



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/077

Judgment No.: UNDT/2019/073

Date: 1 May 2019

Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

NOUINOU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALD/OHR, UN Secretariat

Notice: This Judgment has been redacted as per the Dispute Tribunal's order in accordance with art. 36 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. On 27 November 2018, the Applicant, a former Programme Management Assistant at the G-5 level, step 6, who previously worked on a temporary appointment in the Office for Counter-Terrorism (“OCT”), filed an application in which she contests various issues in connection with her recruitment and employment with OCT and the subsequent non-renewal of this appointment. As relief, the Applicant requests compensation for damages to her “health, moral, financial, career, libel, name [and] reputation”.

2. On 27 December 2018, the Respondent filed his reply in which he submits that some aspects of the application are not receivable and that, in any event, the application is without merit.

3. The case was initially assigned to another Dispute Tribunal judge but reassigned to the undersigned Judge on 25 January 2019.

Case management

The procedural history

4. After the filing of the application and reply, the Tribunal issued various written orders in response to motions filed by the parties. By its final Order No. 47 (NY/2019) dated 13 March 2019, the Tribunal allowed the parties to file or request production of any additional evidence by 22 March 2019 after which they were to file their closing statements in a consecutive sequence from 29 March to 12 April 2019.

5. The Respondent filed no submission regarding additional evidence while, in the Applicant’s 22 March 2019 submission, she requested the Respondent to file a wide range of documentation.

6. In accordance with Order No. 47 (NY/2019), the Applicant filed her closing statement on 1 April 2019 and the Respondent filed his closing statement as a response thereto on 8 April 2019. The Applicant's time limit for filing her sur-reply closing statement was on 14 April 2019 but, on an exceptional basis, the Tribunal extended this deadline until 16 April 2019 at which time the Applicant filed her sur-reply.

The Applicant's request of 22 March 2019 for the Respondent to produce additional evidence

7. The Respondent filed no evidence in response to the Applicant's 22 March 2019 submission. In the Applicant's final statement of 16 April 2019, she submits that the Respondent failed to comply with Order No. 47 (NY/2019) by not producing the additional evidence that she had requested on 22 March 2019.

8. The Tribunal notes that, by Order No. 47 (NY/2019), the parties were ordered to "file a statement providing a list of any additional evidence which a party requests to be produced, or requests of the opposing party to produce, and stating the relevance thereof".

9. Firstly, the Applicant requested that the Respondent produce, "Communication[s] between [the Chief of Strategic Planning, her first reporting officer ("the FRO"), the Deputy Director and a staff member from the Executive Office] during Decision to not extend the Applicant's Contract and Decision to issue the [job opening] fill her post".

10. However, as determined below, no evidence regarding any such communications is relevant in the present case because, with reference to sec. 2.2(d) of ST/AI/2010/4/Rev.1 (Administration of temporary appointments), the Applicant was merely hired "[t]o temporarily fill a vacant position pending the finalization of the regular selection process" in accordance with ST/AI/2010/3 (Staff selection system). Even if the decision-maker had, somehow, held an inappropriate bias against the Applicant, this would not have changed the reason behind the decision not to renew

her temporary appointment, namely that another candidate was selected for the relevant post after a regular selection process pursuant to ST/AI/2010/3, in which the Applicant did not participate because she did not submit a job application before the selection decision was made.

11. Secondly, as regards the Applicant's remaining requests for production of evidence, these were all formulated in overbroad and unspecific terms for the Tribunal to determine their relevancy. With reference to the Appeals Tribunal in para. 5 of *Rangel* Order No. 256 (UNAT/2016), rather than a genuine request for documentation, the Applicant's request therefore gives the impression that it "constitute[d] an impermissible 'fishing expedition'" because the Applicant "requested the production of a large number of documents" and the request was "cast in the most general terms".

12. Consequently, the Applicant's request and submission regarding additional evidence are therefore rejected.

The Applicant's request of 22 March 2019 for the Respondent to produce additional evidence

13. In the 16 April 2019 final statement, the Applicant also requests "case management discussion and hearing on the case if deemed necessary" but provided no justification therefor. The Tribunal finds that, absent any explanation of justification from the Applicant, no further case management is appropriate at the closing phase of the proceedings.

Consideration

Scope of the case

14. Based on the parties' submissions, by Order No. 47 (NY/2019), the Tribunal defined the issues in this case as follows:

- a. Whether the Applicant's recruitment for a temporary appointment was undertaken in a proper manner?
- b. Whether the Applicant's terms of appointment were appropriate and correctly implemented?
- c. Was the decision to not extend the Applicant's temporary appointment with OCT lawful?

15. Neither party subsequently challenged the Tribunal's definition of the issues. However, in the Applicant's closing statement, she deviates from the outline and structures her submission under different headlines. To the best of the Tribunal's ability, in the following, it has intended to place the Applicant's submissions under the appropriate headings and, in the interest of justice, covered all possible perspectives of her contentions.

Was the Applicant's recruitment for a temporary appointment undertaken in a proper manner?

Parties' submissions

16. The Applicant's principal contentions may be summarized as follows:

- a. The Applicant was recruited without the "scrutiny" of the relevant "EO" (presumably referring to the Executive Office) or the then-Office of Human Resources Management ("OHRM"). The Chief of Strategic Planning essentially handled the process and he, *inter alia*, took the lead in assessing,

considering, short-listing and hiring the Applicant. He acted as the *de facto* hiring manager for the large part of the recruitment process, although the final selection decision was formally to be made by another Chief, namely the FRO, who was the “true” hiring manager, in accordance with Temporary Job Opening no. 91620 (“the TJO”) and against which the Applicant was subsequently hired and to which her personnel action form refers.

b. In the TJO, the work experience requirement was described as, “Several years of international experience in programme or project administration, technical cooperation or related area”. This “raises concerns” as to who assessed the Applicant, short-listed and hired her and based on which evaluation criteria.

c. The assessment of the Applicant’s candidature was limited to three interview panel members and the Respondent has not proven if they possessed the required “qualifications for competency-based interview”. Neither the Chief of Strategic Planning or the FRO were part of the panel. The interview questions included no questions on project or cooperation as set forth in the TJO, and the Applicant had no prior experience in working as a Programme Management Assistant.

d. The FRO initially informed the EO that she did not want to hire Applicant, but the Chief of Strategic Planning improperly took on the role of managing the recruitment process and, under the Recruiter’s Manual, thereby overstepped the scope of his authority.

e. The FRO was neither part of the interview panel, nor was she informed of the Applicant’s work permit issue. This matter was “invented” by the Chief of Strategic Planning under “undisclosed authorization” since he had asked the Applicant to provide him copies of her [redacted] applications. The FRO was not copied when contacting various authorities regarding the validation of the Applicant’s work permit until 2020.

f. The Chief of Strategic Planning, who has no human resources background, did not have the legitimate authority to take a decision on the methodology for the Applicant's assessment and selection or with regard to her eligibility to work at the United Nations in the U.S. This authority lays with the OHRM and the government of the host country.

g. The post to be filled by the Applicant was vacant and "I-ACT" (apparently, referring to "Integrated Assistance for Countering Terrorism") was not a busy unit compared to other units in the OCT. The Chief of Strategic Planning caused delays to the recruitment and the FRO was not involved in the process and did not object thereto. The Chief of Strategic Planning appears to have hired the Applicant in I-ACT to indirectly "fulfil his Hidden Spy Agenda". When drafting and advertising the TJO, the OCT managers demonstrated "unethicality and lack of integrity". It is "glaringly apparent that a central review body might have not been convened since no candidate was picked while waiting for the Applicant two months to start working despite the Work Permit obstacle". The Chief of Strategic Planning was clearly in bad faith, had improper motives and acted in his own self-interest.

h. Given the Chief of Strategic Planning's "express desire" to "freely hire the Applicant and fire her, no credibility whatsoever can be given to either her recruitment process or her contract termination, which all were clearly tainted by bias on the part of the two main actual decision-makers from the beginning". The process was vitiated by procedural irregularities to avoid objective assessment and proper scrutiny.

i. While no attempt was made to refer the selection process to "a local review panel, thus rendering the delegation of authority to [the Chief of Strategic Planning] to hire and fire the Applicant in violation of the [Regulations and Rules], EO/OHRM did not explain how letting [the Chief of Strategic Planning] the Applicant to work for two managers [whom] he has

conflict of interest with, would foster ethics and transparency”. The EO and OHRM, nevertheless, endorsed each statement and recommendation provided by the Chief of Strategic Planning without reviewing documents that he must have produced “to justify [the Applicant] to come in and crucify her to go out”.

j. The Chief of Strategic Planning lied to the Applicant when stating that he simply was in charge of administration and did not tell her that, in fact, he was in charge of recruiting her. Neither did he declare to the OCT that he knew and had previously met her. Had the Applicant known about the Chief of Strategic Planning’s involvement in her recruitment process, she would have rejected the job. Although, after joining OCT, the Applicant raised her concerns about the Chief of Strategic Planning’s conflict of interest when she realized his managerial role, he continued to harass her as if he had authority over her. This caused her to feel distress and she regretted to have trusted him as he was “unmasked as person of disgrace”.

k. The Applicant ignored the reasons provided by the Chief of Strategic Planning when, without her knowledge or her consent, he led the recruitment process and, as hiring manager, influenced the process. The Chief of Strategic Planning did not disclose his conflict of interest in an effort to ensure that the process would lead to the Applicant’s eventual separation. The Chief of Strategic Planning made no attempt to recuse himself or prevent “subversion of the process” by declaring his conflict or any of his actions, especially that he did not like the FRO or the Deputy Director. Such a declaration would have countered his objective.

l. On the receivability of the Applicant’s appeal against the recruitment process, her evidence demonstrates that she did suffer harm after the Dispute Tribunal granted a suspension of action in October 2018.

17. The Respondent's principal contentions may be summarized as follows:
- a. The Applicant does not challenge an administrative decision capable of review by the Dispute Tribunal. The Applicant has a duty to identify the specific administrative decisions that she contests in a clear and concise manner but has not done so; rather her submissions are vague and deprive the Respondent of notice of the challenged administrative decision. It is impossible to determine the specific decisionmaker, the date, or the time frame of the alleged impugned administrative decision.
 - b. If the issue is understood as a challenge to the administrative decision to appoint the Applicant, such a decision cannot be reviewed by the Dispute Tribunal because the decision was to the benefit of the Applicant and carried no adverse consequences to the Applicant's terms of appointment. The Dispute Tribunal does not engage in academic reviews of decisions that do not result adverse consequences.
 - c. To the extent that the Applicant makes allegations of abuse of authority or harassment, the application is not receivable. The Applicant has not complied with the process regarding complaints of prohibited conduct, as set out in ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). Pursuant to section 5.11 of that Bulletin, the Applicant must submit a complaint of prohibited conduct to the Head of Department. In the absence of any such complaint, the Dispute Tribunal does not have jurisdiction to hear this aspect of the application.

Receivability

18. In addition to the Respondent's contentions, the Tribunal notes that, according to the consistent jurisprudence of the Appeals Tribunal, it has the authority to examine its competence and thereby jurisdiction on its own, or in Latin legal terms: *sua sponte*

(see, for instance, *O'Neill* 2011-UNAT-182, *Tintukasiri et al.* 2015-UNAT-526 and *Harb* 2016-UNAT-643).

19. Firstly, the Tribunal notes that, if required, pursuant to staff rule 11.2(c), a staff member must file a request for management evaluation within 60 calendar days from the date on which s/he received notification of the impugned administrative decision, although this deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman. In this regard, the Tribunal further notes that the selection decision is clearly not covered by any of the exceptions to the requirement of requesting management evaluation set out in staff rule 11.2(b), namely an administrative decisions (a) taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or (b) taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process.

20. It follows from the case record that the Applicant was notified of her selection for the TJO on or about 24 April 2018 and her request for management evaluation was dated 19 October 2019. The management request was therefore clearly filed beyond the 60-day time limit, and from the case record follows that no efforts for informal resolution conducted by the Office of the Ombudsman was pending. While this issue of *ratione temporis* has not been brought up by the Respondent neither in the management evaluation response (which appears to entirely fail to even review the selection decision, although the Applicant did so to contest it in her request) nor in his submissions before the Tribunal, the Applicant's appeal against her own selection for the TJO is not receivable because it is time-barred under staff rule 11.2(c).

21. Secondly, following the contention of the Respondent, as stated by the Appeals Tribunal in *Sefraoui* 2010-UNAT-048, para. 18, "A party in whose favour a case has been decided is not permitted to appeal against the judgment on legal or academic grounds" (see also, for instance, *Saffir & Ginivan* 2014-UNAT-466, para. 13). Similar considerations would apply (*mutatis mutandis*) to an application before the Dispute

Tribunal and an impugned administrative decision under art. 2.1(a) of its Statute. Aside from wasting judicial resources, another reason is that, pursuant to art. 10.5 of the Statute of the Dispute Tribunal, no reasonable remedy would be available for the Tribunal to rectify the situation to the relevant applicant's advantage. The appeal would therefore only be of speculative interest.

22. In the present case, the Applicant basically appeals against herself being selected for and appointed to a job, which is evidently an administrative decision to her advantage. If the Applicant's position was to be accepted, namely that her recruitment was unlawful, no option would be available for the Tribunal to remedy the situation in the Applicant's favour. Also, the Applicant's recruitment was the consequence of her own actions, namely her applying for the TJO and subsequently accepting the offer. The Applicant has not established how she suffered any harm therefrom or pointed to any reasonable type of relief that the Tribunal could order to her benefit in accordance with art. 10.5 of the Statute of the Dispute Tribunal. The Applicant's interest, if any, in the appeal is therefore purely academic.

23. Consequently, the Applicant's appeal of the decision to recruit her against the TJO is not receivable as it does not concern a decision that is appealable under the Tribunal's Statute, arts. 2.1(a) and 10.5(b).

24. Even if the Tribunal were to review this case, it is noted that from the Applicant's submissions, it appears that the Applicant argues that her recruitment against the TJO was done in an effort by the Chief of Strategic Planning to tarnish her reputation within the United Nations while employed in the position. When claiming any ulterior motive, it is trite law that the onus is on the applicant to substantiate such allegation (see, for instance, *Parker* 2010-UNAT-012 and *Morsy* 2013-UNAT-298) which will, however, often have to be proved by circumstantial evidence (see, for instance, *He* 2016-UNAT-686, para. 39). In the present case, however, the Applicant

has provided no submissions or evidence that would enable the Tribunal to draw any such inference of malicious intent concerning her recruitment against the TJO.

Whether the Applicant's terms of appointment were appropriate and correctly implemented

Parties' submissions

25. The Applicant's principal contentions may be summarized as follows:

a. The FRO adopted a "professional attitude" and completely refused to acknowledge the Applicant's presence and pointedly ignored her on all occasions. During the six months that the Applicant was working in OCT, the FRO did not even exchange a greeting with her and "launched an unhappy look at her whenever she looked at her". The Applicant was demotivated by this attitude, which "also resulted in the migration of every staff member who worked for [the FRO]".

b. By asking the Applicant to "extra translate documents", the Chief of Strategic Planning and the FRO undermined her performance and their motivation was "tainted by prejudice, arbitrariness and other extraneous factors, which contributed to a fraudulent unlawful administrative decision" and "served to violate Applicant's right to a full and fair consideration of her work performance".

c. The claim that the Applicant volunteered to assist other programme managers as well as the FRO is untrue. Firstly, evidence shows that it was the Deputy Director who instructed the Applicant to assist other programme managers. Secondly, "this claim does not stand up to scrutiny especially because the post was vacant and subject to a generic vacancy announcement after filling it in a temporary term for maximum of 364 calendar days and which had not been complied with yet".

d. The Chief of Strategic Planning's efforts to assist "in this unwholesome cover-up in which he insulted the Applicant as Psycho telling that to [name redacted, Mr. RM] who interviewed her for a Post in OCT, is so regrettable".

e. "Manipulating the Applicant's recruitment, meddling in her immigration status, mismanaging her job assignments, bullying her, wrongly terminating her, running to intimidate her husband, stalking her after disconnecting her access before end of her contract last day, assaulting her, then slandering her, were all carried out in bad faith, arbitrarily and in exercise of a discretion" that the OCT, the EO or the OHRM did not possess. This demonstrated "hatred, discrimination and racism". It is clear that "whatever they had done in this regard, if it is to be believed that it did, it lacked ethics, transparency, credibility and accountability".

f. The EO and OHRM were well aware of "the illegitimate objective" of the Deputy Director, the FRO and the Chief of Strategic Planning and "colluded with them to achieve it, in breach of their legal obligations to ensure that proper processes were followed and not corrupted, and their duty of care towards the Applicant".

g. The Applicant's performance evaluation was unlawful as it was "motivated by bad faith, and was overcast by inconsistencies occasioned by malicious motives amounting to gross abuse of power" contrary to ST/AI/2010/5 (Performance management and development system). Inappropriately, it was prepared on 12 November and sent to her on 14 November 2018. This occurred after the Applicant had submitted her requests for management evaluation and suspension of action and after her contract was renewed for two weeks till 9 November 2018. This followed the Dispute Tribunal's order on suspension of action pending management evaluation and "after disabling all accesses she was entitled to, and finally after slandering her with [the Department of Safety and Security, "DSS"]".

h. OCT's desire to separate the Applicant appears to have been triggered by "difficult working relationship[s], personality clash[es] and conflict of interest[s] between three Senior Managers: [the Deputy Director, the FRO and the Chief of Strategic Planning], and due to the Applicant [acting] as staff representative. This was shown by the FRO express[ing] her feud with [the Deputy Director] who tasked Applicant to assist other Programme Managers along with her".

i. The second reporting officer ("SRO") was left out although "he approved [of the] FRO's assessment". The Applicant's "Goal 3 [was] wipe[d] out [together with] her main task that consumed her time and energy (Booking [video teleconferences])". An OCT Director also praised the Applicant for her hard work and the Under-Secretary-General of OCT acknowledged her efforts during a high-level conference.

j. The Applicant's performance issues were not raised: (a) in the management evaluation response of 9 November 2018, (b) during the meetings with Applicant's SRO and the EO on 5 October to 2 November 2018, or (c) in a meeting with Under-Secretary-General of OCT on 16 October 2018. When the OCT decided to end Applicant's contract, the job opening for the post was published on 28 September 2018 and a roster candidate was recruited on 4 October 2018 to fill it. At the same time, the Applicant's performance evaluation had not been prepared. The OCT did not comply with secs. 10.1 and 10 ST/AI/2010/5.

k. The action of the FRO and the Deputy Director "were vitiated by bias to ruin [the Applicant's] her career prospects to succeed her in programme management".

26. Reiterating also the above submissions against non-receivability, the Respondent's principal additional contentions may be summarized as follows:

a. The Applicant's TJO was properly managed. In accordance with staff regulation 1.2(c), staff members may be assigned to any activity or office. The Applicant's six months appointment with the OCT coincided with the High-level Conference of Heads of Counter-Terrorism Agencies, and the Sixth Global Counter-Terrorism Strategy. This required all units within OCT to work together. As such, the Applicant was requested to assist different units within the OCT during this time. The tasks assigned to the Applicant were within her skillset as a Programme Management Assistant, and the job description of the Applicant's position, which states that the selected candidate will "perform other tasks as assigned".

b. Contrary to the Applicant's averments, her supervisors and colleagues did not subject her to any prohibited conduct. During the Applicant's temporary appointment with OCT, she had a difficult working relationship with her supervisors and colleagues. Those difficulties arose largely from the Applicant sending "unwelcome emails".

c. The Applicant's claims with respect to her performance management are irrelevant. The decision not to renew the Applicant was not based on the Applicant's performance. OCT allowed the Applicant's appointment to expire following the successful completion of the selection of a candidate against the job opening.

d. The Applicant's claims with respect to the management of her performance have no merit. The Applicant's performance was properly managed. The FRO properly assessed the Applicant's performance, in accordance with the relevant rules. Section 6.1 of ST/AI/2010/4 (Administration of temporary appointments) provides that staff members

holding temporary appointments shall have their performance evaluated “at the end of the temporary appointment”.

e. The FRO assessed the Applicant’s performance as “partially meets expectations” at the end of her temporary appointment. The FRO considered that the Applicant did not demonstrate attention to detail, nor did she demonstrate mastery of the competencies of teamwork or communication. She faced challenges working collaboratively within the team and engaged in email exchanges with colleagues in a confrontational tone. During her appointment with OCT the Applicant was provided with instructions on how to perform her assigned tasks and constructive feedback when she demonstrated performance shortcomings.

Receivability

27. It follows from the consistent jurisprudence of the Appeals Tribunal that the Applicant must clearly identify a specific administrative decision that is being challenged (see, for instance, *Planas* 2010-UNAT-049, *Reid* 2014-UNAT-419 and *Haydar* 2018-UNAT-821). The only administrative decision that the Applicant appears to contest in her closing statement is relating to the implementation of her terms of reference while working for the OCT is her performance assessment.

28. It follows from staff rule 11.2, as read together with art. 8 of the Dispute Tribunal’s Statute, that, before submitting an application with the Dispute Tribunal, an applicant must as a first step seek management evaluation of the relevant administrative decision. The two exceptions thereto are not relevant in the present case because they only apply when an applicant formally contest (a) an administrative decision taken pursuant to advice obtained from technical bodies or (b) of a decision taken at

Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process.

29. When perusing the Applicant's request for management evaluation dated 19 October 2018, she makes no mention anywhere of her performance appraisal. This is only logical as this performance appraisal was not signed before on 12 November and, according to the Applicant's own submissions, sent to her on 14 November 2018. Neither is any mention made of her performance appraisal in the management evaluation response dated 8 November 2018. According to the submissions and documentation on record, the Applicant has made no subsequent request for management evaluation of her performance appraisal.

30. Accordingly, as the Applicant has not requested management evaluation of her performance appraisal, her appeal against this appraisal is not receivable under art. 8 of the Statute of the Dispute Tribunal and staff rule 11.2.

31. However, even if the Tribunal were to review the Applicant's performance appraisal, her main argument appears to be that it was issued too late, namely on 12 November 2018. As also stated by the Respondent, staff members holding temporary appointments shall have their performance evaluated "at the end of the temporary appointment" under sec. 6.1 of ST/AI/2010/4. As from the Applicant's own submissions follows that her appointment ended on 9 November 2018, it would therefore appear to the Tribunal that the performance evaluation was actually undertaken in due time.

32. In the Applicant's other submissions, she also takes issue with the assignment of work tasks as she appears to submit that this was not done in a proper manner. Despite this matter is not mentioned in the Applicant's closing statement, if this question was nevertheless to be adjudicated upon, the Tribunal notes that, as a general matter, the Applicant has the onus to substantiate a claim for breach of her employment contract (see, for instance, the Appeals Tribunal in *Obino* 2014-UNAT-405, para. 19, according to which an applicant has a "statutory burden of proving non-compliance

with the terms of his appointment or his contract of employment”). However, the Applicant has entirely failed to do so. The Tribunal further observes that, in the TJO, it was indicated that, in addition to a range of specific responsibilities, the selected candidate was expected to, “Perform other duties as assigned”. In this regard, the Tribunal finds that none of the tasks that were subsequently assigned to the Applicant, as described by herself, would appear to have been unreasonable for someone in her position as a Programme Management Assistant in OCT. As a matter of substance, the Applicant’s claim in this regard, if any, is also rejected.

The lawfulness of not renewing the Applicant’s temporary appointment with OCT

Parties’ submissions

33. The Applicant’s principal contentions may be summarized as follows:

a. The Applicant faithfully applied for the TJO but “both recruitment and termination processes turned out to be a sham, lacking integrity and fairness”. The OCT always had a work backlog, did not suffer from lack of funds and recruits a “variety of external staff” with no prior United Nations experience. The Applicant was promised that her appointment would be renewed after six months. The Administration was obliged to consider whether it was in the Organization’s interest to fulfill this promise in accordance with her letter of appointment in which was stated that the appointment “shall not exceed 364 calendar days, one year”.

b. Before taking up the temporary appointment, the Applicant had a case before the Dispute Tribunal involving the Office of Internal Oversight Services, which had “abolished her two-years fixed-term contract”. Had this “injustice” not taken place, the Applicant would not have been challenging the decision not to renew her temporary appointment.

c. The decision not to renew the Applicant's appointment was *prima facie* unlawful. The FRO returned from official travel in May 2018 and expressed strong disagreement with Deputy Director, who had tasked the Applicant to assist other programme managers upon her arrival to OCT. The FRO had already then expressed her disagreement with the Chief of Strategic Planning and asked him “to leave her out of [the] recruitment delay caused by Applicant’s Work Permit”.

d. For temporary appointments at the United Nations, when staff are hired for short time periods of around six months, they are subsequently to be renewed subject to availability of funds and their performance. This promise “clearly falls within the ambit of ‘countervailing circumstances’” according to the former United Nations Administrative Tribunal Judgment No. 885, *Handelsman* (1998) and “created a legitimate expectation of renewal for every staff”.

e. The decision to terminate the Applicant’s appointment was *ultra vires* because it was taken without proper delegated authority. It was also malicious. The Chief of Strategic Planning did not have delegated authority “to terminate appointments, let alone by unknown reason”. Such authority is vested in the Secretary-General in accordance with ST/AI/234/Rev.1 (an unknown administrative instruction) but, in the present case, the Secretary-General took no decisions or delegated his authority to the Chief of of Strategic Planning, the FRO or any other official in the OCT.

f. It was reasonable for the Applicant to assume that the Administration intended to extend her contract because: (a) the OCT does not suffer any lack of funds, (b) the Applicant’s expertise was needed, especially her language skills as demonstrated when assisting the entire OCT during her appointment, and (c) the FRO had requested her to prepare her electronic performance appraisal system report in Inspira (the online United Nations jobsite).

g. The Applicant's post continued to exist, and the job description remained the same in the subsequent job opening for the fixed-term post. This concerned "the fatal fact that her recruitment in OCT was a [p]lot to orchestrate a [t]arnished [i]mage of the Applicant in the Organization and discharge her as a Used Object, [redacted].

h. The advertisement to fill the Applicant's post violated her rights as the incumbent of the post. The decision not to renew her temporary appointment and reject her for the job opening was "clearly tainted by bias on the part of her corrupt hiring manager", namely the Chief of Strategic Planning.

i. The Applicant was "very uncomfortable with [the Chief of Strategic Planning's] unlawful shady criminal actions, and she demands answers to her serious worries because he put her integrity and reputation at risk and harm".

j. The question is whether OCT took any decision to fill other posts from the relevant rosters other than the post occupied by Applicant. Even if her post was to be filled from a roster at the time of terminating her employment, the job opening did not indicate that priority would be given to roster candidates. The job opening was prepared "in a hurry" from 28 September to 27 October 2018 to get rid of the Applicant and block her chance to apply for it. This was done "by swiftly hiring from roster on 4 October 2018 a day after she knew about [the job opening] through her friend on 3 October 2018, and decision not to renew her contract was communicated to her on 5 October 2018 during a sudden meeting not intended to discuss her contractual status, but to respond to her earlier queries as [staff representative]". This shows that the process was not undertaken in a transparent manner.

k. The non-renewal decision was taken after Applicant's meeting with the Under-Secretary-General of OCT on 17 September 2018 "and her discussion with him about lack of transparency in recruitment process". At that time, no mention was made of "performance shortcoming or any discussion on performance improvement plan as action". The management evaluation response of 9 November 2018 had no reference to any lack of performance or performance improvement plan but "untruthfully stated that the Applicant volunteered to assist other programme managers in addition to her first superior". Even if she had done so, this "classifies her as a good faith teamwork player who is willing to communicate and assist to fulfil the Office Mandate".

l. The Applicant should "not be victimized for a personal conflict between three senior managers". Also, "the initial collusion in the conduct of these senior managers by [the] EO" was "extraordinary" and "the subsequent OHRM failure to stop the conduct [of the EO and the OCT was] well [known] to be unethical and unlawful".

m. The Respondent is withholding evidence since the OCT might have held meetings "at which it took far-reaching decisions in respect of its Office Mandate and its Personnel but kept no records of its communication". In this regard, the Applicant refers to the Administrative Tribunal of the International Labour Organization Judgment No. 3838 (2017), art. 4 of Code of Conduct for legal representatives and litigants in persons of the Dispute Tribunal, and *Valentine* UNDT/2017/004.

n. The Respondent failed to disclose evidence as ordered by Order No. 47 (NY/2019). This calls into question his "integrity and credibility".

o. It is OCT's responsibility to determine what competencies a vacancy announcement should require, and the Dispute Tribunal may review whether such announcement comply with the ethics and accountability requirements stipulated in the United Nations Charter, art. 101.3.

p. The Applicant filed a complaint under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) to the Deputy Director, the “Office Chief” and the Under-Secretary-General of OCT.

q. The Applicant was selected on 16 February 2018 and joined the OCT in April 2018, and no regular selection process was pending at that time. Instead of 1 March 2018, the Applicant started working on 24 April 2018 “due to delay fabricated by [the Chief of Strategic Planning’s] spying activity” and “[t]here was [n]o process expedition”.

r. The Applicant did not have time to apply for the job opening and “was tricked by [two staff members] who called her for a meeting about the publication of the job opening and the staffing table, but talked about the recruitment from roster and end of contract”.

s. The Respondent did not disclose that the Applicant’s access to the United Nations premises and other matters was illegally disabled.

t. When OCT decided not to renew Applicant’s contract and proceeded with recruitment from roster on 4 October 2018 to “quickly fill Applicant’s post”, no mention was made of “performance shortcomings or any discussion on the initiation of a performance improvement plan as part of a remedial action”.

u. The Applicant was tasked to work for other units during the last week of April 2018 contrary to her job description under the TJO. A high-level conference was held last week of June 2018.

v. No record of meetings, discussions or solutions regarding the Applicant’s alleged conflict with colleagues and supervisors exist. Had such “forged conflicts truly existed, [the] OCT would have dealt with them properly to document proof”.

w. The suspension of action clarified “the nexus between the Applicant’s Staff Union activities” and that “[the] OCT retaliated against her acting as [staff representative”.

x. The Respondent has failed to disclose any evidence on why the job opening to fill the Applicant’s post was advertised before 364 calendar days had been reached.

y. The Respondent’s “egregious cover-up [in] disdain [to] the Applicant’s life image through the DSS Notice [*sic*]” which “defamed her” and exposed “her to risk and danger”.

34. The Respondent’s principal contentions may be summarized as follows:

a. An appointment with a finite term does not carry an expectation of renewal. Temporary appointments may be granted for a period of less than one year for specific short-term requirements, which include temporarily filling a vacant position pending the finalization of the regular selection process.

b. On 16 January 2018, the TJO was issued for the position of Programme Management Assistant at the G-5 level with the OCT, and it was specified that the position was available for only six months. The purpose of the TJO was to allow OCT to fill the position expeditiously while it completed a selection exercise under ST/AI/2010/3.

c. The Organization did not retaliate against the Applicant for her staff representative activities, and she has not shown any nexus between her union activities and the decision not to renew her appointment.

d. The Head of Department selected the Applicant for the TJO and, on 24 April 2018, the Organization granted her a temporary appointment for six months with an expiration date of 23 October 2018. Following the Applicant’s appointment, the OCT then issued a job opening for the position in accordance

with the provisions of ST/AI/2010/3. Subsequently, OCT selected a candidate from the roster of pre-approved candidates of Programme Management Assistants at the G-5 level. The selected candidate met the requirements of the position, had previously served in a similar capacity, and was eligible and suitable for selection. The Applicant could not be selected for the JO as she did not apply for it.

e. Furthermore, the Applicant is not on the relevant roster of pre-approved candidates. On 5 October 2018, the Applicant's SRO informed her in person that a roster candidate had been selected for the job opening and that the Applicant's appointment would not be renewed. As envisioned at the beginning of the Applicant's appointment, the Applicant's appointment ended after six months. Because of the selection of a candidate for the job opening, there was no basis to renew the Applicant's temporary appointment. The Organization no longer had a need to temporarily fill the position following the completion of the selection process for the job opening. The Applicant was accordingly separated from service.

The legal framework governing non-renewal of temporary appointments

35. The Tribunal observes that in accordance with staff regulation 4.5(b), as promulgated by the General Assembly, "A temporary appointment does not carry any expectancy, legal or otherwise, of renewal. A temporary appointment shall not be converted to any other type of appointment". When implementing staff regulation 4.5(b) in staff rule 4.12 on temporary appointment, the Secretary-General further provides that:

(a) A temporary appointment shall be granted for a period of less than one year to meet seasonal or peak workloads and specific short-term requirements, having an expiration date specified in the letter of appointment.

(b) The appointment of a staff member who has served for the maximum period as described in paragraph (a) above may be

renewed for up to one additional year when warranted by surge requirements and operational needs related to field operations and special projects with finite mandates under circumstances and conditions established by the Secretary-General.

36. The administration of temporary appointments is regulated by ST/AI/2010/4/Rev.1 (Administration of temporary appointments), which, in addition to reiterating the above provisions, on the purpose of temporary appointments provides that:

1.1 The purpose of the temporary appointment is to enable the Organization to effectively and expeditiously manage its short-term staffing needs. As stated in General Assembly resolution 63/250, “temporary appointments are to be used to appoint staff for seasonal or peak workloads and specific short-term requirements for less than one year but could be renewed for up to one additional year when warranted by surge requirements and operational needs related to field operations and special projects with finite mandates”.

37. ST/AI/2010/4/Rev.1, para. 2.2, also states that, “A temporary appointment may be granted for specific short-term requirements that are expected to last for less than one year at the time of the staff member’s appointment, such as: ... (d) To temporarily fill a vacant position pending the finalization of the regular selection process”.

38. The Appeals Tribunal has in its jurisprudence consistently upheld the principle that temporary appointments do not carry any expectancy, legal or otherwise, of renewal. For instance, in *Toure* 2016-UNAT-660, the Appeals Tribunal held that,

... The Appeals Tribunal has consistently affirmed the principle that there is no expectancy of renewal of fixed-term and temporary contracts. In order for a staff member’s claim of legitimate expectation of a renewal of appointment to be sustained, it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances. [footnote omitted]

39. In *Kellie* UNAT-2018-875, the Appeals Tribunal elaborated on the meaning of “a firm commitment to renewal revealed by the circumstances” and it found that “[o]ur jurisprudence requires a promise to renew a [fixed-term appointment] at least to be in writing” (see also *Igbinedion* 2014-UNAT-411, *He* 2018-UNAT-825 and *Kule Kongba*

2018-UNAT-849). A similar requirement would therefore also necessarily *mutadis mutandis* apply to a temporary appointment which, unlike a fixed-term appointment, per definition is of interim nature.

40. In addition, the Appeals Tribunal has found that it is an applicant's onus to prove that s/he had a legitimate expectation of renewal or that the non-renewal decision was otherwise inappropriate. For instance, in *Hepworth* 2015-UNAT-503, para. 44, the Appeals Tribunal held that, "Our jurisprudence places the burden on the staff member to show a legitimate expectancy of renewal or that the non-renewal of his fixed-term appointment was arbitrary or motivated by bias, prejudice or improper motive against the staff member".

Did the Applicant have a legitimate expectation of renewal?

41. The Applicant submits that she held a legitimate expectation that her temporary appointment would be extended, primarily referring to the fact that her letter of appointment provided that her temporary appointment "shall normally not exceed 364 days".

42. The Tribunal finds that such statement in itself is only a reflection of the provision in staff rule 4.12(a) that a temporary appointment "shall be granted for a period of less than one year" and gives no expectancy whatsoever of a renewal. To the contrary, the Applicant's letter of appointment explicitly provides that, "This appointment is for a period of six months from the effective date of appointment shown above. It therefore expires without prior notice on **23rd October 2018**" (emphasis in the original).

43. The Tribunal therefore finds that, with reference to *Kellie*, the Applicant has not been able to establish any firm commitment to renew her temporary appointment, be it in writing or not, and therefore has not established her burden of proof under *Hepworth*. As a matter of principle and definition, the Applicant was therefore not terminated. Staff rule 9.1 explicitly provides that "[e]xpiration of appointment" and

“[t]ermination of appointment” constitute two distinct and different grounds for separation.

Was it unlawful to hire someone else as a roster candidate on a fixed-term appointment?

44. The Applicant appears to contend that the fact that OCT proceeded with recruiting someone on a fixed-term appointment under ST/AI/2010/3 to the post, against which she was hired on a temporary basis, was unlawful.

45. Firstly, the Tribunal observes that as the Applicant was hired on a temporary appointment, her appointment could not be converted to any other type of appointment, including a fixed-term appointment, under staff regulation 4.5(b). It was therefore not possible to simply convert her temporary appointment into a fixed-term appointment and a full selection process therefore had to be launched under ST/AI/2010/3 to fill the post on a regular basis.

46. Secondly, the Tribunal notes that, in accordance with staff rule 4.12(a), temporary appointments per definition are only to be used “to meet ... specific short-term requirements”. In accordance with para. 2.2 of ST/AI/2010/4/Rev.1, such requirement is, for instance, to have someone undertaking the functions of a post on an interim basis until it has been filled by a staff member on a fixed-term appointment after a regular selection process under ST/AI/2010/3. This also is what the Respondent submits and the Tribunal finds to not be an irregularity.

47. The Applicant further seems to take issue with the fact that, shortly after the job opening was advertised, a candidate from the relevant roster was selected for the fixed-term appointment.

48. The Tribunal notes that sec. 9.5 of ST/AI/2010/3/Amend.1 provides that, “Should an eligible roster candidate be suitable for [a] job opening, the hiring manager may recommend his/her immediate selection to the head of department/office/mission

without reference to the central review body”. The Tribunal therefore finds that there was no impropriety in the OCT’s selection of a candidate from the roster shortly after the job opening had been formally advertised.

Was the decision not to extend the Applicant’s temporary appointment taken in bad faith?

49. The Applicant finally argues that the decision not to renew her temporary appointment was tainted by various ulterior motives.

50. For the outset, the Tribunal notes that, even if a temporary appointment holds no expectation of renewal under staff regulation 4.5(b) and staff rule 4.12, it follows from the jurisprudence of the Tribunal that, at least upon a staff member’s request, the Organization must provide her/him with an appropriate reason for a non-renewal decision (see, for instance, *Obdeijn* 2012-UNAT-201).

51. In the present case, the Respondent submits that the reason why the Applicant’s temporary appointment was not renewed was that, pursuant to sec. 2.2(d) of ST/AI/2010/4/Rev.1, the Applicant’s was only hired to fill the post on an interim basis until someone was recruited for this post after the finalization of a regular selection process in accordance with ST/AI/2010/3. As such, the Applicant does not seem to deny this explanation, but rather seems to challenge the fact that her appointment was not extended.

52. Considering the particular circumstances of the present case, the Tribunal finds that the reason provided by the Respondent is both credible and lawful, also taking into account that it is in the best interest of the Organization that posts are filled on a regular, and not on an interim, basis. The Tribunal further notes that the Applicant was separated from the Organization as a consequence of the fact that her temporary appointment had expired in accordance with her letter of appointment.

53. Accordingly, the Tribunal finds that the Applicant has failed to substantiate that the reason provided for the non-renewal of her temporary appointment was unlawful.

Conclusion

54. In light of the above, the Tribunal rejects the application in its entirety.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 1st day of May 2019

Entered in the Register on this 1st day of May 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York