



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

HAMMOND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nusrat Chagtai, ALD/OHR, UN Secretariat

Introduction

1. On 1 November 2019, the Applicant, a former Administrative Officer, with the African Union-United Nations Hybrid Operation in Darfur (“UNAMID”), filed an application contesting the non-renewal of his fixed-term appointment. The case was filed with the Nairobi Registry.

2. On 4 December 2019, the Respondent filed his reply submitting, *inter alia*, that the Application is not receivable *ratione materiae* as the Applicant did not request management evaluation of the contested decision within the 60-day deadline prescribed in staff rule 11.2(c).

3. On 17 April 2020, the case was transferred to the New York Registry and assigned to the undersigned Judge.

4. On 24 April 2020, by Order No. 81 (NY/2020), the Tribunal ordered that, upon review of the parties’ submissions, receivability can be dealt with on the papers as a preliminary issue.

5. Pursuant to Order No. 81 (NY/2020), on 8 May 2020, the Applicant filed his closing submission. On 15 May 2020, the Respondent filed his closing statement. On 21 May 2020, the Applicant filed his final submission responding to the Respondent’s closing submission.

6. For the reasons stated below, the Tribunal finds that the Applicant’s claim regarding the non-renewal of his fixed-term appointment is not receivable.

Facts

7. The Applicant served as an Administrative Officer at the P-4 level in the UNAMID Communication and Public Information Section (“CPIS”) on a fixed-term appointment.

8. On 31 October 2017, the Secretary-General’s proposed budget for UNAMID for 2017 to 2018 (“the Budget”) recommended the conversion of the Administrative Officer post that the Applicant encumbered (“the Post”) from the P-4 level in the Professional category to the FS-6 level in the Field Service category, effective 31 December 2017. The General Assembly approved the Budget on 24 December 2017.

9. Effective 1 January 2018, UNAMID placed the Applicant against a vacant P-4 level Human Rights Officer post so that he could serve out his existing fixed-term appointment until its expiry on 30 June 2018.

10. On 23 April 2018, UNAMID informed the Applicant in writing that his fixed-term appointment would not be renewed beyond 30 June 2018 due to the reclassification of the Post.

11. On 29 April 2018, the Applicant went on certified sick leave.

12. From 1 July 2018, UNAMID granted the Applicant month by month contract extensions because his certified sick leave continued beyond the expiration of his appointment.

13. By emails of 16 and 17 October 2018, UNAMID Human Resources (“HR”) informed the Applicant that his appointment would be renewed on a monthly basis pending the outcome of the cases the Applicant had filed with the Dispute Tribunal.

14. On 11 November 2018, the Director of Mission Support wrote to the Applicant stating that the non-renewal of his appointment was “put in abeyance for the period of

authorized sick leave pursuant to Section 3.9 of ST/AI/2005/3” and that there was no expectation of renewal beyond this period.

15. The Applicant’s last certified sick leave day was on 9 March 2019 and he was separated on 10 March 2019.

16. On 23 April 2019, HR notified the Applicant that the effective date of his separation was 9 March 2019.

17. On 22 June 2019, the Applicant requested management evaluation of the contested decision. On 25 October 2019, the Management Evaluation Unit (“MEU”) informed the Applicant that his request for management evaluation was not receivable because it was time-barred.

Consideration

The issue in the present case

18. The preliminary issue is to determine whether the request made by the Applicant, on 22 June 2019, for a management evaluation was within the period of 60 days from the date that he was notified of the decision that he is challenging, namely the non-renewal of his fixed-term appointment.

Legal framework

19. Staff rule 11.2(a) requires a staff member wishing to formally contest an administrative decision to, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

20. Staff rule 11.2(c) states that a request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the

date on which the staff member received notification of the administrative decision to be contested.

21. Article 8.1(c) of the Dispute Tribunal's Statute provides that an application shall be receivable if an applicant has previously submitted the requested administrative decision for management evaluation where required.

22. It is settled jurisprudence that there must be a timely request for management evaluation prior to submitting an application to the Tribunal (see, for instance, *Dzuverovic* 2013-UNAT-338; *Kouadio* 2015-UNAT-558). The Tribunal does not have power to waive the deadlines for the filing of requests for management evaluation or to make any exception to it (see, for instance, *Costa* 2010-UNAT-036; *Christensen* 2013-UNAT-335).

23. The Appeals Tribunal has ruled that the decisive moment of notification for purposes of staff rule 11.2(c) is when "all relevant facts ... were known, or should have reasonably been known. (See, for instance, *Auda* 2017-UNAT-746)

24. It follows that the time limit for requesting management evaluation begins to run from the date of notification of the decision being challenged. The disputed issue in the present case is the date of notification of the decision to not renew the Applicant's fixed-term appointment.

25. The Applicant submits that he was notified of the decision to not renew his fixed-term appointment on 23 April 2019 when HR notified him that the effective date of his separation was 9 March 2019. The Applicant contends, therefore, that he filed a timely request for management evaluation on 22 June 2019 within the time limit of 60 days.

26. Furthermore, the Applicant states that he could not have received a notification on 23 April 2018 that his fixed-term appointment would not be renewed beyond its

expiry on 30 June 2018 as his appointment continued to be extended beyond 30 June 2018, until 9 March 2019.

27. In addition, the Applicant states that UNAMID made a promise in emails from HR dated 16 and 17 October 2018 to renew his appointment until the date of the outcome of his cases (not related to the present matter) that were pending before the Dispute Tribunal.

28. The Respondent contends, on the other hand, that UNAMID notified the Applicant on 23 April 2018 that his fixed-term appointment would not be renewed beyond its expiry on 30 June 2018. The deadline for requesting management evaluation of the contested decision was, therefore, 22 June 2018. However, the Applicant waited over one year later on 22 June 2019 to request management evaluation of the non-renewal decision. As such, the application is *ratione materiae*.

29. In terms of the extensions of the Applicant's contract beyond 30 June 2018, the Respondent states that the subsequent extensions of the Applicant's appointment were for administrative purposes to allow the Applicant to utilize his sick leave entitlements. As such, the Respondent states that on 1 July 2018, in accordance with ST/AI/2013/1 (Administration of fixed-term appointments) and ST/AI/2005/3 (Sick leave), UNAMID granted the Applicant month by month contract extensions only because his certified sick leave continued beyond the expiration of his appointment.

30. It is the Respondent's position that UNAMID's email of 23 April 2019, informing the Applicant of the effective date of his separation at the end of his certified sick leave, was not a new administrative decision and did not reset the deadline for requesting management evaluation.

31. Having reviewed the record, the Tribunal finds that, contrary to the Respondent's assertions, the Applicant was not given a clear and unambiguous

notification on 23 April 2018 that his fixed-term appointment would not be renewed beyond its expiry on 30 June 2018.

32. It is undisputed that HR sent the Applicant emails some months later on 16 and 17 October 2018, informing him that his appointment would be renewed on a monthly basis pending the outcome of the Applicant's cases (relating to other matters) before the Dispute Tribunal. The Respondent states that these emails were sent by mistake and that the Applicant knew or ought to have known that there was no order suspending the implementation of a non-renewal decision in any of his cases pending before the Dispute Tribunal at that time.

33. It is correct that there was no order suspending the implementation of a non-renewal decision in any of the Applicant's cases pending before the Dispute Tribunal at that time. However, the Tribunal finds the Administration's line of reasoning to be disingenuous.

34. Staff members ought to be able to reasonably rely on the information provided by the Administration's own HR representatives. The onus is not on the staff member to know that HR representatives made a mistake in their advice as the Respondent seems to suggest. The Tribunal acknowledges that mistakes are made. However and whenever made, the Administration has the duty to correct its mistakes (see, for instance, *Cranfield* 2013-UNAT-367, *Kule Kongba* 2018-UNAT-849). Nonetheless, in the present case the errors by HR on 16 and 17 October 2018 were neither formally acknowledged to the Applicant nor ever corrected.

35. Instead, the Director of Mission Support notified the Applicant by letter almost one month later on 11 November 2018, that the Applicant's contract would only be extended for the period of his certified sick leave and that such extensions carried no expectation of further renewals beyond that period. The letter made no mention of the emails from HR on 16 and 17 October 2018 informing the Applicant that his appointment would be renewed on a monthly basis pending the outcome of his cases

before the Dispute Tribunal. It follows that the Administration never properly addressed its mistake by giving the Applicant appropriate clarification and notification of correction.

36. There is an implied duty of care on the Respondent to properly administrate its dealings with staff members and inform them clearly of mistakes that need to be corrected. The Tribunal finds there to have been poor management and communication in the present case on the part of HR and also on the part of the Director of Mission Support who sent the Applicant a letter clarifying his contract status without addressing the grave mistake made by HR in its previous emails to the Applicant.

37. The Tribunal therefore understands that in light of HR's emails on 16 and 17 October 2018, the Applicant could have reasonably understood by mistake that his contract would be further extended pending proceedings in his cases before the Dispute Tribunal.

38. However, the Tribunal finds that notwithstanding the very poor management of the matter by UNAMID, the 11 November 2018 letter of Director of Mission Support makes it clear to the Applicant that the only reason that the Applicant's contract was being renewed was to allow the Applicant to utilize his sick leave entitlements pursuant to sec. 3.9 of ST/AI/2005/3 and that there was no expectation of renewal beyond this period.

39. It follows that the Applicant was notified clearly on 11 November 2018 that his contract was only being renewed periodically to allow the Applicant to utilize his sick leave entitlements and that there was no expectation of renewal beyond this period. The Applicant should therefore have requested management evaluation of this 11 November 2018 decision within 60 days if he disagreed with it. As the Applicant did not request management evaluation within that deadline and waited until 22 June 2019, his application is not receivable.

Conclusion

40. It is the Judgment of the Tribunal that this claim is not receivable. The application is rejected.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 29th day of June 2020

Entered in the Register on this 29th day of June 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York