



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

PATKAR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT
ON RECEIVABILITY**

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Kong Leong Toh, UNOPS

Introduction

1. The Applicant, a former staff member with the Water Supply and Sanitation Collaborative Council (“WSSCC”) at the P-5 level with the United Nations Office for Project Services (“UNOPS”) in Geneva, contests the Administration’s decision not to renew her fixed-term appointment beyond 31 March 2018.

2. The Respondent contends that the application is not receivable since the Applicant failed to request management evaluation of the contested decision within the 60-day time limit under staff rule 11.2(c).

Facts and procedural history

3. In August 2017, the WSSCC Steering Committee decided to implement a new structure for the WSSCC. In September 2017, the Deputy Director of the UNOPS People and Change Group gave presentations to all WSSCC staff members about an upcoming restructuring exercise, and informed them that a matching exercise would be conducted for that purpose.

4. On 24 November 2017, the Deputy Director sent a letter to the Applicant informing her that all posts in the current WSSCC structure were being abolished effective 31 March 2018, and that she had not been matched against any position in the new structure. The Deputy Director informed the Applicant that she was invited to apply for three new WSSCC posts stating as follows:

I must with regret now give you formal notice that your current appointment will not be renewed when it expires on 31 March 2018 and you will be separated from service. Should you be selected for one of the new WSSCC posts, the foregoing would of course cease to be applicable. The foregoing would also not apply if you are selected for and accept any other fixed-term UNOPS post commencing on or before 1 April 2018.

5. On the same day (24 November 2017), the Deputy Director sent an email to all WSSCC staff members confirming that the outcome of the matching exercise was notified to them. The Deputy Director advised staff members who were not matched that the vacancy announcements would be advertised for internal candidates only and that he hoped that most of the positions would be filled with qualified internal candidates.

6. Thereafter, the Applicant had several communications with the Deputy Director regarding the decision not to match her against any position, and she applied for the position of Head of Global Policy and Innovation at the P-5 level.

7. On 19 December 2017, the Applicant was informed that she was not selected for the position of Head of Global Policy and Innovation.

8. On 7 February 2018, the Applicant requested a management evaluation of the decision not to renew her appointment beyond 31 March 2018, and on 26 March 2018, the Applicant received a management evaluation response.

9. On 22 June 2018, the Applicant filed the application referred to in para. 1 above.

10. On 26 July 2018, the Respondent filed his reply contending that the application is not receivable.

11. By Order No. 42 (GVA/2020) dated 6 April 2020, the Tribunal decided to reassign the case to the undersigned Judge.

12. On 15 June 2020, pursuant to Order No. 44 (GVA/2020), the Applicant filed a submission on the issue of receivability. On 16 and 19 June 2020, the parties made further submissions on the issue of receivability.

Consideration

13. Under staff rule 11.2(c), the statutory time limit for requesting management evaluation is 60 days from the notification of the contested decision. Article 8.1 of the Dispute Tribunal's Statute provides that the application is receivable if the contested administrative decision has previously been submitted for management evaluation, where required.

14. The Appeals Tribunal's jurisprudence has established that "[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine" (*Rosana* 2012-UNAT-273, para. 25, affirmed in *Newland* 2018-UNAT-820, para. 34).

15. Having reviewed the evidence on file and the parties' arguments, the Tribunal finds that the application is not receivable as time-barred.

16. It results from the file that, on 24 November 2017, the Applicant received a letter indicating that she had not been matched against any post in the newly planned structure of the WSSCC. On the same date, an email was sent out indicating the process to be followed for staff members who were and were not matched. The Applicant immediately sought an explanation for the decision from the UNOPS Deputy Director and discussed the situation by telephone on 27 November 2017.

17. The Applicant requested management evaluation of the decision not to renew her appointment only on 7 February 2018, namely after expiration of the 60-day deadline set out in staff rule 11.2(c).

18. The Applicant claims that the restructuring process embarked upon by UNOPS had different stages: one was a matching exercise that looked exclusively at the functions of two posts purportedly without consideration of the incumbents, and the second was an internal "job fair" for staff displaced following the initial exercise. She argues that the matching exercise alone could not, therefore, have resulted in a final non-renewal decision since it was not the end of the process. The Applicant claims that

only when the decision not to select her during an internal “job fair” was notified to her on 19 December 2017, the non-renewal decision became final. The objection is without merit.

19. The 24 November 2017 letter to the Applicant clearly stated that “all posts in the current WSSCC structure [were] being abolished with effect [close of business] 31 March 2018”. Also, as per the language quoted above (see para. 4), the letter was unambiguous and unconditional about the separation of the Applicant upon the expiration of her appointment on 31 March 2018. It should have been challenged by the Applicant within the deadline provided for by the applicable staff rule.

20. The Tribunal is mindful that the 24 November 2017 letter in question provided that should the Applicant be selected for another position before 31 March 2018, the non-renewal decision would cease to be applicable. However, this does not mean that the decision communicated to the Applicant on 24 November 2017 was not final. Any subsequent decision to rescind the earlier non-renewal decision due to the Applicant’s selection for another position would have been simply a new administrative decision superseding a previous decision.

21. In light of the foregoing, the application is dismissed.

Conclusion

22. The Tribunal rejects the application as not receivable.

(Signed)

Judge Francesco Buffa

Dated this 30th day of June 2020

Entered in the Register on this 30th day of June 2020

(Signed)

René M. Vargas M., Registrar, Geneva