



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1287

Case No. 1369

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Spyridon Flogaitis, President; Ms. Jacqueline R. Scott, Vice-President; Mr. Kevin Haugh;

Whereas at the request of a former staff member of the United Nations Environment Programme (hereinafter referred to as UNEP), the President of the Tribunal granted an extension of the time limit for filing an application with the Tribunal until 31 August 1999 and periodically thereafter until 30 June 2003;

Whereas, on 1 July 2003, the Applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 20 August 2004, the Applicant, after making the necessary corrections, again filed an Application requesting the Tribunal, inter alia:

“2. ...

D. Decisions on Administrative Measures

...

... [To order] rescission of all ... decisions and non-decisions by the Secretary-General ... to allow the Tribunal to promulgate new decisions explicitly addressing the specific case of the Applicant rectifying and at the same time condemning the very

flagrant and serious nature of the ... 'irregularities and their consequences' in the assessment of the Applicant's performance in the Individual Review Form ... and the Comparative Review Form ... prepared by the Applicant's second reporting officer [the Chief, Biological Diversity Unit, UNEP,] and recognizing in these new decisions that the ... 'irregularities and their consequences' were the direct causes of the Applicant being redeployed in UNEP and subsequently separated from service from UNEP and the United Nations as a whole resulting in the Applicant losing a promising career ... as well as to allow the Applicant to be compensated ...

3. Compensation Claimed by the Applicant

... [T]o order a settlement, which respects the rights and interests of the Applicant and which gives the Applicant *maximum* compensation:

...

4. Other Relief Claimed by the Applicant

... [T]o enforce the following [relief]:

(a) *Immediate suspension of action* on the administrative decision to have the Applicant put on the UNEP Redeployment List and separated from UNEP;

(b) *Measures* to make those who caused the unjust and unlawful separation of the Applicant from UNEP and subjected the Applicant to very flagrant and serious discrimination and miscarriage of justice to account for their deeds;

(c) *Any other relief* ... due to the Applicant ... [in particular, that the 'appropriate administrative measures to correct the ... irregularities and their consequences' recommended by the Joint Appeals Board (JAB) be taken]."

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 28 February 2005 and once thereafter until 31 March;

Whereas the Respondent filed his Answer on 31 March 2005;

Whereas the Applicant filed Written Observations on 26 January 2006;

Whereas the statement of facts, including the employment record, contained in the report of the JAB reads, in part, as follows:

“Employment History

[Following a series of short-term appointments with the United Nations Human Settlements Programme (UNCHS) the Applicant joined UNEP on a six-month fixed-term appointment at G6/1, effective 23 December 1986. Her fixed-term appointment was extended through 26 November 1987. Following a break in service, from 27 November 1987 to 11 January 1988, she was given another fixed-term appointment until 21 May 1988 (4 months and 10 days) at G6/11] and subsequently her fixed-term appointments were extended until 31 March 1997. In May 1993 her grade was

changed to G4/IX due to the result of conversion of the nine level salary scale to a seven level scale. She was separated from the Organization on 31 March 1997.

Summary of the facts:

[On 11 September 1996, the Executive Director, UNEP, addressed a memorandum to all staff, to inform them of a budget reduction exercise, and, resulting re-deployment of staff. Comparative assessments would be made for the purpose of identifying staff members to be re-deployed and for selecting staff members for available vacancies.]

[On 1 October 1996, the Applicant was advised that a preliminary determination had been made of the staff members to be maintained, and that, regretfully, she was now being considered for redeployment. She was invited to submit her comments.]

... On 4 November 1996, [the Applicant] rebutted ... her performance evaluation report [(PER)] for the period 9 August 1995 through 31 March 1996 ... She won the rebuttal and the overall rating ... [was] changed to 'An excellent performance'. (...) The overall ratings of her two previous PERs had also been 'excellent'.

... On 27 November 1996, ... [the Chief, Human Resources Management Service (HRMS), United Nations Office at Nairobi (UNON),] informed [the Applicant] in a confidential [memorandum], that the Executive Director [had] taken a decision on the staff to be redeployed [and that her name had been placed on the list for priority review]. She was given a consolidated list of all available vacancies and urged to apply for those posts for which she considered herself qualified. She was also advised that staff members who were not selected would be separated from service. ...

[On 30 January 1997, the Chief, HRMS, wrote to the Applicant, advising her that she had not been 'retained for any of the posts in the Compendium' and that 'as she could not be redeployed', she would be separated under the provisions of staff rule 109.7. In the mean time, her current contract would be extended until 31 March 1997.]

... On 15 March 1997, [the Applicant] requested ... an administrative review [of the contested decision]. (...)

... On 1 April 1997 the Executive Director, UNEP, replied to [the Applicant's] request for an administrative review (...)[, confirming the decision of 30 January 1997].

... On 30 April 1997, [the Applicant lodged an appeal with the JAB in Nairobi] against [the] administrative decision to separate her from UNEP as of 31 March 1997 as a result of the redeployment exercise (...).

..."

The JAB adopted its report on 27 June 1998. Its conclusions and recommendations read, in part, as follows:

“21. ***Conclusions***

a.) The JAB panel investigated extensively the circumstances by which the Appellant was put on the UNEP redeployment list and found certain irregularities in such process, in particular inconsistencies in ratings of the Individual Review Forms

similarly applied in the Comparative Review form.

b.) The JAB panel considered that HRMS did not draw the attention of the supervisor to the nonconformity of his ratings with the guidelines before passing the relevant forms to the Redeployment Panel. HRMS **and** [the] Redeployment Panel did not correct the irregularity.

c.) As a consequence of the irregularities, [the Appellant] was recommended for redeployment and the same irregularities affected the relevant decision by the Redeployment Panel which ultimately led her separation from UNEP.

22. *Recommendations*

a.) ... HRMS to systematically review the compliance with the guidelines by the supervisors as in the case of any administrative exercise involving ratings of staff member's performance.

b.) ... HRMS to ensure that guidelines on administrative exercise are clear and as simple as possible and that they are clearly followed by the staff member.

c.) The second supervisor to review the Individual Review form of the Appellant in conformity with the guidelines. That the new Individual Review Form of the Appellant replaced the previous one, in the Appellant's Official Status file.

d.) ... HRMS to consider other appropriate administrative measures to correct the above irregularities and their consequences."

On 5 February 1999, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed her as follows:

"The Secretary-General considers that a new review of your Individual Review Form would serve no purpose at this time as you have already separated from service. The Secretary-General further considers that the Board's recommendation that 'other appropriate administrative measures' be taken does not identify those measures and is therefore not possible to implement.

The Secretary-General has taken note that the Board's examination of your case has not disclosed any discrimination against you. He acknowledges, however, that there may have been some technical irregularities in the assessment of your performance when completing the Individual Review Form. He has therefore decided that you should be paid compensation in the amount of three months' net base salary and that you shall be given special consideration for future vacancies in UNEP for which you are qualified and in which you are interested."

On 20 August 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The JAB's and the Secretary-General's failure to recognize, and thus to rectify, the very flagrant and serious discrimination to which the Applicant was subjected by the Chief, Biological Diversity Unit, UNEP, violated her due process rights.

2. The second reporting officer deviated from the way he prepared the Individual Review Forms for other secretaries in the Biological Diversity Unit, UNEP, by not applying the relevant Redeployment Guidelines in a uniform manner.

3. The JAB failed to exhaustively address all the Applicant's pleas.

4. The Applicant contests the decision of the Secretary-General to pay her only three months' salary, which is disproportionate to the injustice to which she was subjected.

Whereas the Respondent's principal contentions are:

1. The Applicant was employed pursuant to a fixed-term appointment, which carried neither the right to, nor the legal expectancy of, continued employment with the United Nations.

2. The decision not to renew the Applicant's appointment did not violate her rights. It was a valid exercise of the Secretary-General's authority.

3. There was no discrimination or other improper motive behind the decision not to extend the Applicant's contract.

4. The Applicant has been appropriately and adequately compensated for any procedural irregularities.

The Tribunal, having deliberated from 29 June to 13 July 2006, now pronounces the following Judgement:

I. The Applicant was employed in UNCHS in December 1985 for five weeks. Following a further series of short-term appointments, she joined UNEP on a fixed-term one, in 1986, extended through November 1987. After a break in service, she rejoined UNEP in January 1988, and subsequently, she received further fixed-term appointments and promotions, until 31 March 1997, when she finally separated from service, as a result of a redeployment exercise.

In September 1996, all staff members in UNEP were advised that a budget reduction exercise would take place, with resulting re-deployment of staff. Comparative assessments would be made for the purpose of identifying staff members to be re-deployed and for selecting staff members for available vacancies. In October 1996, the Applicant was advised that a preliminary determination had been made of the staff members to be maintained, and that, regretfully, she was now being considered for redeployment.

Around the same time, the Applicant rebutted her 1996 PER, which later was proved to have been unfair to her. Her overall performance rating was changed to “an excellent performance”.

On 27 November 1996, the Applicant was informed that the UNEP Executive Director had taken a decision on the staff to be redeployed and that her name had been placed on the list for priority review. She was given a consolidated list of all available vacancies; urged to apply for posts for which she considered herself qualified; and, advised that, should she not be selected, she would be separated from service. At the end of her contract, 31 March 1997, she was separated from service, as, apparently, she could not be redeployed.

She requested administrative review of this decision and, subsequently, the case was appealed to the JAB. The latter reviewed the Applicant’s Individual and Comparative Review forms. Despite the fact that it concluded that there was no sign of discrimination, the JAB made a series of findings, the most important of which was that, during the redeployment exercise, some discrepancies had occurred in the Applicant’s ratings, when compared with the relevant instructions and guidelines. The JAB recommended that HRMS review the guidelines, to ensure that they are as clear and simple as possible and that they are followed. It also recommended that the Applicant’s Individual Review form be reviewed in conformity with the guidelines and that HRMS consider other appropriate administrative measures to correct the irregularities and their consequences.

The Secretary-General followed the JAB’s recommendation regarding the irregularities and awarded the Applicant damages in the amount of three months’ net base salary. He also decided that she would receive special consideration for future vacancies in UNEP.

On 20 August 2004, the Applicant appealed the Secretary-General’s decision to the Tribunal, after she asked, and was awarded, an exceptionally large number of extensions of the time limit.

II. The questions before the Tribunal are (i) whether the Applicant was adequately compensated for the irregularities in the assessment of her performance in the course of the redeployment exercise and (ii) whether the non-renewal of her appointment violated her rights.

The Administration had offered the Applicant a number of short-term or fixed-term contracts, the last of which was to expire 31 March 1997. Fixed-term contracts do not normally carry any right of renewal, and thus, as no right or expectation for renewal was given to her, on the date of expiration, she had to leave office. The Administration had put the Applicant’s name on the redeployment list and thus subjected itself to a procedure which had to be executed, following the general principle of administrative law of *fair administration*.

That principle was in substance acknowledged by the JAB and the Secretary-General, who both accepted that certain irregularities had occurred in the re-deployment process, in

particular, that, as a consequence of certain “inconsistencies in ratings of the Individual Review Forms similarly applied in the Comparative Review form”, the Applicant was recommended for re-deployment and that the same irregularities affected the relevant decision by the Redeployment Panel which ultimately led to her separation from UNEP. The question is whether the compensation given to her by the Respondent in this regard was sufficient for the damage caused.

The Tribunal notes that, as the Applicant was serving on a fixed-term appointment which would automatically expire on the date of the expiration, she suffered no material damage from the separation from service as such.

At the same time, the Tribunal notes that the Secretary-General decided that the Applicant should be paid compensation in the amount of three months’ net base salary and that she would be given special consideration for future vacancies in UNEP for which she is qualified and in which she is interested, and believes that the compensation given by the Secretary-General is sufficient for the discrepancies during the re-deployment procedure followed, especially because her contract was expiring anyway.

Lastly, because of the long lapse of time before the case was finally submitted to it, the Tribunal feels that it is unable to give reasonable consideration to the other contentions of the Applicant. As it noted in its Judgement No. 1155, *Thiam* (2003),

“The ... Applicant’s case is a perfect example of why time limits exist, and why, barring exceptional circumstances, they are not to be extended. With respect to the Applicant’s claims for reimbursement of medical expenses, the Applicant makes claims for expenses that are, in some cases, more than ten years old. With respect to some of those expenses, the Applicant is unable to provide evidence of having incurred them, because too much time has elapsed. In at least two instances where the Applicant sought to obtain duplicate records to demonstrate those expenses, the record holders explained that they were unable to provide such duplicates, having previously destroyed their records, due to the great length of time that had elapsed since service was provided to the Applicant. In one case, the record holder was only required to maintain its records for ten years.”

and, its Judgement No. 1076, *Shehabi* (2002),

“Had the Applicant filed his appeal within a reasonable period after his release, the Respondent claims that exceptionally he would not have invoked the time bar. The Respondent concluded that since the appeal was not filed for over eight years after the Applicant’s release, he could not consider that period to be reasonable. The Tribunal finds that the sentiments so expressed by the Respondent constitute a realistic recognition as to the amount of latitude which should have been afforded to the Applicant and likewise the Tribunal cannot consider that an eight year delay such as occurred here was reasonable or that a time limit so long exceeded should be ignored or waived.”

III. On the basis of the above, the Tribunal rejects the Application in its entirety.

(Signatures)



Spyridon **Flogaitis**
President



Jacqueline R. **Scott**
Vice-President



Kevin **Haugh**
Member

Geneva, 28 July 2005



Maritza **Struyvenberg**
Executive Secretary