



Before: Judge Francis Belle

Registry: Geneva

Registrar: René M. Vargas M.

ADELEGAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Joseph Amisi

Counsel for Respondent:

Jenny Kim, UNOPS

Introduction

1. The Applicant, a former staff member of the United Nations Office for Project Services (“UNOPS”), Finland, contests the non-renewal of his fixed-term contract, which expired on 31 October 2020.

Facts and procedural background

2. On 27 June 2018, the United Nations (“UN”) and the Government of Finland signed an agreement under which the UN would undertake a one-year pilot project from 1 July 2018 to 30 June 2019 “to explore the efficacy of innovative technological strategies [promoting] the effectiveness of UN activities and programmes [in order] to support the achievement of the Sustainable Development Goals (hereafter “SDGs”), by focusing during this pilot project on how innovative technological strategies [enhance] the effectiveness of activities in the areas of peace and security, circular economy, education and health (hereafter the “Pilot Project”)”. The implementation period of the Pilot Project was subsequently extended until 30 June 2020.

3. On 17 June 2019, the Applicant joined UNOPS as the United Nations Technology Innovation Labs (“UNTIL”) Thematic Lead in Circular Economy (P-3 level), under a one-year fixed-term appointment. UNTIL was established by the United Nations Office of Information, Communications and Technology (“OICT”), with UNOPS as the implementing partner for Administration and Human Resources services. The Applicant’s letter of appointment stated that his appointment was limited to service within OICT, and that if the post were to be abolished, UNOPS would have no obligation to consider him for posts outside of OICT.

4. On 24 January 2020, the Applicant submitted to UNOPS Senior Portfolio Manager a complaint of racial discrimination and abuse of authority against the then UNTIL Finland Lab Manager.

5. In March 2020, OICT was informed of the decision by the Executive Office of the Secretary-General (“EOSG”) to move the UNTIL’s operational and management responsibilities to the UN Global Pulse, the Secretary-General’s initiative managed by the EOSG.
6. On 15 May 2020, the Applicant’s contract was extended until 30 June 2020.
7. By email dated 18 June 2020, the Applicant submitted to the Under-Secretary-General and Executive Director, UNOPS, the same complaint of racial discrimination and abuse of authority by the then UNTIL Finland Lab Manager.
8. On 1 July 2020, UNTIL ceased to be a pilot project and moved from OICT to UN Global Pulse.
9. On 10 August 2020, the Applicant’s contract was further extended until 30 September 2020. According to the Applicant’s Personnel Action Form, the Applicant’s appointment was limited to UN Technology Support Services (“UNTSS”).
10. On 17 August 2020, UNTIL underwent a portfolio review with UN Global Pulse due to limited resources and new priorities related to COVID-19. The review concluded that circular economy was not a priority for UNTIL Finland in the short-term and, consequently, the EOSG decided not to continue with the circular economy thematic area.
11. On 1 September 2020, the Applicant received a non-renewal letter dated 31 August 2020, stating in its relevant part that:

[D]ue to lack of funding the post of UNTIL Thematic Lead in Circular Economy that [the Applicant was] encumbering will be abolished with effect 30 September 2020. Further to the above, I must with deep regret now give you formal notice that your appointment will not be renewed when it expires COB 30 September 2020 and you will be separated from UNOPS service effective that date.

12. Amendment One to the Financial Agreement for UNTIL Finland, dated 5 September 2020, shows that circular economy posts were only budgeted until 31 October 2020.

13. On 8 September 2020, representatives of the UN and the Government of Finland participated in the UNTIL Finland Advisory Panel meeting, where the participants reaffirmed the EOSG's decision of 17 August 2020 not to continue with the circular economy thematic area, stating that:

Circular Economy and Peace & Security portfolios offer little or no relevance to new Covid19 priorities.

[... ..]

In the short-term, Circular Economy and Peace & Security thematic areas will be withdrawn. Neither align with the GP approach over the longer term, and neither align with the COVID-19 focus in the immediate term.

14. At the meeting of 21 September 2020, the Senior Portfolio Manager, UNOPS, stated that as a follow-up to the non-renewal letter sent to the Applicant on 31 August 2020, the "Circular Economy" and "Peace and Security" Thematic areas of the lab would be abolished because the current activities in Covid-19 would rely on expertise that exists through the current Health and Education posts. The Senior Programme Manager, Global Pulse, confirmed this and explained that, as of then, the focus would be on Covid-19. According to the latter, it was still unclear in what form the lab would continue after the transition period and that it would not be structured around thematic areas.

15. By email dated 21 September 2020, the Senior Portfolio Manager, UNOPS, informed the Applicant that the abolition of the post he encumbered and the non-renewal of his contract would move forward because activities in the area of circular economy were outside the scope of the Secretary-General's priorities and funding for such activities and posts would not be available. He added that "in order to accommodate the separation process, an extension of one month until 31 October 2020 [had] been agreed".

16. By email dated 28 September 2020, the Senior Portfolio Manager, UNOPS, reiterated that UNTIL would focus on providing support to the UN's COVID-19 response and recovery goals and, consequently, that circular economy posts would not be funded beyond 31 October 2020.

17. Accordingly, the Applicant's appointment was further extended until 31 October 2020.

18. On 15 October 2020, the Applicant requested management evaluation of the contested decision mentioned in para. 1 above.

19. By letter dated 29 October 2020, the Applicant was informed of the outcome of his request for management evaluation, which upheld the contested decision.

20. On 30 October 2020, the Applicant filed the application mentioned in para. 1 above.

21. On the same date, the Applicant filed a motion for interim measures pending proceedings seeking the suspension of the above-mentioned contested decision.

22. On 31 October 2020, the Applicant was separated from service.

23. By Order No.112 (GVA/2021) of 4 November 2020, the Tribunal rejected the Applicant's motion for interim relief pending proceedings.

24. On 4 December 2020, the Respondent filed his reply.

25. On 25 September 2021, the present case was assigned to the undersigned Judge.

26. By Order No. 159 (GVA/2021) of 1 November 2021, the Tribunal instructed the parties to file their respective closing submission by 15 November 2021.

27. On 12 November 2021, the Applicant filed a motion for a 30-day extension of the deadline to file his closing submission, arguing that he was no longer self-represented as he recently appointed Counsel to represent him in the current proceedings.

28. By Order No. 167 (GVA/2021) of 12 November 2021, the Tribunal granted the motion in part and extended the parties' deadline to file their respective closing submission to 25 November 2021.

29. On 25 November 2021, the parties filed their closing submissions.

Parties' submissions

30. The Applicant's principal contentions are:

- a. The Administration created an expectancy of renewal;
- b. The reason provided for the non-renewal, namely, the abolition of the post he encumbered, was unlawful and not supported by the facts:
 - i. There was no actual abolition of his post because the Administration has continued circular economy activities after 31 October 2020;
 - ii. The reasons provided to the Applicant by UNOPS and UN Global Pulse at the meeting of 21 September 2020 were contradictory and not reliable; and
 - iii. The Secretary-General had no requisite authority to dismiss the Circular Economy portfolio and to abolish the post that he previously encumbered.
- c. The decision not to renew the Applicant's appointment was flawed due to procedural irregularities and lack of due process:
 - i. It was unfair and against proper procedure for his appointment not to be renewed by way of unilaterally moving him to UNTSS or UN Global Pulse in contravention of his letter of appointment with service limited to OICT without a new letter of appointment; and

ii. The decision not to renew the Applicant's contract was wholly and effectively made at the meeting of 8 September 2020, which has been demonstrated to have serious irregularities in terms of its convening, constitution, and procedural conduct.

d. The decision was tainted with bias and ulterior motives because he filed complaints of harassment and abuse of authority against his former Supervisor.

31. The Respondent's principal contentions are:

a. There was no firm commitment to renew the Applicant's contract;

b. The abolition of the Applicant's post was part of a genuine organizational restructuring based on the new priorities related to COVID-19 response and recovery goals;

c. The Applicant's argument that, the decision not to continue with the circular economy thematic area was unlawful because the quorate condition of the UNTIL Finland Advisory Panel meeting had not been fulfilled, is not relevant, as the contested decision was not made by the Advisory Panel but by the EOSG;

d. The extension of the Applicant's fixed-term appointment from 1 July 2020 to 31 October 2020 did not contradict his initial appointment; and

e. The Applicant has failed to provide any evidence in support of the allegation that the contested decision was tainted by bias against him because of his complaints of harassment and abuse of authority against his former Supervisor.

Consideration

Scope of judicial review

32. The present case concerns the non-renewal of the Applicant's fixed-term appointment.

33. In this respect, the Tribunal recalls that a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal under staff regulation 4.5(c) and staff rule 4.13(c) and expires automatically, without prior notice, on the expiration date specified in the letter of appointment pursuant to staff rule 9.4. There is thus no legitimate expectation of renewal unless the Administration has made an express promise in writing that gives the staff member an expectancy that the appointment will be extended (see, e.g., *He* 2018-UNAT-825, para. 41; *Igbinedion* 2014-UNAT-411, para. 26).

34. Nevertheless, the Administration is required to state the reasons for a non-renewal to ensure that the Tribunals can judicially review the validity of the decision, and this reason must be lawful and supported by the facts (see, e.g., *Nouinou* 2019-UNAT-902, para. 50; *He* 2018-UNAT-825, para. 46; *Obdeijn* 2012-UNAT-201, paras. 33-39; *Islam* 2011-UNAT-115, paras. 29-32).

35. Moreover, a non-renewal decision can be challenged on the grounds that the Administration has not acted fairly, justly, or transparently with the staff member or was motivated by bias, prejudice or improper motive. It is incumbent on the staff member to prove that such factors played a role in the non-renewal decision (see, e.g., *Porrás* 2020-UNAT-1068, para. 24; *Nouinou* 2019-UNAT-902, para. 47; *He*, para. 43; *Said* 2015-UNAT-500, para. 34).

36. Having reviewed the parties' submissions and the evidence on record, the Tribunal notes that the Applicant advances various arguments for contesting the management evaluation decision. In this respect, the Tribunal recalls that "the Administration's response to a request for management evaluation is not a reviewable decision" (see *Nwuke* 2016-UNAT-697, para. 20). This means that the Tribunal does not have jurisdiction to consider appeals against the Administration's responses to the Applicant's request for management evaluation. Therefore, the Tribunal will not adjudicate the Applicant's arguments in this respect.

37. In light of the foregoing, the Tribunal defines the issues to be examined in the present case as follows:

- a. Whether the Applicant was promised a renewal;
- b. Whether the reason provided for the non-renewal decision was lawful and supported by the facts;
- c. Whether the non-renewal decision was flawed by procedural irregularities; and
- d. Whether the non-renewal decision was tainted by ulterior motives.

Whether the Applicant was promised a renewal

38. The Applicant appears to argue that the Administration created an expectancy of renewal of his contract by referring to statements, allegedly made by various individuals of the Organization, suggesting that contracts of all staff members would be renewed once UNOPS received the funds from the Government of Finland.

39. The Tribunal notes that the individuals concerned dispute the facts as presented by the Applicant and he has not adduced any written evidence regarding a firm commitment to renewal. In this respect, the Tribunal recalls that “[i]n order for a staff member’s claim of legitimate expectation of a renewal of appointment to be sustained, it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case”. A promise to renew a fixed-term appointment must therefore at least “be in writing” and contain “the essential elements of a proper and concrete offer of renewal, such as the duration of the extension” (see *Kellie* 2018-UNAT-875, paras. 41, 44 and 45; *Kalil* 2015-UNAT-580, para. 67).

40. Therefore, the Tribunal finds that the Applicant has not established by evidence that a firm commitment to renew his contract was made by the Organization.

Whether the reason provided for the non-renewal decision was lawful and supported by the facts

41. In the present case, the reason provided for the Applicant's non-renewal is the abolition of the post he encumbered due to limited resources, and new priorities related to COVID-19 response and recovery goals.

42. In this respect, the Tribunal recalls that to meet changing needs and economic realities, "an international [organization] necessarily has power to restructure some or all of its departments or units, including the abolition of posts" (see, e.g., *Nouinou*, para. 34; *Loeber* 2018-UNAT-844, para. 18; *Smith* 2017-UNAT-768, para. 26; *Gehr* 2012-UNAT-236, para. 25). Therefore, the abolition of a post as a result of a genuine organizational restructuring is a legitimate and valid reason for not extending a fixed-term appointment (see, e.g., *Marius Mihail Russo-Got* 2021-UNAT-1090, para. 32; *Islam*, para. 30).

43. First, the Tribunal is satisfied that the abolition of the Applicant's post in the present case was part of a genuine organizational restructuring. The evidence on record shows that the EOSG decided to abolish the circular economy programme and, accordingly, the post the Applicant encumbered, following a review of the Pilot Project, on the grounds that there were limited resources and that the circular economy programme was not critical to the UN's COVID-19 response and recovery goals. In light of the EOSG's decision, all circular economy posts, including the P-3 Thematic Lead in Circular Economy the Applicant encumbered and a P-1 Thematic Analyst in Circular Economy, were only budgeted to 31 October 2020 and thus abolished thereafter. Furthermore, there is no evidence that there could have been funding available to the Respondent to renew the Applicant's fixed-term appointment for any longer period.

44. Second, the Tribunal is not persuaded by the Applicant's submission that there was no actual post abolition because the Administration has continued circular economy activities after 31 October 2020. The Applicant seems to conflate circular economy posts with circular economy activities. The continuation of circular economy activities, even if true, does not necessarily require the maintenance of posts in circular economy. Further, other than assertion, the Applicant has not

provided any evidence to show that the post of the UNTIL Thematic Lead in Circular Economy at the P-3 level that he encumbered still exists.

45. Third, the Tribunal is not convinced by the Applicant's argument that the reasons provided to him at the meeting of 21 September 2020 by UNOPS and UN Global Pulse were contradictory. In this respect, the Applicant specifically stated that:

At the 21 September 2020 meeting, [the Senior Portfolio Manager, UNOPS,] stated that as a follow-up to the non-renewal letter sent to the Applicant on 31 August 2020, the "*Circular Economy*" and "*Peace and Security*" Thematic area of the lab would be abolished *due to lack of funding* with effect from 31 October 2020. [He] further stated that the Lab will continue with the "*Education*" and the "*Health Thematic Area*". On the contrary, [the Senior Programme Manager, UN Global Pulse,] stated in the same meeting that UNTIL Finland will be moving away from Thematic Focus as he has informed us in previous meetings and that a decision had been made to work on COVID-19 Projects.

46. However, the evidence on record shows that the Senior Programme Manager, UN Global Pulse, in fact confirmed the statement of the Senior Portfolio Manager, UNOPS, and added that it was still unclear in what form the lab would continue after the transition period and that it would not be structured around thematic areas. Accordingly, the Tribunal finds that the reasons provided by UNOPS and UN Global Pulse were not contradictory but mutually reinforcing.

47. Moreover, the Tribunal finds no merit in the Applicant's submission that the Secretary-General had no requisite authority to abolish the post at stake. The evidence on record shows that the decision to abolish the post was made by the EOSG, who is responsible for implementing the agreement between the UN and the Government of Finland, and the Government of Finland agreed with the decision. Indeed, the post the Applicant encumbered was abolished because the agreement between the UN and the Government of Finland was amended given the circumstances of the Global COVID-19 Pandemic, and the UN negotiated this amendment through the EOSG. The agreement was designed for easy modification and the necessary exchange of information was done to secure the change before

the Applicant was informed that the post would be abolished. Furthermore, it falls within the Organization's discretionary power to restructure even though it may result in the loss of employment for its staff (see *Lee* 2014-UNAT-481, para. 28).

48. In light of the foregoing, and considering the particular circumstances of the present case, the Tribunal finds that the reason provided for the non-renewal decision was legitimate and supported by the facts.

Whether the non-renewal decision was flawed by procedural irregularities

49. The Applicant points to a number of alleged irregularities, which he claims render the non-renewal decision unlawful.

50. In this respect, the Tribunal recalls that procedural irregularities in the decision-making process do not necessarily result in a subsequent finding of unlawfulness of the contested decision and the determination of whether a staff member was denied due process or procedural fairness must rest upon the nature of any procedural irregularity and its impact (see *Sarwar* 2017-UNAT-757, para. 87).

51. In support of his claim of procedural irregularities, the Applicant argues that it was unfair and against proper procedure for his appointment not to be renewed by way of unilaterally moving him to UNTSS or UN Global Pulse in contravention of his letter of appointment with service limited to OICT without a new letter of appointment. The Tribunal notes that moving the Applicant to UN Global Pulse was a natural consequence of the genuine organizational restructuring, i.e., the UNTIL's operational and management responsibilities being moved to UN Global Pulse on 1 July 2020. Indeed, the evidence on record shows that UNTSS is broader and includes OICT, which formerly included UNTIL, as well as UN Global Pulse. Moreover, even if it was technically not correct not to issue a new letter of appointment to the Applicant for the period of 1 July 2020 to 31 October 2020, this would have been an immaterial irregularity that would not have disrupted the lawfulness of the non-renewal decision.

52. The Applicant further argues that the decision not to renew his contract was wholly and effectively made at the meeting of 8 September 2020, which has been demonstrated to have serious irregularities in terms of its convening, constitution, and procedural conduct. The Tribunal finds that the Applicant's argument is not supported by evidence. Indeed, the record shows that the decision not to continue with the circular economy and, accordingly, not to renew his contract was made by the EOSG following a portfolio review with UN Global Pulse on 17 August 2020. The UNTIL Finland Advisory Panel merely confirmed that decision at the 8 September 2020 meeting, before the Applicant was informed of the non-renewal of his fixed-term appointment on 21 September 2020. This is further supported by the fact that on 1 September 2021, the Applicant received a non-renewal letter dated 31 August 2020, informing him that the post he encumbered would be abolished and that Amendment One to the Financial Agreement for UNTIL Finland dated 5 September 2020 showed that circular economy posts were only budgeted to 31 October 2020. Therefore, the Tribunal finds that the claimed irregularities in the meeting of 8 September 2020 would not have any impact on the non-renewal decision.

53. Moreover, the Tribunal finds that there is no evidence to prove that the non-renewal decision was not fair or was not transparent. Indeed, the evidence on record shows that, on several occasions, the Applicant was informed of the non-renewal of his contract because there would be a shift in emphasis from the circular economy towards the health and education programmes. Such change was driven by the circumstances of the global COVID pandemic.

54. Accordingly, the Tribunal finds that the Applicant failed to establish that the non-renewal decision was flawed by procedural irregularities.

Whether the non-renewal decision was tainted by ulterior motives

55. The Applicant submits that the non-renewal decision was tainted with bias and ulterior motives because he filed complaints of harassment and abuse of authority against his former Supervisor.

56. In this respect, the Tribunal recalls that it is for a party who alleges that ulterior motives tainted a decision to substantiate this claim by way of evidence (see, e.g., *Ross* 2019-UNAT-944, para. 25; *Morsy* 2013-UNAT-298, para. 23). When doing so, “[t]he mental state of the decision-maker usually will be placed in issue and will have to be proved on the basis of circumstantial evidence and inference drawn from that evidence” (see *He* 2016-UNAT-686, para. 39).

57. The Tribunal notes that, to support his claim, the Applicant submitted evidence showing that on 18 June 2020 he filed a complaint of harassment and abuse of authority against his former Supervisor, namely, the then UNTIL Finland Lab Manager. However, he did not present any evidence showing that the non-renewal decision was a result of his complaint of harassment and abuse of authority against his former Supervisor. Further, his former Supervisor was not the decision-maker of the contested decision. The Applicant does not claim that the decision-maker of the contested decision was racially or discriminatorily motivated either.

58. Therefore, the Tribunal finds that the Applicant failed to establish that the decision not to renew his fixed-term appointment was tainted by improper motives, resulting from his complaint against his former Supervisor.

Conclusion

59. In view of the foregoing, the Tribunal DECIDES to reject the application.

Judge Francis Belle

(Signed)

Dated this 21st day of December 2021

Entered in the Register on this 21st day of December 2021

(Signed)

René M. Vargas M., Registrar, Geneva