



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

SEYFOLLAHZADEH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Esther Shamash, UNDP

Introduction

1. By application filed on 17 November 2015, the Applicant contests “the decision to terminate [her] permanent contract after more than 17 years of working with [the United Nations Development Programme (“UNDP”)], for the purported reason of lack of financial resources leaving [her] without a placement from 17 April 2015 which was the start of the Job Search period imposed in [her] while the Country Office had vacant positions that suited her area of expertise and experience”.
2. The Respondent filed his reply on 10 December 2015.

Facts¹

3. The Applicant joined UNDP on 1 November 1997, as Secretary (Programme) at the G-4 level, UNDP, Country Office, Iran. She was promoted to the G-5 level, to the position of Programme Assistant, on 1 July 2000 and to the G-6 level on 1 July 2003. Her fixed term appointment was converted into a permanent one effective 30 June 2009.
4. In 2011, the Applicant applied and was selected for a National Officer post (“NOB”) as Global Fund Project Manager, and started her new appointment in January 2012. This post was funded through project funds.
5. The letter of appointment, signed by UNDP management on 18 December 2011 and by the Applicant on 15 January 2012, states that she was “offered a permanent contract” as Global Fund Project Manager (NOB II), TB Component – Services Limited to GF Project, with an assignment for a fixed-term of one year, from 1 January to 31 December 2012. It further noted that as a permanent staff member, she would “carry over [her] ‘permanent status’ into the project funded position”.

¹ The facts, insofar as they are relevant, are taken from Judgment *Seyfollahzadeh* UNDT/2015/037

6. A note for the record dated 18 December 2011 was provided to the Applicant in January 2012, stating that she had been selected for an NBO position, in a donor funded project with available funding until the end of September 2013, that, hence, at that stage, “the project [could] only commit to fund an FT contract from 1 January 2012 till 30 September 2013”, and that in view of the Applicant’s status as a permanent staff member, “at the time of project closure which [would] result in post abolishment, [she] [would] receive termination indemnity as per the UNDP rules and regulations of ‘Agreed Separation’”.

7. By letter dated 16 April 2014, the Resident Representative informed the Applicant that the position she was encumbering would be abolished effective 30 September 2014, since it was no longer funded and the functions were no longer needed. She was encouraged to apply for other vacancies, and was told that in view of her status as holder of a permanent appointment she would be given priority consideration over equally qualified candidates who were not permanent or long serving. She was further told that she would be given a three-month job search period to focus on finding other job opportunities, from 17 April to 17 July 2014. Finally, in case she would not secure employment during that period, the Applicant was advised that the following three months from 18 July to 17 October 2014 would count as notice of separation period. Thereafter, should she still not have secured a post, she might either undertake a fully funded temporary assignment or take special leave without pay, or apply for agreed separation. She was asked to inform UNDP about her preferred option two weeks prior to the end of her initial search period; otherwise, the Organization would automatically place her on three months’ notice of separation period.

8. On 23 June 2014, the Office of Staff Legal Assistance (“OSLA”) wrote to a Legal Specialist, Legal Support Office, UNDP, with respect to the abolition of the Applicant’s post as of 30 September 2014, and to the terms of the letter of 16 April 2014, noting that it appeared that UNDP was not making sufficient efforts to assist the Applicant in securing further employment. OLSA also raised concerns regarding medical coverage after separation.

9. On 18 July 2014, the Applicant, through OSLA, submitted a request for management evaluation of the decision not to provide her with after-service health insurance (“ASHI”), referring to a notification of said decision on 27 May 2014. No other issues were included in this request for management evaluation.

10. By email of 30 September 2014, the Deputy Resident Representative informed the Applicant that the Country Office had secured additional funding to cover the cost of the post until 31 December 2014, and that UNDP, Headquarters, had advised that the notice separation period, ending 17 October 2014, would be maintained. The temporary assignment would follow the notice period, thus running from 18 October to 31 December 2014, and, in case no further additional funding was found, the Organization would proceed with her separation effective 31 December 2014.

11. In reply to her inquiry in August 2014, the Applicant was informed, on 31 December 2014, that she could use her 60 days of annual leave instead of converting them into payment. The Applicant remained in service beyond 31 December 2014 for administrative purposes only, that is, under annual leave and, subsequently, certified sick leave, until her separation.

12. The Applicant filed her first application with the Tribunal on 12 January 2015, registered under Case No. UNDT/GVA/2015/004, contesting, *inter alia*, her separation from service, and her being deprived from after service health insurance as well as from the benefits of the United Nations Joint Staff Pension Fund (“UNJSPF”).

13. On 11 March 2015, the Applicant asked the Deputy Resident Representative to advise her on the balance of her annual leave after the end of March 2015, which she calculated would allow her to remain in service for administrative purposes until 14 April 2015. She stated that “once [she would] hear on the balance of [her] annual leaves, [she would] inform [him] if [she] [would] use her leave days or commute them to cash”. She subsequently decided to take her annual leave and not to convert it into cash.

14. By email of 23 March 2015, the Deputy Resident Representative informed the Applicant that she would soon receive a detailed response on the separation papers/process.

15. On 24 March 2015, the Applicant sent an email to the Deputy Resident Representative, stating that despite her request and follow up since December 2014, “[she had] not yet received the separation papers to review”, she further noted that “she would highly appreciate it if the papers along with the necessary procedures could be sent to [her] for review”.

16. By email of 30 March 2015, the Deputy Resident Representative informed the Applicant that her annual leave would be exhausted on 14 April 2015, and asked her which of the following three options would be her preference:

- a. Agreed separation on 14 April 2015, which would require her signing a certificate of non-contestation and withdrawing her application before the Tribunal; or
- b. A period of special leave without pay for the sole purpose of bridging the gap until she becomes eligible for ASHI, followed by an agreed separation on 20 February 2018; or
- c. Termination on 14 April 2015.

17. The Applicant was requested to respond within ten business days of receipt of the email in question with how she wished to proceed. The Deputy Resident Representative noted that if the Applicant were to decline the two options under paras. 16.a and 16.b above, or if she were to fail to respond, UNDP would initiate termination of her appointment in accordance with the UN Staff Regulations and Rules, and that she would be entitled to a termination indemnity. He also recalled that the three months’ notice period had already expired.

18. The Applicant responded by email of 12 April 2015, stressing, *inter alia*, that in view of her status on stress-related sick leave no unnecessary deadlines should be imposed on her to respond to communications; she further noted that she had been asking the country office to be provided with the separation papers

for her review since December 2014, and reiterated her request that they be given to her, together with the assignment of one focal point responsible for her separation for further communications.

19. By email of 18 April 2015, the Deputy Resident Representative informed the Applicant that the fact that she had a case pending at the Tribunal “would not in itself affect the date on which [she] exhaust [her] annual leave balance, at which time UNDP would need to proceed with the process of [her] separation”; he noted that the purpose of his earlier email was to find out whether she would prefer an agreed separation or SLWOP prior to agreed separation for bridging purposes for ASHI. Finally, he reiterated that UNDP had complied with its obligations to her, and referred back to the abolition of her post on 30 September 2014, as well as to the three months’ notice period given to the Applicant at that time. To his email, he attached the separation papers for the Applicant’s review, as per her request.

20. During the hearing held on 21 April 2015 for Case No. UNDT/GVA/2015/004, the Tribunal ordered the Applicant to inform it whether she wished to settle the matter amicable with the Respondent and, subsequently, withdraw her application if an amicable settlement was reached. On 24 April 2015, pursuant to the Tribunal’s order, the Applicant informed the Tribunal that she did not wish to withdraw her application.

21. On 4 May 2015, in an email to the Deputy Resident Representative, the Applicant expressed her understanding that her separation would be effected through option 3 of the Deputy Resident Representative’s email of 30 March 2015, to wit, through termination of her appointment. The Applicant attached the initial draft of the separation form, and asked to be informed of her official last working day with UNDP.

22. She reiterated that latter request in an email of 8 May 2015 to the Deputy Resident Representative, by which she also requested to be informed “if [she] need[ed] to do anything in regard to [her] separation from UNDP”.

23. Also by email of 8 May 2015, the Deputy Resident Representative noted that while the Applicant's last working day had initially been determined to be 14 April 2015, in light of her having submitted several doctor's certificates in support of her certified sick leave until 6 May 2015, a determination of her last working day could only be made once these certificates were reviewed by the UN Medical Service Division. He further responded to her inquiry noting that no further action was required on the agreed separation related forms, "as the Organization [was] proceeding with [her] separation through termination of [her] appointment".

24. By Judgment UNDT/2015/037 of 12 May 2015, the Tribunal rejected the Applicant's first application as not receivable, *ratione materiae*, for lack of (timely) management evaluation. That Judgment was affirmed by the Appeals Tribunal in its Judgment *Seyfollahzadeh* 2016-UNAT-620.

25. By letter of 9 June 2015 entitled "Termination of your appointment" and addressed to the Applicant, the Assistant Administrator and Director, Bureau of Management, UNDP, referred to the letter of 16 April 2014 by which the former had been informed of the abolition effective 30 September 2014 of the post she encumbered, and to the fact that despite the three months' search period (17 April to 17 July 2014), as well as the three months' notice of separation (18 July to 17 October 2014), she remained without placement "to date". The Applicant was informed that in accordance with Staff Rule 9.6(c)(i), UNDP would proceed with the termination of her appointment effective close of business 10 June 2015.

26. On 4 August 2015, the Applicant requested management evaluation of the decision of 9 June 2015 to terminate her permanent appointment.

27. On 24 August 2015, the Officer-in-Charge, Bureau of Management, UNDP, responded to the Applicant's request for management evaluation, upholding the decision.

Parties' submissions

28. The Applicant's principal contentions are:

- a. Had she been given the correct advice, she would not have accepted the NOB project funded position but would have remained on a more secure position;
- b. Her rights of a holder of a permanent appointment after 17 years of service for the United Nations were neglected; OSLA failed to support her on her permanent status and placement in the Country Office;
- c. Although she was given legitimate expectation that ASHI would be provided in case her post were to be abolished, she was not provided with it; the offer made by UNDP in this respect was inadequate and unfair;
- d. She was provided with a confusing one year contract, and a contradictory note for the file; she was not given a chance to find alternative career development opportunities in other Country Offices, which was discriminatory; human resources policies were violated in application of separation letters, and there was a lack of support towards her separation process;
- e. The Administration applied intentional negligence in its actions with respect to the Applicant's Pension Fund;
- f. She was blackmailed when her termination indemnity was reduced by 50% after she took her case to the Tribunal;
- g. The Judge was misled by the Administration, which used an "email from a staff member-HR colleagues" as an administrative decision, and tried to use that as a justification in the delay in processing her initial request for management evaluation;

- h. She requests:
- i. That the decision to terminate her permanent contract prior to her reaching the age of 55 be revoked and her status as a permanent staff member be recognized;
 - ii. That her health insurance and her pension scheme with the UNJSPF be maintained;
 - iii. Compensation for damages for loss of earnings resulting from the termination of her contract and the impact of that decision on her career development, and for loss of physical and emotional health and moral damages; and
 - iv. Disciplinary action against senior managers who were responsible for the malicious decisions.

29. The Respondent's principal contentions are:

- a. The only matter before the Tribunal is whether the decision to terminate the Applicant's appointment was legal, since the Applicant abandoned all but that challenge in her request for management evaluation in the present application;
- b. While the Applicant enumerates a series of allegations on the basis of which she contests the termination decision, those are not receivable, either because they are non-reviewable administrative decisions, or because they are *res judicata*; with respect to the Applicant's allegation concerning the Pension Fund, she failed to point out a decision by the Respondent, and has not provided any evidence for her allegations;
- c. The application as far as it is addressed against the termination decision is not receivable *ratione materiae*; the Applicant knew by the date of the hearing of 21 April 2014 in Case No. UNDT/GVA/2015/004 that insofar as she chose not to withdraw her case and not to opt for an agreed separation, the Respondent would have no choice but to terminate her

appointment; as such, when the Applicant declined to pursue an agreed separation, it was or should have been clear to her that her appointment would be terminated; she stated this in an email of 4 May 2015; that understating was confirmed by email of 8 May 2015 from the Deputy Resident Representative to the Applicant;

d. As such, leaving the Applicant's prior awareness that her appointment was to be terminated aside, the email of 8 May 2015 constituted written notification of the decision;

e. Since the Applicant failed to file a request for management evaluation within 60 days of the notification of said decision, as per staff rule 11.2(c), the application is irreceivable, *ratione materiae*;

f. The application is also without merit; the Applicant admits that she was informed on 16 April 2014 that her post would be abolished effective 30 September 2014; she did not challenge this decision at that time; while the Respondent, until 24 April 2015, was still open to grant her an "agreed separation" subject to the Applicant withdrawing her application, she decided not to choose this option. Since the Applicant's post had long been abolished, the Respondent had no other choice but to terminate her permanent appointment, a decision that was lawful;

g. The application should be dismissed.

Consideration

30. The duties of a Judge in reviewing a case include "the adequate interpretation and comprehension of the applications" brought before it (*Massabni* 2012-UNAT-238).

31. Making use of this competence, the Tribunal notes that while the Applicant refers to various other matters, including the denial of after service health insurance, and negligence by the Administration in the sending of the relevant separation papers to the UNJSPF, she identifies the contested decision as "the decision to terminate [her] permanent contract after more than 17 years of

working with UNDP, for the purported reason of lack of financial resources leaving [her] without a placement from 17 April 2015 which was the start of the Job Search period imposed in [her] while the Country Office had vacant positions that suited her area of expertise and experience”, notified to her on 9 June 2015. The Tribunal finds that it is thus legally seized only of the decision to terminate the Applicant’s permanent appointment effective close of business 10 June 2015.

32. The Tribunal further notes that the letter of 9 June 2015 refers to that of 16 April 2014, by which the Applicant had been informed of the abolition of the post she encumbered, effective 30 September 2014. The letter of 9 June 2015 further refers to the lack of placement of the Applicant “to date”, following the expiration of the three months’ search period as well as the three months’ notice of separation period, which expired on 17 October 2014. It follows from the chronology of events as described above, and the context in which the letter of 9 June 2015 was issued, that this letter constitutes, in essence, merely the implementation of the earlier decision to separate the Applicant from the Organization for reason of post abolition.

33. Indeed, the Tribunal recalls that at the end of the Applicant’s notice period, the Organization had secured additional funding for her until 31 December 2014, and she had been informed on 30 September 2014 that in case no further additional funding was found, the Organization would proceed with her separation effective 31 December 2014 (cf. para. 10 above). The record shows that after 31 December 2014, the Applicant remained in service exclusively for administrative purposes, that is, under annual leave and certified sick leave, until her separation on 10 June 2015.

34. The summary of communications between the Applicant and the Deputy Resident Representative shows without any ambiguity that after the email of 30 September 2014, by which the Applicant had been informed of her separation from service on 31 December 2014, the only matters that were discussed were: 1) the exact *date* of her separation (depending on her exhaustion of entitlements to annual leave and sick leave), and 2) the *modalities* of the Applicant’s separation. In fact, without ever putting into question the separation of the Applicant in view

of lack of placement after the abolition of her post, and as a matter of fairness, the Organization gave her the opportunity to choose between different options, to wit, agreed separation—prior to or after a period of SLWOP for bridging purposes— or termination of her permanent appointment.

35. The Applicant, in her application, notes that “her initial dispute to the separation letter is currently under review by [the Appeals Tribunal]” and that “despite the fact that [she] was still challenging [her] separation from UNDP, a termination letter was issued to [her] on 9 June 2015”. The Tribunal finds that the Applicant seeks to litigate the termination decision, as the direct result and implementation of the separation decision previously challenged by her.

36. Indeed, the matter of the Applicant’s separation, upon abolition of the post she had encumbered at the time, has already been decided by the Tribunal, in Judgment *Seyfollahzadeh* UNDT/2015/037. That Judgment was affirmed by the Appeals Tribunal in its Judgment *Seyfollahzadeh* 2016-UNAT-620, that is, after the present application was filed. The matter has thus been litigated through the Organization’s entire internal justice system and ruled upon by its highest court, the Appeals Tribunal, whose judgments are final and without appeal and, hence, is no longer appealable.

37. In this respect, the Tribunal recalls that according to the longstanding jurisprudence of the Appeals Tribunal, “the authority of a final judgment—*res judicata*—cannot be readily set aside (*Shanks* 2010-UNAT-26*bis*; *Costa* 2010-UNAT-063) and the Dispute Tribunal is correct in finding that an issue is not receivable if it is *res judicata* (*Onana* 2015-UNAT-533).

38. Since the letter of 9 June 2015 constitutes merely the implementation of an earlier decision, which was reviewed in Judgment *Seyfollahzadeh* UNDT/2015/037, as affirmed by the Appeals Tribunal, and as such is *res judicata*, the application is not receivable.

39. Regarding the termination itself, and as a matter of completeness, the Tribunal notes that the Applicant does not raise any question related to the actual date of the termination of her appointment, upon exhaustion of her certified sick

leave and annual leave entitlement, that is, 10 June 2015, nor does she contest the fact that separation was by way of termination, rather than by way of agreed separation. Indeed, she had herself excluded the option of agreed separation, which was conditional upon her withdrawing her previous application with the Tribunal.

Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 1st day of June 2016

Entered in the Register on this 1st day of June 2016

(Signed)

René M. Vargas M., Registrar, Geneva