



Before: Judge Joelle Adda

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

HEURTEMATTE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Michel Boulianne, UN Women
Prue Smith, UN Women
Ivanova Galan, UN Women

Introduction

1. On 29 December 2021, the Applicant filed the application in which he contests the “Decision of the abolishment of [his] post which caused his non-renewal of appointment beyond 30 September 2021”.

2. Upon resolving some technical issues with the initial filing of the application, the Respondent duly filed his reply on 15 March 2022 wherein he contends that the application is without merit.

Consideration

The contested decision

3. The Respondent submits that “the Applicant does not appear to have contested the separate but related decision not to renew his fixed-term appointment after it was decided to abolish his former post”, but that “in view of the fact that the Applicant did request management evaluation of this decision, the Respondent will proceed on the assumption that the Applicant did intend to also appeal this decision”.

4. The Tribunal notes that the Appeals Tribunal in *Fasanella* 2017-UNAT-765 held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”. As such, “the Dispute Tribunal may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed”. See para. 20.

5. The Tribunal finds that it is evident from the application that the Applicant wishes to contests both (a) the abolition of his post and (b) the non-renewal of his fixed-term appointment. The Respondent’s submissions to the contrary are therefore rejected.

Additional evidence

6. As background for the abolition of the Applicant's posts, the Respondent submits as follows:

... The abolition of the Driver to the Head of Office post was the result of an operational determination in connection with a larger office administrative and budgetary assessment that such post was no longer required in UN Women in order to fulfil its mandate. It is well established that fixed-term contracts carry no expectancy of renewal and the resulting separation of the Applicant through the non-renewal of his fixed-term appointment was carried out properly, in line with Staff Rules 9.1(iii) and 9.4.

... In early 2020, the Regional Office started a reorganization process based on regional needs for the redesign of division of labor, existing assets, and personnel interests and competencies.

... The process was developed in regular exchange with UN Women's Change Management team in headquarters and was based *inter alia* on in-house interviews, personnel surveys, country offices surveys on the Regional Office's performance. [footnote reference to Annex 2 to the reply]

... When the reorganization process was announced in early 2020, no decision had yet been made on which positions would be affected. However, change management is by nature adaptive and the reorganization discussions were shaped by the new COVID reality and work modalities.

... After the Regional Office transitioned to a fully remote work modality due to the COVID-19 pandemic, the office space was no longer in use, nor would be required for the foreseeable future. In this context, UN Women made the administrative decision not to renew the lease for its premises beyond 31 May 2020.

... UN Women has 74 employees based in its Regional Office in Panama, of which only 19 are staff members. [footnote reference: "As of 9 March 2022"] The office carries no ground operations and serves mainly fundraising and coordination purposes. The Applicant's primary functions were to drive the office vehicles to transport the Regional Director, other personnel and visitors; his secondary functions were to collect and deliver mail, documents and other items to UN offices, government offices, embassies, and commercial establishments; and on a lesser frequency, as needed, his functions included to provide general administrative and logistic support such as assisting staff in events and meetings, in filing, photocopying, maintaining records and payments of bills. [footnote reference to Annex 1 to the reply]

... In the Regional Office's new teleworking modality, the need for transporting individuals was essentially inexistent, and the need for collection and delivery of mail, documents and other items were limited to the occasional delivery of office equipment and personal protective equipment to personnel. Without a physical office space, with all meetings and events being held virtually and transactions performed online, the functions related to administrative and logistic support also became redundant despite UN Women's good faith efforts to identify alternative administrative functions for the Applicant that could be performed from home.

... In view of the above and in the context of the reorganization process, UN Women reassessed the need for the functions associated with Applicant's former post and reasonably deemed it redundant, which eventually culminated in the non-renewal of the Applicant's contract over a year after the Regional Office started operating fully remotely.

... The facts that the Regional Office (i) has not hired another driver since the Applicant's separation, and (ii) is currently finalizing the process of selling its only two vehicles in Panama which remain underused further demonstrate that the Decision was sound and was a legitimate exercise of UN Women operational discretion.

7. The Respondent's above quoted factual submissions, however, stands largely uncorroborated by any of the evidence that he appends to his reply: (a) the Applicant's job description (Annex 1), (b) a 2020 annual report from UN Women on "COVID 19 capitalization and ACRO's [presumably, an acronym for "Americas and the Caribbean Regional Office"] reorganization proposal (Annex 2); (c) five receipts from "AMBER MOON PANAMÁ TAXI SERVICES, S.A." from 25 August to 18 December 2020 (Annex 3).

8. In the interest of justice, also referring to the Dispute Tribunal's judgment in *Quatrini* UNDT/2020/043, which was not appealed by the Respondent, the Tribunal will therefore order the Respondent to file the relevant documentation for his submissions or, at minimum, make proper references to the documentation already on file and explain their relevance as per arts. 18.2 and 19 of its Rules of Procedure.

9. Aside from this, the Tribunal finds that the case file is fully briefed. After the filing of the Respondent's additional submission—unless otherwise ordered—the

Tribunal will therefore allow the Applicant to file his final observations and thereafter proceed to adjudicating the matters of the present case.

IT IS ORDERED THAT:

10. By **4:00 p.m. on Thursday, 3 November 2022**, the Respondent is to provide documentation for, or at least, references to, the factual submissions contained in paras. 29-36 of his reply;

11. By **4:00 p.m. on Thursday, 17 November 2022**, the Applicant is to file his final observations to the Respondent's reply and additional submissions. The submission shall not exceed five pages, using Times New Roman, font 12 and 1.5 line spacing.

12. Upon receipt of the Applicant's submissions, unless otherwise instructed, the Tribunal will proceed to adjudicate this matter on the papers before it.

(Signed)

Judge Joelle Adda

Dated this 27th day of October 2022