to solve the matter informally were discontinued; the case does not show any exceptional circumstances to justify a waiver of the time-limit under art. 7.5 in connection with art. 35 of the Tribunal's Rules of Procedure; the application should therefore be dismissed, as irreceivable;

b. The decision was legal and constitutes a correct exercise of the Administration's discretion; although it was in no obligation to do so, the Administration tried to find a solution for the Applicant's situation, though unsuccessfully; this undertaking did however not amount to any promise or formal commitment of renewal;

c. Under staff regulation 4.5 and staff rule 4.13, FTAs do not carry any expectancy, legal or otherwise, of renewal; this has been confirmed by the jurisprudence of the Dispute and the Appeals Tribunal; in the case at hand, the non-renewal decision was based on a valid reason, which was provided to the Applicant;

d. The project had been approved by the UNECE Executive Committee in July 2008, in accordance with the normal UNECE practice as outlined in the extra-budgetary project guidelines; Russia was the only donor for this extra-budgetary project hence for the extra-budgetary funding of the Applicant's post; it was therefore completely within Russia's discretion to discontinue the funding and UNECE had no choice but to accept that decision, particularly since Russia was under no contractual obligation to continue the funding; staff members have no right and the Administration is not obliged to protect a technical cooperation project in order to secure someone's employment;

e. The donor explicitly stated that the project and relevant funding would be discontinued on 1 June 2013; therefore, the Applicant's argument that the

Donor had agreed to fund the project until the end of 2013 is unfounded; the Applicant was notified of this decision (funding discontinuation) and of the resulting decision (non-extension of his appointment beyond 31 May 2013) well in advance, namely on 2 November 2012; since then and until May 2013, no communication was sent to the Applicant that could be considered as superseding the November 2012 memorandum;

f. The Applicant only secured a letter pledging funds from the Dutch government, not a cash contribution needed as per ST/AI/285 (IV) and ST/SGB/188, para. 40, to allow UNECE to allot funding for and to extend the Applicant's contract; the Applicant was verbally told that UNECE had to receive a cash contribution to extend his contract and that it was the Applicant's responsibility, as Programme Manager, to follow-up and provide the Dutch government with the requested administrative guidance to implement a potential cooperation; the new project did not materialize in due time as the proposal was not ready to be submitted for approval to the UNECE Executive Committee; hence, there was no basis to request any country's contribution to finance such programme; even if a new project had been approved by Executive Committee, this would have implied a new recruitment process for a project manager;

g. The project the Applicant was working on was not extended beyond 31 May 2013;

h. The Applicant did not meet the burden of proof with respect to an undertaking on the part of the Administration to have created a legitimate expectancy that his contract would be renewed; in fact, no express or implicit promise or firm commitment able to create such an expectancy was given by the Administration; particularly, the Applicant did not produce any evidence with respect to the assurances he alleges he was given by UNECE management;

i. None of the three P-5 posts at SED was extra-budgetary; hence, UNECE was precluded from using them to charge the Applicant's extra-budgetary post against it; a lateral transfer under sec. 2.5 of

ST/AI/2010/3 was not possible, since the Applicant's appointment was limited to his post and he had not undergone a competitive selection process and as such could not be transferred to a regular position;

j. The Applicant, who carries the burden of proof, does not provide evidence of his allegation that the decision was motivated by extraneous factors; the Administration, in its dealing with him, complied with its duty to act fairly, justly and transparently;

k. The Administration was under no obligation to find alternative employment for the Applicant; the decision not to extend his appointment, on the grounds that the donor decided not to finance the project any longer, was legal and the application should be dismissed in its entirety.

Consideration

Receivability

30. The Appeals Tribunal has confirmed that even if not raised by the parties, the Dispute Tribunal has a duty to raise receivability issues at its own motion (cf. *Christensen* 2013-UNAT-335; *Chakroun* 2014-UNAT-406). Moreover, the Appeals Tribunal has consistently held that the various statutory time limits have to be strictly enforced (*Mezoui* 2010-UNAT-043; *Samuel Thambiah* 2013-UNAT-385; *Al-Mulla* 2013-UNAT-394) and that the mere confirmation of an original decision does "not have the effect of suspending, or restarting, the time limits for initiating formal proceedings" (*Cremades* 2012-UNAT-271; see also *Sethia* 2010-UNAT-079).

31. On the other hand, the Appeals Tribunal has held in *Faraj* 2013-UNAT-331, that an Applicant acting in good faith can fully rely on the explicit and misleading legal instructions received from the Administration with respect to the appeals procedure, and that an application cannot be found irreceivable on the grounds that the Applicant, in following that erroneous advice, did not comply with the statutory time limits.

32. Mindful of the above jurisprudence, and before analysing in-depth the chain of communication between the Applicant and the MEU, the Tribunal recalls that the Applicant sent a first request for management evaluation on 21 September 2012, of the decision of 26 July 2012 not to extend his appointment beyond 30 November 2012, which—upon his request—MEU put in abeyance. On 15 November 2012, he requested MEU to incorporate the decision of 2 November 2012 not to renew his appointment after 31 May 2013 into his pending MEU request. Thereafter, and after he had received several communications from MEU (cf. here below), the Applicant submitted another request for management evaluation on 31 May 2013, of the decision of 29 May 2013 not to extend his appointment beyond 31 May 2013. Upon receipt of the MEU response of 15 July 2013 to his last request for management evaluation, the Applicant filed the present application on 11 October 2013.

33. In view of the above timeline and jurisprudence of the Appeals Tribunal, the Tribunal first has to assess whether the decision of 29 May 2013 constituted a new, separate administrative decision subject to independent review or whether it constituted a mere confirmation of the earlier decision of 2 November 2012.

34. The Tribunal notes that the memorandum of 2 November 2012, notified to the Applicant on 13 November 2012, unequivocally and without any conditionality informed the latter that his FTA was not going to be renewed beyond 31 May 2013, since his project post was to expire at that date. It explicitly reads: “[p]lease accept this letter as an advance notice of ending of your fixed-term appointment with UNECE on 31 May 2013.”

35. On the one hand, while after 2 November 2012, the Applicant and others within UNECE made efforts to find alternative funding to continue the financing of his post and/or to find alternative placement for the Applicant, these actions did not in themselves modify the content of the decision of 2 November 2012. They rather show that the non-renewal decision of 2 November 2012 might have been reversed under certain circumstances e.g. if the funding of the project had continued beyond 31 May 2013. However, the foregoing does not imply—as argued by the Applicant—that when all these efforts failed, a new decision not to

extend the Applicant's appointment beyond 31 May 2013 was taken on the basis of new facts.

36. On the other hand, the decision of 29 May 2013 does not include any new elements regarding the crucial content of the decision of 2 November 2012, i.e. that the Applicant's contract would not be renewed beyond 31 May 2013. Neither does it include new grounds for this decision, i.e. that the funding of the project—and, hence, of his post—had come to an end. Finally, the failure to request the USG, DM, to make an exception allowing that the Applicant be charged against a regular budget post, does not amount to an administrative decision since it can only be considered as one step which could have led to an administrative decision, but not as an administrative decision in itself (cf. *Ishak* 2011-UNAT-152). Therefore, the decision of 29 May 2013 constitutes a mere confirmation of the original decision of 2 November 2012, and does not reset the clock for appealing the non-renewal decision the Applicant wants to contest.

37. It follows that the date of notification of the decision of 2 November 2012, that is, 13 November 2012, was the date at which the deadline under staff rule 11.2(c) started to run. It follows that the present application, filed only on 11 October 2013, does not seem to meet the well-known time-limit.

38. However, the Tribunal notes that in forwarding the decision of 2 November 2012 to the MEU on 15 November 2012, the Applicant took timely action under staff rule 11.2(c) to protect his rights. Clearly, by that action, the Applicant intended to extend his pending MEU request to that new decision not to extend his appointment beyond 31 May 2013. In view of the then ongoing efforts to settle the issue, he requested, and the MEU agreed, to further put his case, which now related to the decision of 2 November 2012, in abeyance. The Tribunal notes that the Applicant's intention to extend his request for management evaluation to that new decision was not contradicted by the MEU, which at no point told the Applicant that if he intended to request management evaluation of the 2 November 2012 decision, he had to submit a new, separate request to the MEU. Rather, it accepted to incorporate the decision, which changed the date of

the end of the Applicant's appointment from 30 November 2012 to 31 May 2013, into his pending request for management evaluation.

39. The Tribunal is concerned that thereafter the MEU, by its communication of 19 February 2013—that is, long after the 60-day deadline to request management evaluation of the 2 November 2012 decision had elapsed—stated that “the decision of 2 November 2012 supersedes the decision of 21 September 2012 (sic), and renders [the Applicant's] entire case MEU/708-12/R moot”, and that it would proceed “to close the file, related to the 21 September 2012 (sic) decision since it no longer stands”. Indeed, while at that stage, a request for review of the decision of 26 July 2012—not of 21 September 2012 as mistakenly referred to by the MEU—had become moot, this was not the case for the decision of 2 November 2012, which was to take effect on 31 May 2013. In that same communication, the MEU further induced the Applicant in error when it stated that the foregoing was “without prejudice to [his] ability to submit another request for management evaluation challenging future non-extensions of [his] contract” (emphasis added by the Tribunal), since the Applicant could only understand that at that point, no further action was to be taken by him with respect to any earlier decisions, including the decision of 2 November 2012, and that any further action was only required if the Applicant were to be notified of a new (“future”) decision of non-extension of his contract.

40. The MEU further reinforced the incorrect understanding when by its letter dated 25 March 2013 addressed to the Applicant, it reiterated the terms of the earlier communication of 19 February 2013, and stressed that the MEU would proceed to close the Applicant's file. This letter clearly did not constitute a substantive review of the Applicant's request for management evaluation, which by then undoubtedly extended to the decision of 2 November 2012. The Tribunal noted that the letter did not contain the standard paragraph usually contained in a substantive response upholding the contested decision, namely that “any recourse in respect of [a] decision may be addressed to the UNDT in accordance with Staff Rule 11.4.”

41. The Tribunal considers that under the circumstances of the case at hand and in light of the above-referenced jurisprudence of the Appeals Tribunal in *Faraj* 2013-UNAT-331, the Applicant could in good faith conclude that no further action was to be taken by him with respect to the 2 November 2012 decision but that he could request a new review if he received a “future” non-renewal decision. Therefore, while not technically a new, but rather a confirmative decision of the earlier decision of 2 November 2012, the Tribunal finds it understandable that the Applicant proceeded to again request—timely—review of the decision of 29 May 2013, on 31 May 2013. It further notes that upon receipt of the letter of 15 July 2013 in response to his latest request for management evaluation, the Applicant ensured to file the application timely, that is on 11 October 2013. Finally, the Tribunal finds it noteworthy that the response of 15 July 2013 to the Applicant’s request for management evaluation of 31 May 2013, while upholding the non-renewal decision, does not raise the issue of the timeliness of the request for management evaluation.

42. In applying the rationale of *Faraj*, in view of the diligence applied by the Applicant throughout the process, and the fact that he could in good faith rely on information received from the MEU, the Tribunal finds that the present application with respect to the decision not to extend the Applicant’s appointment beyond 31 May 2013, as initially contained in the memorandum of 2 November 2012, and confirmed by the decision of 29 May 2013, is receivable, *ratione materiae* and *ratione temporis*.

Merits

43. With respect to the merits of the case, the Tribunal recalls the longstanding and consistent jurisprudence of the Appeals Tribunal according to which a fixed-term appointment has no expectation of renewal or conversion to another type of appointment (*Pirnea* 2013-UNAT-311) and that if based on legitimate reasons, supported by the facts, fixed-term appointments may not be renewed (*Islam* 2011-UNAT-115). To determine the lawfulness of a non-renewal decision, the Dispute Tribunal must assess whether the Administration abused its discretion, whether the decision was based on discriminatory or other improper

considerations, or whether the Administration made an express promise creating an expectancy that an Applicant's appointment be renewed (*Abdalla* 2011-UNAT-138; *Ahmed* 2011-UNAT-153). In a recent judgement, the Appeals Tribunal stressed that to create an expectancy of renewal such express promise by the Administration has to be "at least ... in writing" (*Igbinedion* 2014-UNAT-411).

44. The Tribunal studied, in-depth, the parties' submissions and available documentation and finds that the case file does not contain an express promise, in writing or otherwise, which could have created a legitimate expectancy for the Applicant to have his FTA renewed. While attempts were made to find alternative funding and/or placement for the Applicant, and the UNECE Administration wrote to HRMS, UNOG, seeking the approval to exceptionally extend the Applicant's FTA through 31 August 2013, it is clear that the Administration was cautious not to provide the Applicant with an express promise that such efforts would indeed materialize.

45. Moreover, the Tribunal recalls that the Applicant's letter of appointment, signed by him on 9 November 2012, contained a special condition according to which his "appointment [was] limited to the department and post". The case file undoubtedly shows that the Russian government, as the sole donor of the project, decided to discontinue the funding of the project, hence of the post encumbered by the Applicant, as of 1 June 2013 (the letter of 27 September 2012 from the Russian Permanent Mission to the Executive Secretary, UNECE, refers). While, thereafter, attempts were made, particularly by the Applicant, to find alternative funding, the Tribunal cannot but conclude that a continued funding of the project beyond 1 June 2013, did not materialize. Also, any pledge of funding by the Dutch government, secured by the Applicant, did not materialize and even if it had, it would have implied a new project yet to be approved by the UNECE Executive Committee and a new recruitment process for the post of project manager, but not an automatic extension of the Applicant's FTA. Most importantly, the Tribunal recalls that the project, hence the post encumbered by the Applicant, was, *de facto*, discontinued as of 31 May 2013.

46. Finally, in view of the nature of the Applicant's contract and status, the Tribunal notes that the Administration did not have an obligation to place the Applicant in another department or to otherwise secure his continued employment.

47. Therefore, the Tribunal concludes that the Administration provided the Applicant with a legitimate reason for the non-renewal of his appointment beyond 31 May 2013, and that the reason was supported by the facts. While the Tribunal regrets that the Applicant, who throughout his career made a considerable contribution to the Organisation in his area of expertise, had his FTA not renewed, it could not find that the decision was based on any extraneous factors or that the Administration acted otherwise in bad faith. Rather, the decision constituted a lawful exercise of discretion on the part of the Administration.

Conclusion

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

The application is rejected in its entirety.

(Signed)

Judge Thomas Laker

Dated this 29th day of August 2014

Entered in the Register on this 29th day of August 2014

(Signed)

René M. Vargas M., Registrar, Geneva