



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/039
Judgment No.: UNDT/2018/058
Date: 15 May 2018
Original: English

Before: Judge Goolam Meeran
Registry: Nairobi
Registrar: Abena Kwakye-Berko

EDWARDS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
George Irving

Counsel for the Respondent:
Kong Leong Toh, UNOPS

INTRODUCTION

1. The Applicant is a former Security Specialist with the United Nations Mine Action Service (UNMAS) in Somalia under a contract administered by the United Nations Office for Project Services (UNOPS). He filed an application on 25 May 2016 contesting the decision to separate him from service on 31 May 2016 while he was on certified sick leave.

2. On 13 June 2016, the Respondent filed his reply.

THE CLAIM

3. The Applicant submits that the contested decision is unlawful in that:

a. Since he was incapacitated for service by reason of an illness that continued beyond the expiration of his fixed-term appointment, his contract should have been extended in order to allow him to avail himself of the right to exhaust his sick leave in accordance with Staff Rule 6.2 and ST/AI/2005/3 (Sick leave);

b. UNOPS is part of the United Nations system and as such, it is bound by the United Nations rules and practices;

c. The right to grant certified sick leave resides with the United Nations Medical Director or his designated officers. Decisions of a medical nature may not be abridged by UNOPS who have not been delegated the power to do so; and

d. By separating him from service before the exhaustion of his sick leave entitlements, he was precluded from salary and medical insurance during his illness and potentially from exercising his entitlement to a disability pension.

4. The Applicant seeks rescission of the contested decision and extension of his fixed-term appointment beyond 31 May 2016 to enable him to avail himself of any remaining sick leave entitlement and associated entitlements. He also requests

compensation in an amount equivalent to salary and entitlements for the duration of his sick leave. In addition he seeks the equivalent of disability entitlements through to the date of his mandatory retirement plus compensation for moral damages.

THE REPLY

5. The Respondent submits that the contested decision is lawful and that it was a proper exercise of administrative discretion in that:

a. The Applicant's post was abolished together with other Security Specialist posts. It is not disputed by the Applicant that the abolition of these posts was lawful. The Applicant's fixed-term appointment was not renewed following the abolition of his post;

b. The Secretariat Sick Leave Policy does not apply to UNOPS. The Secretariat administrative issuances do not apply to the separately administered funds and programmes of the United Nations, such as UNOPS, unless otherwise expressly provided for therein. The Secretariat Sick Leave Policy does not make any such express provision;

c. Neither staff rule 6.2 nor the rest of the Staff Rules contain a provision to the same effect as paragraph 3.9 of the Secretariat Sick Leave Policy, which provides for the extension of an appointment while on sick leave. Furthermore, there is no general principle of law to the same effect;

d. Staff rule 6.2 (a) does not apply to the Applicant because there are no duties that the Organisation wants him to perform given that the Security Specialist posts, which included his post, were abolished;

e. The United Nations Medical Service has no authority to extend any appointment, not even for Secretariat staff members. The role of the United Nations Medical Service is only advisory;

f. The non-renewal of the Applicant's appointment does not affect any right that he may have to a disability pension or any related entitlement under Appendix D to the Staff Rules.

FINDINGS OF FACT

6. The Applicant is a former Security Specialist with over 17 years of experience in the United Nations system. His last appointment was on a UNOPS contract assigned to UNMAS.

7. The Applicant was on certified sick leave from 30 November 2015. His sick leave was approved through to 23 July 2016.

8. By letter dated 8 January 2016, the Applicant was informed that, due to the restructuring of the programme, the post of Security Specialist that he was encumbering would be abolished at the end of March 2016.

9. With effect from 31 March 2016, the Applicant's Security Specialist post was abolished. However, due to cost savings that UNOPS had identified in the programme budget, his appointment was extended until 31 May 2016.

10. On 7 April 2016, the Portfolio Manager advised the Applicant that notwithstanding his approved certified sick leave, he would nevertheless be separated from service since UNOPS did not have funding for the post.

11. By letter dated 29 April 2016, the Applicant was informed that his appointment would not be renewed beyond 31 May 2016 and that he would be separated from service on that date. In this letter, UNOPS offered to place the Applicant on Special Leave Without Pay (SLWOP) from 1 June 2016 until his medical condition improved or 30 November 2017 (whichever was earlier) so that he could be covered by the United Nations medical insurance scheme. The Applicant did not take up this offer.

12. UNOPS extended the Applicant's contract until 3 June 2016 in accordance with the Tribunal's Interim Order on Suspension of Action (Order No. 265 (NBI/2016) dated 27 May 2016). The Applicant subsequently requested the

Tribunal to grant him interim relief. By Order No. 268 (NBI/2016) dated 3 June 2016, the Tribunal did not grant the application for interim measures. The Applicant's contract expired on 3 June 2016.

THE APPLICABLE LAW

13. The legal principles applicable to this case are:

Staff regulation 4.5 (c) provides that “a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service”.

Similarly, staff rule 9.4 provides that a temporary or fixed-term appointment “shall expire automatically and without prior notice on the expiration date specified in the letter of appointment”.

Administrative Instruction ST/AI/2013/1 (Administration of fixed-term appointments) provides in section 7.1 that a fixed-term appointment “expires on the expiration date specified in the letter of appointment or letter of renewal of appointment”.

14. In *Weerasooriya* 2015-UNAT-571, the United Nations Appeals Tribunal (“UNAT”) held that:

... Secretary-General's Bulletin ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances) expressly provides in Section 2.3 that “[a]dministrative issuances shall not apply to the separately administered funds, organs and programmes of the United Nations, unless otherwise stated therein, or unless the separately administered funds, organs and programmes have expressly accepted their applicability”. Accordingly, administrative issuances do not apply to UNFPA, unless their applicability is expressly provided for in the administrative issuance or expressly accepted by UNFPA being a separately administered fund. We note that UNFPA has not promulgated any administrative issuance incorporating ST/AI/2002/3 or accepting its applicability.

CONSIDERATIONS

15. The issues for determination are:

a. What evidence, if any, is there that the Secretariat's Sick Leave Policy (ST/AI/2005/3) applies to UNOPS such that the Applicant should not have been separated from service while he was on certified sick leave?

b. If the policy does apply, has the Respondent failed or omitted to accord to the Applicant the benefits of the policy enabling him to exhaust his sick leave as provided for under staff rule 6.2 and ST/AI/2005/3?

16. Applying the ruling in *Weerasooriya 2015-UNAT-571*, the Tribunal finds that there is no evidence that the Secretariat Sick Leave Policy (ST/AI/2005/3) expressly provides for its applicability to UNOPS. Further, the Applicant has not shown that UNOPS accepted the applicability of the Policy. In the circumstances, there is no merit in the Applicant's contention that it was unlawful to separate him from service while he was on certified sick leave. It follows that, in the circumstances, he was not entitled to compensation for the loss of any benefits or entitlements arising directly from his separation.

17. However, the question of entitlements, if any, under Appendix D to the Staff Rules is not a matter that falls for adjudication in this case.

Judgment

18. The application is dismissed.

(Signed)

Judge Goolam Meeran

Dated this 15th day of May 2018

Entered in the Register on this 15th day of May 2018

(Signed)

Eric Muli, Legal Officer, for,
Abena Kwakye-Berko, Registrar, Nairobi