



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/018 &
UNDT/NBI/2011/036
Order No.: 150 (NBI/2011)
Date: 30 November 2011
Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

PERROT-MAÎTRE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON WITHDRAWAL OF
SUSPENSION OF ACTION
APPLICATIONS**

Counsel for Applicant:
Seth Levine, OSLA

Counsel for Respondent:
Miouly Pongnon, UNON

Introduction

1. The Applicant filed two Applications with the United Nations Dispute Tribunal (UNDT) in Nairobi seeking the suspension of the decision not to renew her contract with the United Nations Environment Programme (UNEP) beyond 2 May 2011 (“the impugned decision”) on the ground of “unsatisfactory performance.”

2. The first Application, filed on 20 April 2011, registered in UNDT records as case number UNDT/NBI/2011/018 was served on the Respondent on the same day. The Respondent’s Reply was submitted on 26 April 2011. The second Application, filed on 22 July 2011, and registered in our records as UNDT/NBI/2011/036 was served on the Respondent on 26 July 2011.

Facts

3. The Applicant joined the Organization on 3 May 2009 on a one year Intermediate Term Appointment as Senior Task Manager, Division of Environmental Policy Implementation (DEPI) in UNEP Nairobi at the L-5 level, step 5.

4. Effective July 2009, the Respondent transitioned all holders of intermediate and temporary appointments, including the Applicant, to fixed-term appointments. On 25 November 2009, the Applicant met with her First Reporting Officer (FRO) to discuss her mid-term review in respect of her 2009-2010 e-PAS.

5. On 18 January 2010, the Applicant’s Second Reporting Officer (SRO) recommended that UNEP extend the Applicant’s appointment for one additional year. The Applicant’s contract was effectively renewed for one year commencing on 3 May 2010 expiring on 2 May 2011. Her contract therefore transitioned to a P-5 position on a fixed-term appointment (JY9).

6. In June 2010, at a branch meeting, the Applicant’s FRO requested all staff to complete their work plans for 2010-2011 performance cycle which had begun on 1 April 2010. The Applicant then met with her FRO on 18 June 2010 to review

her performance for the period of May 2009 to March 2010. The Applicant was then informed by her FRO that her performance would receive a rating of 'unsatisfactory'.

7. On 6 August 2010, the Applicant met with her FRO to discuss her e-PAS, her performance concerns as well as the need for her to complete her 2010-2011 work plan. On 24 August 2010, the Applicant indicated to her supervisor that she had been unable to access her e-PAS for the previous four weeks owing to a failure of her password. On the same day, the supervisor replied and instructed the Applicant to call the Information Technology Help Desk for assistance.

8. The e-PAS for the period of 2009-2010 was signed by the FRO on 8 October 2010 followed by the signature of the SRO on 19 November 2010. The Applicant received a rating of 'partially meets performance expectations.'

9. Thereafter, the Applicant wrote an email to her supervisors on 14 December 2010 expressing her concerns and surprise at the overall rating and comments contained in her e-PAS for 2009-2010. She requested her FRO for reasons as to why the result of this assessment had not been shared with her in March 2010 at the time her contract was renewed. She also provided additional information and requested an opportunity to discuss the review of the performance assessment for the said period.

10. In light of this state of affairs, the Applicant expressed to her FRO her willingness to work on a Performance Improvement Plan (PIP) in order to avoid facing the same concerns in her next performance evaluation.

11. On 21 January 2011, the Applicant addressed an email to her FRO seeking guidance as to how to proceed with the outcome of her e-PAS for 2009-2010 and the preparation of a PIP. The Applicant avers that she had challenged the rating informally with her FRO to no avail. The Applicant finalized her e-PAS, in which she had received a rating of 'partially meets expectations', on the same day.

12. On 3 February 2011, the Applicant's FRO advised her that her contract would not be renewed beyond its expiry due to unsatisfactory performance.

13. On 15 February 2011, the Applicant met with her FRO and SRO to discuss the appraisal of her performance for the 2009-2010 e-PAS cycle. During the said meeting the FRO indicated that the overall rating in her e-PAS would not be changed.

14. The following day, 16 February 2011, the Applicant wrote to her FRO indicating that her request for the development of a PIP had not been acknowledged. The FRO replied on 17 February 2011 stating that he had never refused to discuss the issues of her performance and had met with her on three occasions to formally discuss the e-PAS. On 20 February 2011, the Applicant filed an incomplete rebuttal statement challenging her performance appraisal for the period of 2009-2010.

15. On 11 March 2011, the FRO confirmed to the Human Resources Management Services of UNON (“HRMS of UNON”) that the Applicant’s contract would not be renewed due to ‘unsatisfactory performance’. On the same day, the Applicant uploaded her final work plan for the performance cycle ending on 31 March 2011.

16. By an email circulated within DEPI in the month of April 2011, staff members were informed that another colleague in the Global Programme of Action Unit in the Marine and Coastal Ecosystems Branch would take up the Applicant’s functions as of 3 May 2011. This notification was confirmed on 12 April 2011 by the Division Director in a meeting of Heads of Units and Branches.

Procedural History

17. On 21 March and 20 April 2011, the Applicant filed a request for management evaluation of the decision not to renew her appointment with UNEP beyond 2 May 2011.

18. On 20 April 2011, the Applicant filed her first Application with the UNDT seeking suspension of the impugned decision.

19. Having considered that the Applicant should be given an opportunity to complete the rebuttal process of her e-PASes for the periods of 2009-2010 and 2010-2011, the Tribunal issued Judgment No. UNDT/2011/076 dated 29 April 2011 wherein it decided that the impugned decision would be suspended for 14 working days following the date on which notification of the report(s) of the Rebuttal Panel(s) is/are made to the Applicant.

20. Subsequently, the Applicant filed her requests for the rebuttal of her e-PASes. On 6 June 2011, the Applicant was informed by the Management Evaluation Unit (MEU) of the outcome of her request for management evaluation. Her request was determined to be moot as the UNEP Administration had decided to renew the Applicant's appointment on a month to month basis pending the finalization of her e-PAS evaluation for 2010-2011 and completion of her e-PAS rebuttal process.

21. On 20 June 2011 and 12 June 2011 respectively, the Rebuttal Panels issued their decisions in respect of the e-PASes for the periods of 2009-2010 and 2010-2011.

22. On 20 June 2011, the Rebuttal Panel for the first performance appraisal advised the Applicant that the rating of her e-PAS for the period 2009-2010 had been changed from 'partially meets performance expectations' to 'fully meets performance expectations'. However, in relation to the e-PAS for the period of 2010-2011, the relevant Rebuttal Panel informed the Applicant on 21 July 2011 that the rating 'partially meets performance expectations' would remain unchanged.

23. On 22 July 2011, the Applicant filed the present Application with the Tribunal seeking further suspension of the impugned decision. The Application was acknowledged and served on the Respondent on 26 July 2011.

24. On 29 July 2011, the Tribunal issued Judgment No. UNDT/2011/135 wherein it found that the Application had satisfied the three requirements for granting a suspension of action as per art.13 of the Rules of Procedure of the

UNDT. The Tribunal thereby considered that the decision should remain suspended.

Consideration

25. On 16 September 2011, the Applicant filed an application to withdraw cases UNDT/NBI/2011/018 and UNDT/NBI/2011/036.

26. The Applicant stated that as a result of having resolved her cases through the informal process, she is therefore withdrawing her Applications and is requesting the Tribunal to formally discharge the suspension of action Judgments, namely Judgments No. UNDT/2011/076 and UNDT/2011/135.

Conclusion

27. In light of the Applicant's notice of withdrawal of her suspension of action Applications, there is no longer any matter for adjudication by the Dispute Tribunal.

28. The decision to suspend the impugned decision as per Judgment No. UNDT/2011/135 dated 29 July 2011 is hereby discharged.

29. The matter of *Perrot-Maître v Secretary-General* is hereby closed.

(Signed)

Judge Vinod Boolell

Dated this 30th day of November 2011

Entered in the Register on this 30th day of November 2011

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi