



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1368

Case No. 1446

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. Goh Joon  
Seng;

Whereas at the request of a staff member of the United Nations, the President of the Tribunal granted an extension of the time limit for filing an application with the Tribunal until 31 July 2005 and twice thereafter until 30 October;

Whereas, on 12 October 2005, the Applicant filed an Application requesting the Tribunal to find, inter alia, that:

“9. the Applicant should be reinstated;

...

15. the Applicant should be placed on an established, regular budget post and compensated by two years' net pay at his current level of compensation.”

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 24 April 2006 and once thereafter until 30 May;

Whereas the Respondent filed his Answer on 30 May 2006;

Whereas the Applicant filed Written Observations on 28 August 2006;

Whereas, on 10 October 2007, the Applicant submitted a communication, amending his Written Observations by adding the following:

“(a) Staff rule 101.1 states: ‘The declaration made by a staff member on appointment shall be placed in his or her Official Status file. A new declaration shall be made after a break in service that exceeds three months.’

(b) In ST/SGB/1998/19, [of 10 December 1998], page 15 (...) it states regarding staff rule 101.1 ‘Staff rule 101.1 codifies the existing practice of placing written declarations in the official status file. The second sentence seeks to ensure that a new declaration is made after a break in service that exceeds three months unless the staff member is reinstated and the staff member’s services are considered continuous under current staff rule 104.3 (b).’

(c) Inasmuch as the Secretary-General never requested a new declaration from [the Applicant], this would suggest that he himself had decided that there had been no break in service and that the Applicant had been reinstated.”

Whereas the statement of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) reads, in part, as follows:

**“EMPLOYMENT HISTORY OF THE [APPLICANT]**

... The [Applicant], a national of Qatar, entered the service of the United Nations as an Associate Social Affairs Officer in the Division of Narcotic Drugs[, Office for Drug Control and Crime Prevention (ODCCP), now United Nations Office on Drugs and Crime (UNODC) in Vienna] at the P-2 level on 17 November 1985 on a two-year fixed-term appointment on secondment from his Government. His contract was subsequently extended for various periods through 31 December 1999, with the [Applicant] remaining on secondment from his Government. The [Applicant] was promoted to [the] P-3 level on 1 September 1992 as a Training Officer.

... In 1999, a dispute arose between the [Applicant] and [the Human Resource Management Section (HRMS)] regarding his secondment status and the [Applicant’s] contract was allowed to expire on 31 December ... The [Applicant] appealed that decision [to the JAB]. Following negotiations between the [Applicant] and the Respondent, agreement was reached on a settlement of the appeal. The Settlement Agreement was concluded on 9 August 2001. Under the terms of the agreement, the Respondent gave the [Applicant] a fixed-term appointment under the 100 Series staff rules as a Programme Management Officer at the P-3 level with ODCCP. That appointment was effective 1 January 2000 and expired on 31 December 2002. The Respondent paid the [Applicant] the emoluments, entitlements and benefits covering the period from 1 January 2000 through 9 August 2001.

... During the period 1 January 2000 to 31 December 2002, the [Applicant]’s salary and other entitlements were charged against various posts. During the year 2003, the [Applicant]’s contract was extended for two six-month periods ..., in view of financial difficulties experienced by UNODC ... After being offered and having signed the first six-month contract, on 27 January ... the [Applicant] wrote ..., on 31 [January] ... to the Chief, HRMS, [stating], *inter alia*:

‘I ... signed the six-month contract ... with some reservation, as it did not accord with my understanding of current arrangement for extension of [UNODC] contracts. I indicated to you that I had expected at least a two-year contract against a regular budget post. ...

I noted from our discussions that HRMS was under the impression that I should now be placed against a temporary post. I have always held a regular post and was reinstated, according to your memorandum of 28 January 2002, to a geographic United Nations secretariat post, thus restoring the *status quo*. I do not understand the logic behind this drastic change. First there was a post and now it appears to have disappeared. ...

... I believe that the onus is on the organization to ensure that I continue to have the same status as before I was illegally separated on 1 January 2000.

...’

... In reply ..., the Chief, HRMS, wrote ... to the [Applicant], on 10 March 2003, [as follows]:

‘You were the incumbent of a regular budget post only until 31 December 1999. As the Organization had initiated your separation from service, that post was subsequently advertized and filled during the course of 2000. In the context of the settlement of your appeal in August 2001 you were granted a new appointment retroactive to 1 January 2000. As your previous post was no longer available, you were charged to various posts, including temporary assistance posts and other posts which were temporarily vacant.

The terms of the settlement agreement provide only that you would be granted a two-year appointment, effective 1 January 2000 through 31 December 2002. The agreement, which was accepted and signed by all parties, makes no reference to the source of funding for your contract. With the implementation of the two-year appointment the Organization fulfilled its obligation under the settlement agreement. Any further extension of appointment is therefore subject to the same conditions as for other staff, namely the programme requirements of the Organization, the availability of a suitable post and satisfactory performance.

In January 2002, it was agreed to change your appointment status from ‘limited’ to ‘geographic’. This was in line with the guidelines issued by OHRM for the new staffing system (which was in draft at that time) indicating that once geographic status has been granted to a staff member, that status is retained throughout his/her career regardless of the nature of posts which are subsequently encumbered. Your appointment status was therefore returned to ‘geographic’ even though you were no longer the regular incumbent of a regular budget post. This status would allow you to be considered [as an] internal candidate for vacancies in the Secretariat.

...’

... In the course of the restructuring of UNODC, a post ... was identified for the [Applicant] and the Director of the Division for Operations recommended a two-year contract extension, from 1 January 2004 to 31 December 2005. ...

...”

On 9 May 2003, the Applicant requested the Secretary-General to review the decision contained in the 10 March Interoffice Memorandum.

On 18 September 2003, the Applicant lodged an appeal with the JAB in Vienna. The JAB adopted its report on 1 September 2004. Its findings and recommendation read as follows:

**“FINDINGS**

15. The Panel found that the Settlement Agreement that the Appellant had signed in 2001 did not contain any specification of the type of post to be occupied by the Appellant and that in the absence of the word reinstatement it could not be construed as a reinstatement. The JAB did not find that the Respondent had violated the terms of the Settlement Agreement in any way and therefore it was in no position to re-open any of the claims made in the Appellant’s first appeal of 2000.

16. The Panel had difficulties to establish which specific decision the Appellant was appealing. It considered that if the Appellant was appealing the decision to extend his contract for six months, that decision had been superseded since the Appellant lodged his appeal, as he had been offered a two-year contract on 4 February 2004. Therefore there were no grounds for receivability.

17. The Panel considered the fact the during the period when the Appellant had been granted the two six-month extensions there had been financial constraints in UNODC which had led the Executive Director to issue his contract policies as noted above. The Panel had no evidence to believe that this policy had been differently applied to the Appellant than to other staff members.

18. The Panel did not find any elements of discrimination, harassment, retaliation or retribution against the Appellant in the Appeal. The Panel did not find any evidence that the Administration was trying to 'ease out' the Appellant. The Panel did not find that there had been any 'alteration' of the terms of the Settlement Agreement or of any policies or practices.

***RECOMMENDATION***

19. In view of the above the Panel recommends to dismiss the appeal in its entirety.”

On 9 February 2005, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General agreed with the JAB’s findings and conclusions and had decided to accept the JAB’s unanimous recommendation and to take no further action on his appeal.

On 12 October 2005, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. According to the Settlement Agreement, there is no indication that he was separated from the Organization.
2. The manner in which he has been treated indicates that the Respondent voided the Settlement Agreement.
3. Inasmuch as his service is viewed as having been continuous, the Settlement Agreement may not be used as an instrument for shifting him from an established post to a temporary post, as the Respondent has done, exposing him to increased instability and diminished security due to the vagaries of funding.
4. The Organization has consistently employed rapid and multiple changes in functions, posts and funding sources to conceal the Applicant’s entitlements to consideration for a career appointment and to a regular, established post because of his previous role in having made testimony to the Office of Internal Oversight Services (OIOS).
5. The Respondent has consistently failed to give him any consideration for a career appointment as called for in the provisions of staff rule 104.12 (b) (iii).

Whereas the Respondent’s principal contentions are:

1. The terms of the Settlement Agreement have been honoured by the Respondent. Issues resolved within the context of the Settlement Agreement cannot be reopened.

2. The scope of the Applicant's present Application is limited to his request for administrative review and appeal, and cannot encompass issues which have not been submitted for administrative review and considered by the JAB.

3. The Settlement Agreement has not been abrogated or violated by the Respondent.

4. The Settlement Agreement did not call for reinstatement, nor could there have been a reinstatement under the terms of staff rule 104.3 (a).

5. There was no harassment or discrimination.

The Tribunal, having deliberated from 1 to 21 November 2007, now pronounces the following Judgement:

I. The Applicant, a national of Qatar, joined UNODC in Vienna on 17 November 1985, on secondment from his Government. He remained on secondment until 1999, when a dispute arose between the Applicant and HRMS regarding his secondment status and his contract was allowed to expire on 31 December. The Applicant appealed the decision not to renew his contract to the JAB on 10 July 2000, which appeal was submitted for conciliation by mutual consent. Following lengthy negotiations, a Settlement Agreement was concluded on 9 August 2001. Under the terms of the Agreement, the Applicant was given a fixed-term appointment at the P-3 level from 1 January 2000 until 31 December 2002 and received, retroactively, the emoluments, entitlements and benefits covering the period from 1 January 2000 through 9 August 2001.

For the period 1 January 2000 to 31 December 2002, the Applicant's salary and other entitlements were charged against various posts. In January 2002, the Applicant's appointment status was changed from "limited" to "geographic", even though he was no longer the incumbent of a regular post. During the year 2003, his contract was extended for two six-month periods. On 31 January, the Applicant wrote to the Chief, HRMS, stating that he had "expected at least a two-year contract against a regular budget post", claiming that he had "held such a post during the entire period of service from 16 November 1985 to 31 December 2002". He added that he understood that he had "always held a regular post and was reinstated ... [in] January 2002 to a geographic United Nations Secretariat post, thus restoring the *status quo*". He was further of the view that, as his performance had been satisfactory, "the onus [was] on the Organization to ensure that [he would] continue to have the same status as before [he] was illegally separated on 1 January 2000".

In his reply of 10 March 2003, the Chief, HRMS, advised the Applicant that, following his separation from service, his regular budget post was filled by someone else. The Applicant was, retroactive to 1 January 2000, charged to various (temporary) posts. Under the terms of the Settlement Agreement, he would only be granted a three-year appointment through 31 December 2002. The Agreement made no reference to the source of funding for his contract and any further extension of appointment was, therefore, subject to the same conditions as for other staff. The Applicant was strongly advised to apply for vacant posts for which he was qualified. Subsequently, he was granted a two-year contract extension, to 31 December 2005, on a regular budget post.

On 9 May 2003, the Applicant requested administrative review of the decision contained in the reply of the Chief, HRMS, dated 10 March. He lodged an appeal with the JAB. In its report dated 1 September 2004, the JAB

did not find that the Respondent had violated the terms of the Settlement Agreement in any way; considered that the appeal against the decision to extend his contract for only six months had been superseded as the Applicant had been offered a two-year contract until December 2005; and, that there was no evidence of discrimination, harassment, retaliation or retribution against him. It therefore dismissed the appeal. On 9 February 2005, the Secretary-General accepted the JAB's findings and conclusions.

II. In his Application, the Applicant requests a number of reliefs, basically relating to (i) the events leading to the Settlement Agreement; (ii) the terms of the Settlement Agreement itself; and, (iii) the events that occurred after the Settlement Agreement.

III. The events leading to the Settlement Agreement were the subject matter of the Applicant's first appeal to the JAB of 10 July 2000. In that appeal, the Applicant claimed that he was wrongfully separated from service at the end of December 1999 when his fixed-term appointment was allegedly permitted to expire upon completion, because of conspiracy and harassment since 1998 as a result of his testimony to OIOS against a senior officer in the Organization. However, the chronology enumerated above shows that the Applicant's contract of employment was permitted to expire when his Government refused to extend his secondment and the Applicant declined the offer to remain with the Organization without secondment status. This, too, was the subject matter of the Applicant's first appeal to the JAB.

IV. These issues had, accordingly, been resolved through mediation and the agreement reached was embodied in the Settlement Agreement. The second preliminary paragraph of the Settlement Agreement reads: "**Whereas** the [Applicant] has lodged an appeal with [JAB] ... alleging, inter alia, that the non-extension of his appointment beyond 31 December 1999 violated his rights." The pertinent provisions of the Settlement Agreement are contained in Sections 1 and 2 which read as follows:

"Section 1 - OFFER OF APPOINTMENT

1.1. ODCCP hereby [renews] offers the [Applicant] an appointment under the terms set forth below, which are hereby accepted by the [Applicant]:

(a) The [Applicant] will be given a fixed-term appointment under the 100 Series of the United Nations Staff Rules as a Programme Management Officer at the P-3 Level, Step XIII, with ODCCP at Vienna;

(b) The Appointment shall be effective on 1 January 2000 and shall expire on 31 December 2002.

1.2. ODCCP shall pay the [Applicant] the emoluments, entitlements and benefits covering the period from 1 January 2000 until the date of this settlement agreement without unnecessary delay.

1.3. This offer is made by ODCCP and accepted by the [Applicant] as sole, full and final settlement of all claims, demands, reparations or grievances which the [Applicant] has put forward in the statement of appeal lodged with the JAB on 10 July 2000, and contained in the Annex to this Settlement Agreement.

Section 2 - WAIVER OF CLAIMS

2.1. In consideration for being granted the appointment referred to in section 1 above, the [Applicant] hereby waives and renounces any and all actions, claims, suits and demands that are set forth in the statement of appeal lodged with the JAB on 10 July 2000, and contained in the Annex to this Settlement Agreement, including, but not limited to, the remedies and pleas requested at pages 48 through 50 thereof.

2.2. Notwithstanding the above, the [Applicant] retains the right to request the review, if necessary by means of a rebuttal procedure in accordance with administrative instruction ST/AI/1999/14 of 17 November 1999, of the Performance Appraisal covering the period 1 January 1999 through 31 December 1999.”

It is clear that the scope of the Settlement Agreement covers all the Applicant’s “claims, suits and demands” lodged with the JAB in his first appeal “including, but not limited to, the remedies and pleas” contained in the statement of appeal.

V. The Applicant also contends that the Settlement Agreement has been abrogated or violated by the Respondent. The Tribunal understands the Applicant’s claim to be one of alleged repudiation of the Settlement Agreement by the Respondent. The Applicant was given, in accordance with Section 1.1 (a), a fixed-term appointment under the 100 Series of the Staff Rules with ODCCP in Vienna for the three-year period from 1 January 2000 to 31 December 2002. That was all that the Applicant was entitled to under the Settlement Agreement. Over and above that, however, the Applicant was granted two six-month contracts, followed by a two-year contract and placement against a budget post.

VI. The Applicant’s complaint that he was placed against a vacant and extra-budgetary post is also without merit. The Settlement Agreement did not stipulate against what budgetary post and on what funding his post should be placed. Assignment of staff is the prerogative of the Secretary-General under staff regulation 1.2 (c). The Tribunal, therefore, finds that the Settlement Agreement had not been repudiated by the Respondent.

VII. The Applicant also asserts he is entitled to be considered for a career appointment and that he has never served under a valid secondment arrangement. This issue is not receivable as it has not been the subject of an administrative review and appeal to the JAB.

VIII. The Application is, therefore, dismissed *in toto* and the Tribunal is constrained to state that it is completely without merit.

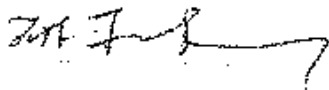
(Signatures)



**Spyridon Flogaitis**  
President



**Jacqueline R. Scott**  
Vice-President



**Goh Joon Seng**  
Member

New York, 21 November 2007



**Maritza Struyvenberg**  
Executive Secretary