



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1170

Case No. 1262: LEJEUNE

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, President; Mr. Omer Yousif Bireedo; Mr. Spyridon Flogaitis;

Whereas at the request of Jacques Lejeune, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time limit for filing an application with the Tribunal until 30 June 2001 and periodically thereafter until 31 March 2002;

Whereas, on 28 March 2002, the Applicant filed an Application containing pleas which read, in part, as follows:

“II: Pleas

Request for Discovery and Witnesses

...

2. The Applicant respectfully requests the Tribunal to order the Administration to produce ... information, items, documents, or records which are in the sole and exclusive control of the Administration ... In the event that the Administration fails or refuses to fully comply with the foregoing requests, the Tribunal is respectfully invited to conclude that such

documents and evidence would most certainly corroborate and/or prove the Applicant's assertions herein, and to award the Applicant his requested relief.

...

3. The Applicant requests an oral hearing ...

Redress Sought

...

5. ... [T]he Applicant requests the following redress:

- immediate reintegration into the UNHCR, with full effect from 15 October 1997, for an additional fixed-term of three years from the Applicant's actual date of reintegration, in a position at grade P.5 ... and the payment to the Applicant of all salary, benefits, post adjustments, in-grade step increases, ... pensionable remuneration ... and any other emoluments that the Applicant would have received or been entitled to ...;
- a written instruction to ... UNHCR ... to cease and desist any and all efforts to impugn the Applicant's personal or professional character, or to otherwise prevent him from obtaining alternative employment, either within the UN system or elsewhere;
- a written apology to the Applicant from the High Commissioner, widely published throughout the UN system, ... [and] issuance of a written Certificate of Employment, in a form acceptable to the Applicant and suitable for disclosure to his prospective employers ...;
- referral of the allegations raised by the Applicant above to an independent and *ad hoc* investigative and disciplinary committee ...;
- the award of the sum of one million dollars (USD 1,000,000) as compensation for the actual and consequential damages the Applicant has suffered as a result of the foregoing actions of the Administration ...
- the award of the sum of two million dollars (USD 2,000,000) as compensation for the moral injury and damage to his reputation ...;
- the award of the sum of ten million dollars (USD 10,000,000) as punitive damages against the UNHCR ...;
- the award of twenty-five thousand dollars (USD 25,000) for costs, expenses, expert, and legal fees ...;
- payment to the Applicant of the difference between the post adjustment [between Guinea and Geneva rates from 1 January through 15 October 1997] ...;
- interest at the compounded rate of ten percent per annum on any and all of the above amounts so recommended to be awarded by the Tribunal, from the date of the Applicant's request for administrative review through the date any amounts awarded hereunder are finally and fully paid to the Applicant; and

6. such other relief as the Tribunal deems just, fair and equitable under the foregoing circumstances."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 December 2002 and once thereafter until 31 March 2003;

Whereas the Respondent filed his Answer on 24 March 2003;

Whereas the Applicant filed Written Observations on 22 July 2003 and, on 21 October 2003, the Respondent commented thereon;

Whereas, on 9 July 2004, the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant joined the Office of the United Nations High Commissioner for Refugees (UNHCR), in Geneva, on a short-term appointment as a Senior Management Inspector, at the L-4 level, on 8 November 1992. Effective 1 January 1993, the Applicant was granted a one-year intermediate-term appointment (200 Series), which appointment was renewed for one year, on 1 January 1994. On 1 January 1995, the Applicant's appointment was extended for two years. Effective 16 August 1995, the Applicant was reassigned as Head, UNHCR's Sub-Office in N'Zerekore (SONZE), Guinea. The Applicant separated from service on 15 October 1997.

In October 1995, the Applicant reported to UNHCR's administration alleged fraud and mismanagement in the Guinea Office. Subsequent investigations, however, failed to substantiate the Applicant's allegations.

On 5 December 1996, the Applicant's supervisor submitted the Applicant's PER for the period 15 August 1995 to 30 November 1996, along with his recommendation not to renew the Applicant's appointment as Head of SONZE. He suggested that a more suitable post be found for the Applicant, where his performance could be reassessed after a year.

On 1 January 1997, the Applicant's contract was extended for one month, to allow him to rebut his PER, however he was placed on special leave with full pay (SLWFP). On 18 January, the Applicant rebutted his PER and, subsequently, his contract was extended to allow for the completion of the rebuttal process. He remained on SLWFP. On 30 April, the Rebuttal Panel submitted its report, concluding that the Applicant's PER was "a literal reflection of his performance". In his final appraisal of the Applicant's PER, the Director, Regional Bureau for Europe concurred with the Panel's conclusion, adding a recommendation that "proper conditions of separation be considered at the expiration of his present contract." The final appraisal was forwarded to the Applicant on 2 July 1997.

On 15 May 1997, the Applicant was notified that his appointment had been extended until 30 June 1997 and that, should he not be selected for a post in the current compendium exercise, this extension would be considered as final.

On 30 June 1997, the Applicant was informed that, in accordance with a recommendation from the Joint Medical Service (JMS), his contract would be extended until 10 July 1997, at which time it would be allowed to expire. Subsequently, based on JMS's further recommendation, the Applicant's appointment was further extended, until 15 October 1997.

On 10 December 1997, the Applicant requested the Secretary-General to review the administrative decision, not to extend his fixed-term appointment.

On 27 June 1998, following an unsuccessful attempt at conciliation, the Applicant lodged an appeal with the Joint Appeals Board (JAB) in Geneva.

The JAB adopted its report on 27 March 2000. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

Receivability

...

54. ... [E]ven if one were to accept the Appellant's argument, that the additional 'decisions' introduced in his statement of appeal 'led to, resulted from, were an indirect consequence of, or otherwise were attributable to the Administration's decision to wrongfully separate [him] from the organization', ... requesting the Secretary-General to undertake an administrative review remains a mandatory procedural step *prior* to filing an appeal and from which the JAB cannot depart. The Panel therefore concluded that [all] items [other than unfair treatment of him by the Administration in failing to renew his contract] were not receivable.

...

Non-renewal of the Appellant's appointment

...

62. With respect to the Appellant's arguments that the non-renewal of his appointment was taken in retaliation for his reports to UNHCR's Administration in 1996, and that it constituted a disguised disciplinary measure ..., the Panel noted the following.

...

66. ... The Panel was satisfied that the Appellant was afforded all the procedural safeguards to uphold his rights in the rebuttal procedure ... No bias was revealed by the rebuttal, and the JAB Panel has no procedural grounds on which to challenge the validity of the rebuttal proceedings.

67. ... [T]he Panel noted that Appellant's Project Personnel appointment was covered by the 200 Series of the Staff Rules. UNHCR is entitled to separate a staff member appointed under the 200 Series from a post, even without prior notice and without regard to either the quality of the services that the staff member rendered or the staff member's personal attributes. ... Furthermore, although UNHCR's Administration was not bound to notify the reasons of a non-renewal, the 15 May 1997 notification memorandum ... clearly indicated the underlying reasons for an eventual non-renewal of his appointment.

...

72. Finally, the Panel examined the Appellant's argument that he had a legal expectancy of renewal ...

73. ... The Panel finds no evidence indicating that the actions of UNHCR's Administration created such expectancy. In this connection it should be noted that the Standard Assignment Length (SAL), on which the Appellant supports his claim for expectancy, merely indicates the period that a staff member is expected to spend at a given duty station. It has no bearing on the duration of the Appellant's appointment, and does not modify its expiration date.

Conclusions and Recommendations

74. ... [T]he Panel concludes that the Appellant did not have an expectancy of renewal, and that the non-renewal of his appointment:

- a. was not in retaliation for his reports to UNHCR's Administration with respect to possible fraud at UNHCR's Branch Office in Guinea;
- b. did not constitute a disguised disciplinary measure;
- c. was not tainted by corruption or by procedural irregularities; and
- d. did not violate UNHCR's rules and procedures.

75. The Panel therefore **recommends** to the Secretary-General that the present appeal **be rejected.**"

On 17 May 2000, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General had decided to accept the JAB's conclusions and its unanimous recommendation and to take no further action on his appeal.

On 28 March 2002, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Administration failed to protect the Applicant from retaliatory action taken against him as a whistle-blower. The promulgation of a false, negative

PER as well as the decision not to renew his fixed-term appointment, was in retaliation for his whistle-blowing activities. The Administration failed to seriously and objectively investigate the Applicant's allegations of corruption and wrongdoing within the Organization.

2. The Administration erroneously relied on a false inaccurate PER in deciding not to renew the Applicant's fixed-term contract. The said PER and the decision not to rescind it should be quashed.

3. The Administration failed to give the Applicant the real reasons for the non-renewal of his contract.

4. The Applicant had a legitimate expectation of renewal of his appointment.

5. The Applicant was unfairly treated by the Administration's failure to renew his contract and by the Administration's interference with his prospective employment opportunities, both within the United Nations and in the private sector.

6. The Administration failed to take the Applicant's candidacy for an internal post seriously, or otherwise short-list the Applicant for a post for which he was the most qualified internal candidate.

7. The placement of the Applicant on SLWFP was a thinly disguised disciplinary measure and was *ultra vires*.

8. The Applicant's rights of due process were violated and there were numerous procedural irregularities in his case.

Whereas the Respondent's principal contentions are:

1. Most of the issues raised by the Applicant in support of his appeal are not receivable.

2. No rights of the Applicant were violated in connection with the expiration on 15 October 1997 of his fixed-term contract and the non-renewal of that contract.

3. The Applicant's allegations that UNHCR interfered with prospective employment opportunities, in addition to being non-receivable, are unfounded.

4. The Applicant's allegations that the Organization failed to completely and objectively investigate his allegations of fraud and misappropriation within UNHCR, in addition to being non-receivable, are unfounded.

5. The Applicant's contentions regarding his placement on SLWFP, in addition to being non-receivable, are unfounded.

6. The Applicant's allegations of "thinly disguised disciplinary measures" taken against him, in addition to being non-receivable, are unfounded; no disciplinary measures were taken against the Applicant and the procedures regarding disciplinary measures therefore did not apply.

The Tribunal, having deliberated from 24 June to 23 July 2004, now pronounces the following Judgement:

I. The Applicant contests several issues in his Application. The Tribunal, having carefully reviewed the documentation contained in the file, concludes that only two of these issues are receivable before it: the non-renewal of the Applicant's fixed-term appointment and the issue concerning the rebuttal of his PER for the period 15 August 1995 to 30 November 1996. The other issues contained in the Application were not the subject of administrative review and therefore are not receivable. Staff rule 111.2(a) states:

"A staff member wishing to appeal an administrative decision ... shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing."

In its jurisprudence, the Tribunal has stated that compliance with this rule is a pre-requisite for bringing a case before it. In Judgement No. 571, *Noble* (1992), the Tribunal stated: "the failure by the Applicant to follow the procedure required by staff rule 111.2 ... renders any further consideration of that decision by the Tribunal beyond its competence." In his letter to the Secretary-General of 10 December 1997, the Applicant requested administrative review only of the decision not to renew his fixed-term appointment and of the conclusions of the Rebuttal Panel, which had considered the rebuttal of his above-mentioned PER. Consequently, all other issues raised by the Applicant are not receivable.

II. Nonetheless, the Tribunal finds that the Applicant's request concerning the Rebuttal Panel's conclusions is time-barred. The Applicant was provided with the final appraisal on his PER, following the Rebuttal Panel's review of it, on 2 July 1997. His request for administrative review was not submitted until December 1997, thereby

exceeding the two-month time limit prescribed in staff rule 111.2(a), rendering his request for administrative review, on the rebuttal of his PER, time-barred.

III. Having made the above determinations, the Tribunal will now turn to the decision not to renew the Applicant's fixed-term appointment.

The Applicant appeals to the Tribunal to rescind this decision, his primary claim being that the decision was taken in retaliation and as direct retribution for a 1996 report which he had submitted to the Administration, detailing administrative, financial and operational failures and widespread fraud within UNHCR's Guinea Office. In support of this claim, the Applicant submits, *inter alia*, that since he joined UNHCR, in November 1992, his first three PERs had overall ratings ranging from "above average" to "excellent", leading to his appointment as Head of UNHCR's Sub-Office in N'Zerekore, Guinea. Therefore, according to the Applicant, there could be no doubt that he was the victim of retaliation.

The Applicant further contends that he had a legitimate expectation of renewal of his contract. In support of this contention, the Applicant states that he was informed that the "Standard Assignment Length" (SAL) was for two years which, by its own terms, extended beyond the expiration date of his then existing contract.

Furthermore, the Applicant claims that the failure of the Respondent to advise him of the reasons for non-renewal of his fixed-term contract is procedurally irregular, as well as in violation of the Administration's own written policies and must therefore be set aside and quashed. In support of his argument, the Applicant points to ILOAT's Judgement No. 1544, *Gery-Pochon* (1996) wherein it was held that: "[a] firm line of precedent has it that though fixed-term appointment ends automatically at the schedule date of expiry the staff member must be told the true grounds for non-renewal and given reasonable notice of it even if the contract does not expressly so require". (See also ILOAT's Judgments No. 17, *Duberg* (1955); No. 1298 *Ahmad*, (1993); and, No. 1384, *Wadie*(1995).)

IV. The Tribunal notes that the Applicant's appointment was covered by the 200 series of the Staff Regulations and Rules. Staff rule 204.3(a) provides that such appointments "shall expire without notice on the date specified in the respective letter of appointment", and staff rule 204.3(d) stipulates that such appointments carry no expectancy of renewal. Likewise, the Applicant's letter of appointment clearly states "[t]his appointment does not carry any expectancy of renewal".

The Tribunal has consistently upheld these rules, reaffirming that staff members serving under fixed-term appointments have no right to renewal of their contract and that their employment with the Organization ceases automatically and without prior notice upon the expiration date of their fixed-term contract, unless there are countervailing circumstances. (See Judgements No. 1048, *Dzuverovic* (2002); No. 1057, *Da Silva* (2002); and, No. 1084, *Sabbatini* (2002).) These may include abuse of discretion or an express promise by the Administration, thereby creating an expectancy that the appointment will be extended. The Tribunal could not find such circumstances in the present case.

The Applicant refers to the SAL in support of his claim of legal expectancy of continued employment. The Tribunal finds that the JAB correctly established that the SAL only indicates the length of time that a staff member could expect to stay at a specific duty station, provided that he holds a valid appointment, but it has no bearing on the duration of a staff member's appointment, and it does not modify its expiration date.

As for the Applicant's contention regarding the Respondent's obligation to inform him of the reasons for not renewing his contract, the Tribunal points to the Applicant's letter of appointment, which states that his appointment expires "without prior notice" upon the expiration date stated therein.

V. The Applicant also claims that the non-renewal of his contract was based on an impugned PER, which was completely contrary to his earlier PERs. This, in his view, serves as additional evidence of the Respondent's attempts to discipline and punish him for bringing to light the widespread fraud within the UNHCR's Guinea Office.

The Tribunal, like the JAB, could not find any evidence substantiating these allegations and finds that the Applicant failed to carry his burden of proof. Moreover, the Tribunal notes that the Applicant rebutted his PER but that the Rebuttal Panel did not recommend any changes thereto and furthermore, several investigations which were carried out subsequent to the Applicant's allegations of fraud found that they were baseless.

VI. In view of the foregoing, the Tribunal finds that the Respondent's decision not to renew the Applicant's fixed-term appointment did not violate the Applicant's rights.

VII. Accordingly, the Application is rejected in its entirety.

(Signatures)

Julio **Barboza**
President

Omer Youssif **Bireedo**
Member

Spyridon **Flogaitis**
Member

Geneva, 23 July 2004

Maritza **Struyvenberg**
Executive Secretary