



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

MOHAMED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nicole Wynn, ALD/OHR, UN Secretariat

Nusrat Chagtai, ALD/OHR, UN Secretariat

Introduction

1. On 24 November 2017, the Applicant filed an application contesting the Administration's refusal to convert his fixed-term appointment into a continuing appointment.

2. In response, the Respondent claims, *inter alia*, that the application is not receivable.

3. On 16 August 2018, the Judge originally handling this matter decided to adjudicate the issue of receivability as a preliminary matter and directed the Applicant to make submissions on this subject, which he did on 23 September and 9 November 2018.

4. The undersigned Judge, who was assigned to this case on 16 October 2019, as directed by the previous Judge, decides to adjudicate the issue of receivability as a preliminary matter for a fair and expeditious disposal of this matter.

Factual background

5. The Applicant joined the United Nations in 2007 on a 300-series appointment of limited duration as translator at the P-3 level. His appointment was extended several times. In July 2009, the Applicant was reappointed on a fixed-term appointment which was also subsequently extended several times. In 2010, the Applicant was moved to a P-4 level post with retroactive effect from 1 March 2009. On 1 July 2017, the Applicant's appointment was extended for one month pending completion of his performance appraisal and, thereafter, was renewed until 30 June 2018.

6. On 1 July 2017, the Applicant submitted a management evaluation request stating: "I want my contractual arrangement to be converted from fixed-term to a continuing appointment in accordance with para. 50 of Section VI of the GA

Resolution No. 65/247". The Management Evaluation Unit ("MEU") rejected the Applicant's request as non-receivable.

Consideration

7. To determine whether the application is receivable, the Tribunal will first have to define the contested administrative decision. It will then review whether such administrative decision is receivable.

Definition of the contested administrative decision

8. The Respondent contends that the Applicant has failed to identify the administrative decision he wishes to contest. He argues further that since the Applicant refers to the date of 1 July 2017 when his fixed-term appointment was renewed, he is in fact challenging the extension of his fixed-term appointment.

9. The Appeals Tribunal has established that the burden of clearly defining the administrative decision under appeal lies with the applicant (see, for instance, *Haydar* 2018-UNAT-821, para. 13). However, it is also settled jurisprudence that the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged and to identify the subject of judicial review (see, for instance, *Massabni* 2012-UNAT-238, para. 26 and *Zachariah* 2017-UNAT-764, para. 23).

10. Mirroring the language of his request for management evaluation, in the application, the Applicant defined the contested decision as follows: "The decision is about the conversion of my contractual arrangement from a fixed-term to a continuing appointment on the basis of paragraph number 50 of the GA resolution 62/274 [...]".

11. In his additional submissions on the matter of receivability, the Applicant further claimed that it is the Administration's duty to consider his fixed-term appointment for conversion to a continuing appointment as soon as he became eligible, even if he did not submit a request for consideration. He states: "[T]he administration

has failed in monitoring my years of service and should have made the effort to convert my appointment after two years of satisfactory service as of 1 July 2009”.

12. The Tribunal interprets these submissions as a challenge against an implied administrative decision of failing to include the Applicant in the list of candidates for conversion to continuing appointment.

Receivability

13. Staff rule 11.2(c) provides that a staff member must seek management evaluation within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. Article 8(3) of the Statute of the Dispute Tribunal states that the Dispute Tribunal may not waive the deadline for management evaluation.

14. To determine what date sets off the deadline to challenge an implied decision, the Tribunal will establish the date on which the staff member knew or reasonably should have known of the implied decision. This date will set the deadline for seeking management evaluation (*Chahrour* 2014-UNAT-406, para. 31).

15. ST/IC/2013/20 (Review for consideration for the granting of a continuing appointment, as at 1 July 2012) issued on 8 July 2013, implements General Assembly resolution 65/247 (Human Resources management), adopted on 24 December 2010 and ST/SGB/2011/9 (Continuing appointments). ST/IC/2013/20 sets out the procedure to draw up the list of staff members being considered for conversion. It provides that candidates under consideration are notified by automatic e-mail.

16. In his request for management evaluation of 11 August 2017, the Applicant acknowledges that he has been aware that he was not being considered for conversion “Since the launch of the first review for continuing appointments”. Therefore, the Applicant should have reasonably known of his exclusion from the list of candidates for conversion in 2013, when the first review took place and he was not notified of his

inclusion in the list of candidates. However, he did not seek management evaluation until several years later, even when his fixed-term appointment was renewed several times thereafter. There is no doubt, therefore, that the Applicant did not challenge the implied decision in a timely manner.

Conclusion

17. In light of the foregoing, the Tribunal rejects the present application as not receivable.

(Signed)

Judge Joelle Adda

Dated this 22nd day of October 2019

Entered in the Register on this 22nd day of October 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York