



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/150

Judgment No.: UNDT/2021/021

Date: 9 March 2021

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

BATTISTA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, AAS/ALD/OHR
Maureen Munyolo, AAS/ALD/OHR

Introduction

1. This is an application filed by the Applicant contesting the United Nations Global Service Centre (“UNGSC”), Reference Verification Unit’s (“RVU”) decision to close her reference verification case as “negative employment” because she did not meet the minimum verifiable 10 years work experience required for the position she had been selected for and because of this her temporary employment was not renewed at its expiry after 364 days (“the contested decision”).

2. The Respondent argues that the application is not receivable *ratione materiae* as the contested decision is not a reviewable administrative decision within the meaning of art. 2.1(a) of the Dispute Tribunal’s Statute. The Respondent further argues that should the Tribunal determine that the application is receivable, the contested decision was lawful because the Applicant could not verify a minimum of 10 years’ work experience as required at the P-5 level and that her temporary employment ended by effluxion of time as provided by her terms of appointment following the rules and regulations governing temporary job openings. The application is rejected.

Facts and Procedure

3. At the time of the contested decision, the Applicant encumbered a temporary appointment as a P-5 Senior Political Affairs Officer at the United Nations Interim Security Force for Abyei (“UNISFA”).

4. On 16 November 2017, UNISFA issued a temporary job opening (“TJO”) to fill the position of P-5 Senior Political Affairs Officer (“the Position”) for an initial period of six months while the previous incumbent of the Position was away on secondment. The Applicant applied and was selected for the Position.¹

5. On 18 September 2018, RVU informed the Applicant that she was required to

¹ Reply para. 1 and annexes R/1 and R/2.

verify her employment and academic background and specified the employment history to be verified.²

6. On 30 April 2019, the RVU notified the Applicant of the contested decision.³

7. On 25 June 2019, the former incumbent of the Position informed UNISFA's Chief of Staff ("CoS") that he would not be returning to UNISFA from his secondment. On 26 June 2019, the CoS requested the Chief Human Resources Officer ("CHRO") to initiate a "recruit from roster" selection exercise to fill the Position.⁴

8. On 16 July 2019, UNISFA informed the Applicant of the non-renewal of her temporary appointment.⁵

9. The Applicant separated from the Organization on 14 October 2019.⁶

10. On 23 October 2019, the Tribunal received an application challenging the contested decision.

11. The Respondent filed a reply on 27 November 2019.

12. The Applicant filed a rejoinder to the reply on 11 January 2021.

13. The Tribunal held a case management discussion ("CMD") on 9 February 2021. At the CMD, the parties agreed that the application would be determined based on their pleadings and supporting documentation without the need for an oral hearing.

14. The Applicant and Respondent filed closing submissions on 19 and 24 February 2021 respectively.

² Reply, annex R/3/

³ Application, annex 2.

⁴ Reply, annex 5.

⁵ Reply, annex 6.

⁶ Reply, annex 4.

Submissions

Receivability

The Applicant

15. The application is receivable and the Respondent is disingenuous to suggest that the RVU's determination had no effect on her terms, conditions and prospects of continued employment with UNISFA. The issue with the RVU arose out of her employment with UNISFA and therefore relates to her employment terms and conditions. The determination by RVU had a direct consequence on her future employability with UNISFA and any other United Nations agency. Receivability should not be so narrowly interpreted as to exclude staff members from a remedy which has such devastating implications on their future ability to earn.

16. She was informed by her Chief that but for the decision of the RVU, she would have continued in the job on one contract or another. This is also borne out by the fact that the need for work in the same role continued.

17. Staff rule 4.12(b) and section 14.1 of ST/AI/2010/4/Rev.1 (Administration of temporary appointments) states that a temporary appointment may exceptionally be extended beyond 364 days only where: (1) a temporary emergency or surge requirement related to field operations unexpectedly continues for more than one year; (2) a special project unexpectedly continues for more than one year; or (3) operational needs related to field operations unexpectedly continue for more than the initial period of 364 days.

18. The Applicant requests the Tribunal to rescind the negative RVU decision and to certify what she has already provided and what was submitted afterwards by her referee so that the information is not requested again.

The Respondent

19. The Application is not receivable *ratione materiae*. The RVU decision had no adverse legal consequences for the terms and conditions of the Applicant's appointment. She continued to serve in the Position on the same terms and conditions of her temporary appointment and received all her salary, benefits and entitlements. Contrary to the Applicant's allegation, UNISFA did not terminate her appointment. The Applicant's appointment expired on 12 October 2019. Under staff rule 9.6(b), separation as a result of expiration of appointment shall not be regarded as a termination.

20. Contrary to her allegations, UNISFA did not renew her temporary appointment because the Applicant had completed the maximum permitted period of 364 days on a temporary appointment. Under staff rule 4.12(b) and ST/AI/2010/4/Rev.1, there were no exceptional circumstances warranting renewal of her appointment.

21. The Applicant states that the contested decision has a direct impact and consequence on her future career prospects with UNISFA and other United Nations missions and agencies. However, to be considered as an appealable administrative decision, a decision must have a direct impact and not the potential of future harm. In any event, the negative reference check does not have any future harm to the Applicant's career, neither does it prevent her from being recruited to any future job openings because any future job openings that the Applicant will apply to will be assessed based on the specific job requirements and the information that she will provide on her Personal History Profile.

Considerations

Receivability

22. Article 2.1(a) of the UNDT Statute provides that:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in noncompliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

23. For an application to be receivable, the decision being challenged must be an “administrative decision”.⁷ One of the key characteristics of an administrative decision is that it must produce adverse legal consequences for a staff member’s employment contract or terms of appointment.⁸

24. It is the duty of the Applicant to show the Tribunal that the impugned decision has a direct adverse impact on her terms of appointment or contract of employment. In the case at hand, despite the negative employment decision the Applicant successfully concluded her term of appointment. She has not shown that the negative employment decision had any direct adverse consequences on her contract.

25. The Applicant’s argument that the decision was used by the Administration not to renew her temporary employment is without merit. She has not adduced any evidence to substantiate her claim. On the contrary the Respondent has shown that the temporary employment expired at the end of the maximum 364 days offered in the contract.

26. The Applicant has failed to convince the Tribunal that the decision not to renew her temporary employment was a direct consequence of the decision from RVU certifying negative employment. The assertion that she was informed by her Chief that “but for the decision of the RVU, she would have continued in the job on

⁷ *Andati-Amwayi* 2010-UNAT-58, paras. 16-19; *Andronov*, Former United Nations Administrative Tribunal Judgment No. 1157 (2003).

⁸ *Reid* 2014-UNAT-419, para. 18; see also *Pedicelli* 2015-UNAT-555, paras. 31-32; *Lee* 2014-UNAT-481, para. 49; *Gehr* 2013-UNAT-313, para. 18.

one contract or another” is not supported by any evidence. Her reasoning that “the need for work in the same role continued” does not in itself guarantee renewal of her contract which expired due to effluxion of time pursuant to staff rule 4.12(b) and sections 14.1 – 14.3 of ST/AI/2010/4/Rev.1 providing that:

Staff rule 4.12 (b),

Temporary appointment

(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.

Sections 14.1-14.3 of ST/AI/2010/4/Rev.1,

14.1 A temporary appointment may exceptionally be extended beyond 364 days, up to a maximum of 729 days, under the following circumstances:

(a) Where a temporary emergency or a surge requirement related to field operations unexpectedly continues for more than one year;

(b) Where a special project in the field or at a headquarters duty station unexpectedly continues for more than one year;

(c) Where operational needs related to field operations, including special political missions, unexpectedly continue for more than the initial period of 364 days.

14.2 Under no circumstances shall the period on a temporary appointment exceed 729 days.

14.3 A recommendation for an exceptional extension of a temporary appointment leading to service of one year or more shall be sent by the programme manager to the Executive Office or the local human resources office, as appropriate. It shall be accompanied by a written justification, which must be consistent with the provisions of the present instruction. The Executive Office or the local human resources office shall decide whether or not the recommendation will be

approved.

27. The Applicant has not shown that the above provisions applied specifically to her contract of employment and that but for the RVU decision entitled her to a temporary appointment of more than 364 days. In the absence of any provable direct legal consequences stemming from the RVU decision, the Applicant has not demonstrated that she has a challengeable administrative decision for appeal under the Tribunals' Statute⁹.

Judgment

28. The application is not receivable *ratione materiae* and is dismissed.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 9th day of March 2021

Entered in the Register on this 9th day of March 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

⁹ See for example *Fairweather*, 2020-UNAT-1003.