



Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

WILLIAMS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Edward Patrick Flaherty

Counsel for Respondent:

Kong Leong Toh, UNOPS

Introduction

1. The Applicant contests the decision of the United Nations Office for Project Services (“UNOPS”) not to extend his appointment and not to pay him his salary and other emoluments from 1 January 2018 to 1 March 2018 while he was on service-incurred certified sick leave.

Facts

2. On 1 October 2012, the Applicant was seconded from the United Nations Human Settlements Program (“UN-Habitat”) to UNOPS to assume the position of Executive Director (D-2, step I), Water Supply and Sanitation Collaborative Council (“WSSCC”). The Applicant’s secondment was extended twice until 31 December 2017. Prior to his secondment, the Applicant held a Director’s position (D-1, step II) with UN-Habitat.

3. On 3 October 2017, UNOPS informed the Applicant *inter alia* that his appointment would not be renewed, and he would be separated from UNOPS effective 31 December 2017.

4. By a medical certificate dated 18 December 2017, the Applicant’s physician placed him on sick leave from 18 December 2017 to 17 January 2018. However, since the Applicant’s contract was set to expire on 31 December 2017, he could not introduce a leave request beyond that date in the UNOPS intranet system.

5. On 22 December 2017, the Applicant informed the Director, Global Service Cluster (“GSC”), UNOPS, that his Doctor had placed him on sick leave for one month. He requested approval of his sick leave and assurances that his period of absence be captured in the UNOPS intranet system.

6. The same day, the Director, GSC, UNOPS, replied to the Applicant: “[n]eedless to say this is a certified sick leave and has to be honoured”.

7. On 31 December 2017, UNOPS separated the Applicant from service.

8. On 18 January 2018, the Applicant had a follow-up medical appointment during which his physician extended his sick leave for an additional 30 days, namely until 15 February 2018.

9. On 31 January 2018, the Applicant contacted the Director, GSC, UNOPS, requesting him to process the extension of his sick leave in the UNOPS intranet system as he had not been able to do so.

10. On 1 February 2018, the former Deputy Director of Human Resources, UNOPS, replied to the Applicant that there was no need to submit the leave request as he had been separated from UNOPS effective 31 December 2017.

11. In February 2018, several emails were exchanged between the Applicant and UNOPS Administration concerning his request for sick leave.

12. On 21 February 2018, the Director, GSC, UNOPS, informed the Applicant that UNOPS would not pay his salary for the months of January and February 2018 since he had left UNOPS in December 2017. However, he proposed, as an alternative, a settlement agreement to deal with all the Applicant's pending claims.

13. On 21 March 2018, the Applicant requested management evaluation of the decision not to extend his appointment beyond 31 December 2017 on the account of his certified sick leave, and not to pay him his salary and other emoluments due from 1 January to 28 February 2018.

14. On 19 July 2018, the Applicant received the response to his request for management evaluation. UNOPS indicated that the Applicant's contract had expired on 31 December 2017 and that UNOPS was not obliged to extend his appointment beyond that date for him to use sick leave.

15. On 17 October 2018, the Applicant filed the present application.

16. On 9 November 2018, the Respondent filed his reply.

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

18. On 12 June 2020, pursuant to Order No. 50 (GVA/2020), the Applicant filed a rejoinder to the Respondent's reply.

Parties' submissions

19. The Applicant's principal contentions are:

- a. UNOPS violated staff rule 6.2 and UNOPS Administrative Instruction AI/HRPG/2013/02 on Separation from Service of Staff Members, by failing or refusing to extend his contract past its expiration date to accommodate his sick leave and to pay him his salary and benefits during that time;
- b. Staff rule 9.6(i) and AI/HRPG/2013/02 provide that a staff member's appointment should be extended to allow him to exhaust his sick leave entitlement;
- c. UNOPS broke its own express promise to pay the Applicant his salary up to the end of his sick leave. Such promise was contained in the email dated 22 December 2017 from the Director, GSC, UNOPS;
- d. UNOPS violated the duty of care owed to the Applicant by failing to protect him from incurring a service-incurred illness; and
- e. The UNOPS Process and Quality management System, section 7.5.11, Manage Certified Sick Leave for Staff – On Staff Request does not set out any discernible policy concerning sick leave or address the issue of fixed-term appointments and sick leave.

20. The Respondent's principal contentions are:

- a. Staff rule 6.2 does not contain any obligation to extend a staff member's appointment for the sole purpose of allowing that staff member to be on sick leave during the period of that extension;
- b. UNOPS Administrative Instruction AI/HRPG/2013/02, on which the Applicant relies, was abolished by UNOPS Operational Directive OD.PCG.2017.01 that came into effect in August 2017;

- c. The UNOPS Process and Quality management System, section 7.5.11 Manage Certified Sick Leave for Staff – On Staff Request, does not contain any obligation to extend an expiring contract for the sole purpose of allowing a staff member to be on sick leave during the period of that extension;
- d. In *Edwards* UNDT/2018/058, this Tribunal considered the interpretation of staff rule 6.2 and has concluded that there is no obligation to extend a staff member’s appointment in such circumstances; and
- e. The statement of the UNOPS Director Global Service Cluster that “[n]eedless to say this is a certified sick leave and has to be honoured”, only meant that UNOPS would honour its existing obligations but did not create any new obligation.

Consideration

21. Having examined the parties’ submissions, the Tribunal finds that the present matter can be determined without holding a hearing. Indeed, the issue for determination in this case is a matter of law that has already been addressed by the parties in their respective pleadings.

22. It is well established in the Staff Rules and UNAT’s jurisprudence that a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, and shall expire automatically and without prior notice on the expiration date specified in the letter of appointment.

23. In the present case, the Applicant’s fixed-term appointment expired on 31 December 2017 and it results from the case file that he was granted sick leave from 18 December 2017 to the end of his contract.

24. The Tribunal finds that the effective content of the challenged decision communicated to the Applicant on 21 February 2018 concerns the non-extension of his fixed-term appointment with UNOPS for the sole purpose of allowing him to be on sick leave during the period of that extension.

25. Therefore, the legal issue for determination in the present case is whether UNOPS is under an obligation to extend a fixed-term appointment for the sole purpose of allowing a staff member to utilize his or her sick leave entitlement.

26. The answer is negative, as there is no evidence in the case file to conclude that the legal framework of UNOPS includes such obligation.

27. The Applicant relies on staff rule 6.2(a) that provides for the right of a staff member to be granted sick leave as follows:

Staff members who are unable to perform their duties by reason of illness or injury or whose attendance at work is prevented by public health requirements will be granted sick leave. All sick leave must be approved on behalf of, and under conditions established by, the Secretary-General.

28. However, said staff rule does not contain any obligation for the Administration to extend a staff member's appointment for the sole purpose of enabling him or her to utilize his or her sick leave entitlement.

29. The Applicant also refers to UNOPS Administrative Instruction AI/HRPG/2013/02, para. 13.2, which provides that:

In cases of expiration of fixed-term appointment or of termination, the date of separation may be postponed if the staff member is on certified sick leave at the time of separation to enable the staff member to utilize any sick leave entitlement. Staff member's appointment shall be extended until the end of his/her certified sick leave to enable the staff member to exhaust his/her sick leave entitlement. Such extension will not give rise to any further entitlements to salary increment, annual leave, sick leave or home leave, etc.

30. Nevertheless, that Administrative Instruction was abolished and replaced by UNOPS Operational Directive OD.PCG.2017.01 on Human Resources, Ethics and Culture that came into effect on 15 August 2017—prior to the Applicant being placed on sick leave—and does not include a similar provision.

31. The Applicant also refers to staff rule 9.6(i) but its content does not support his claim as said rule does not provide for the renewal of a fixed-term appointment for the use of sick leave. It rather provides for the termination of an appointment when the staff member is “incapacitated for further service”, in which case, his or her appointment may be terminated after exhaustion of any sick leave entitlement. This is certainly not the Applicant’s case.

32. The Applicant further argues that UNOPS broke its own express promise to pay him his salary through the date of the conclusion of his sick leave. He recalls that on 22 December 2017, the Director, GSC, UNOPS, replied to his request for sick leave indicating “[n]eedless to say this is a certified sick leave and has to be honoured”.

33. Assuming that said wording gave the Applicant a reasonable expectation that UNOPS would extend his fixed-term appointment and pay his salary and benefits during the duration of his sick leave, this so-called “promise” would only apply to his first request for sick leave, that is for the period from 18 December 2017 to 17 January 2018 as per the medical certificate on record.

34. Furthermore, even considering that said sentence could amount to a promise of extension of his fixed-term appointment, the Tribunal finds that UNOPS cannot abide by an act that is outside the remit of its own policies (see *Cranfield* 2013-UNAT-367).

Conclusion

35. In view of the foregoing, the Tribunal rejects the application.

(Signed)

Judge Francesco Buffa

Dated this 10th day of August 2020

Entered in the Register on this 10th day of August 2020

(Signed)

René M. Vargas M., Registrar, Geneva