



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

ZHANG

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Jérôme Blanchard, LPAS, UNOG

Introduction

1. The Applicant, a former Translator at the Chinese Translation Section (“CTS”), Languages Service (“LS”), Division of Conference Management (“DCM”), United Nations Office at Geneva (“UNOG”), contests the decision to terminate her permanent appointment for unsatisfactory performance and separate her from service.

Facts

2. On 3 December 2020, the Applicant’s First Reporting Officer (“FRO”), namely the Chief, CTS, LS, DCM, UNOG (“Chief, CTS/DCM”), requested the Human Resources Management Services (“HRMS”), UNOG, to initiate the termination of the Applicant’s permanent appointment due to unsatisfactory performance.

3. On 20 February 2021, the Director-General, UNOG, approved the recommendation of the Chief, CTS/DCM.

4. On 24 February 2021, the Chief, CTS/DCM informed the Applicant of the decision to terminate her permanent appointment. On the same day, the proposal to terminate the Applicant’s permanent appointment was submitted to the Central Review Committee (“CRC”), as per ST/AI/222 (Procedure to be followed in cases of termination of a permanent appointment for unsatisfactory service) and ST/SGB/2011/7 (Central Review Bodies).

5. On 9 April 2021, the Applicant contested the composition of the CRC panel. On the same day, a Human Resources Officer, HRMS, UNOG, replied indicating that the CRC panel members had expressed no conflict of interest in reviewing the Applicant’s case, and that the panel’s composition was in line with the applicable legal framework.

6. On 16 April 2021, the Applicant submitted her comments to the CRC.

7. Between 4 and 26 May 2021, the CRC attempted to schedule a hearing for the Applicant to attend in person but was informed that she was unable to attend on the proposed dates due to being on Certified Sick Leave (“CSL”) from 6 May to 3 June 2021.
8. On 31 May 2021, the CRC recommended the termination of the Applicant’s permanent appointment to the Under-Secretary-General (“USG”), Department of Management Strategy, Policy and Compliance (“DMSPC”).
9. On 29 July 2021, the recommendation of the CRC was approved, and, on the following day, the Applicant was informed of this decision.
10. On 3 August 2021, the Applicant requested management evaluation of the contested decision, and filed an application for suspension of action in its respect.
11. On 23 September 2021, the Management Evaluation Unit (“MEU”) decided to uphold the contested decision, and, on 24 September 2021, the Applicant was separated from service.
12. On 23 December 2021, the Applicant filed the instant application.
13. The Respondent filed his reply on 10 March 2022, followed by a corrigendum dated 10 May 2022.
14. On 9 June 2022, the Applicant filed a motion requesting *inter alia* leave to file comments on the above-mentioned Respondent’s reply and corrigendum.
15. By notification of 14 June 2022, the Tribunal informed the Applicant that she had until 15 July 2022 to file her comments on the reply and corrigendum. By notification of 15 July 2022, the Tribunal extended this deadline until 15 August 2022 on medical grounds and in response to the Applicant’s motion filed on 14 July 2022.

16. On 15 August 2022, the Applicant filed a motion “for extension of time to file comments and brief comments”, requesting also that this case be considered together with another case she filed in February 2022, namely Case No. UNDT/GVA/2022/005. The motion also contained a little over four pages of comments from the Applicant related to the Respondent’s reply and corrigendum.

17. By Order No. 81 (GVA/2023) of 24 August 2022, the Applicant’s motion for extension of time to file comments on the reply was granted. Furthermore, the Applicant was instructed to consolidate the “brief comments” and its annexes, filed with the above-mentioned 15 August 2022 motion, and informed that the Tribunal would assign her other case to the same Judge.

18. On 23 September 2022, the Applicant filed her comments on the reply.

19. By Order No. 33 (GVA/2023) of 14 April 2023, the Tribunal informed the parties that it was ready to adjudicate the matter and that it would proceed with its judgment based on the papers before it.

Consideration

20. The Tribunal is seized of an application where the staff member contests the termination of her permanent appointment and separation from service due to unsatisfactory performance.

21. After a full review of the case file and the evidence contained therein, the Tribunal identifies the following legal issues to be addressed:

- a. Whether the decision to terminate the Applicant’s permanent appointment for unsatisfactory performance was unlawful; and
- b. If the Applicant is entitled to any remedies;

22. The Tribunal will address both issues in turn.

Whether the decision to terminate the Applicant's permanent appointment was unlawful

23. The UN Staff Regulations and Rules allow the Secretary-General to terminate a staff member's permanent appointment if performance proves to be unsatisfactory. The relevant provisions read as follows:

Staff Regulation 9.3

(a) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed term or continuing appointment in accordance with the terms of his or her appointment or for any of the following reasons:

...

(ii) If the services of the staff member prove unsatisfactory;

Staff Rule 9.6

Termination

Definitions

...

Termination for unsatisfactory service

(h) The appointment of a staff member may be terminated for unsatisfactory service under conditions established by the Secretary-General.

24. The Tribunal recalls that efficiency and competence are the paramount considerations for the employment of staff members, and they are enshrined in art. 101.3 of the UN Charter, as follows:

The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

28. Terminating a staff member's permanent appointment for unsatisfactory performance is subject to a procedure, which is described in ST/AI/222 and

ST/SGB/2011/7. According to the evidence on file, the Tribunal is satisfied that the proper procedure was followed in this case.

29. Indeed, the evidence shows that the Chief, CTS/DCM rated the Applicant's performance as either "partially meets performance expectations" or "does not meet performance expectations" since 2015, except for the 2016-2017 cycle in which she "fully met" expectations. In this regard, it is noticeable that the Applicant did not rebut those evaluations, except for the "partially meets performance expectations" in the 2018-2019 cycle, which was upheld by a rebuttal panel.

30. In addition, the Tribunal also notes the Applicant's allegation that she was not able to rebut her other performance evaluations due to health issues arising from alleged harassment.

31. The Applicant's allegations are vague and unsubstantiated by facts or evidence. In this regard, the Tribunal highlights that it is a staff member's responsibility to seek appropriate redress whenever there are disagreements over work performance appraisals. The Organization has made it possible to contest and challenge a performance evaluation before an impartial reviewer pursuant to ST/AI/2010/5 (Performance Management and Development System). If the Applicant was prevented from doing so, the burden of proving such impediment lies on her.

32. However, the evidence on record shows that the Applicant never rebutted her performance evaluations of 2014-2015, 2015-2016, 2016-2017, 2017-2018, and 2019-2020, or contested the recommendation of the rebuttal panel to not change her overall rating from "partially meets performance expectation" in the 2018-2019 cycle. Those evaluations are now binding upon the Applicant, the Administration, and this Tribunal.

33. Furthermore, the Tribunal notes that the decision to terminate the Applicant's appointment due to unsatisfactory performance was preceded by a recommendation that was reviewed by a Central Review body pursuant to staff rule 13.1(b)(i). Said rule provides that "the central review bodies shall review recommendations for the

termination of permanent appointments for unsatisfactory service under staff regulation 9.3 (a) (ii) and staff rule 9.6 (c) (ii)”.

34. Therefore, the Respondent has demonstrated that, pursuant to ST/AI/222 and ST/SGB/2011/7, the request to terminate the Applicant’s appointment was submitted to the Central Review Committee (“CRC”), for subsequent recommendation to the USG, DMSCP, on whether there were sufficient grounds for termination of the permanent appointment of the Applicant.

35. The case record also shows that all the Applicant’s performance evaluation documents of the past six cycles contain detailed information on the implementation of Performance Improvement Plans (“PIPs”), and on the discussions held with the Applicant in this regard.

36. The Applicant’s vague allegations that the PIPs were not in fact implemented, discussed, or mutually agreed on, are not sufficient evidence for this Tribunal to determine any type of illegality linked to the performance evaluations.

37. The Appeals Tribunal has consistently stated that when reviewing an administrative decision based on performance evaluation, the Dispute Tribunal must give deference to the Administration’s appraisal of a staff member’s performance, and decide whether there is a rational objective connection between the information available and the finding of unsatisfactory work performance. Indeed, in *Sarwar* 2017-UNAT-757, para. 74, the Appeals Tribunal stated that:

the [Dispute Tribunal] must accord deference to the Administration’s appraisal of the performance of staff members, and cannot review *de novo* a staff member’s appraisal, or place itself in the role of the decision-maker and determine whether it would have renewed the contract, based on the performance appraisal. Performance standards generally fall within the prerogative of the Secretary-General and, unless the standards are manifestly unfair or irrational, the [Dispute Tribunal] should not substitute its judgment for that of the Secretary-General. The primary task is to decide whether the preferred and imposed performance standard was not met and to assess whether an adequate evaluation was followed to determine if the staff member failed to meet the required standard. There must be a rational objective connection between the

information available and the finding of unsatisfactory work performance.

38. In the current case, the Tribunal does not find any evidence to question the Administration's evaluation, and concludes that the Applicant was given the opportunity to improve her performance throughout the years but failed to do so.

39. In relation to her allegations of bias and improper motives, the Tribunal recalls that the burden of proving those allegations lays with the Applicant as per the Appeals Tribunal jurisprudence (*Azzouni* 2010-UNAT-081, para. 35; *Obdeijn* 2012-UNAT-201, para. 38).

40. In this case, the Applicant has neither demonstrated that the decision to terminate her permanent appointment is connected to any ulterior motive against her nor has she alleged or detailed any specific facts in this regard.

41. Therefore, the Tribunal finds no evidence of unlawfulness in the contested decision.

Remedies

42. The Applicant has failed to demonstrate the illegality of the contested decision, which is an essential element to grant her any remedies as per art. 10 of the Tribunal's Statute. Consequently, she is not entitled to any compensation.

Conclusion

43. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Teresa Bravo
Dated this 30th day of May 2023

Entered in the Register on this 30th day of May 2023

(Signed)

René M. Vargas M., Registrar, Geneva