



Administrative Tribunal

Distr. Limited  
23 December 2009

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1499

Case No. 1539

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Dayendra Sena Wijewardane, President; Sir Bob Hepple, First Vice-President; Mr. Goh Joon Seng, Second Vice-President;

Whereas, on 17 March 2007, a former staff member of the United Nations, filed an Application containing pleas which read, in part, as follows:

“II. PLEAS

[Requests the Tribunal to find that]

1. ...[the Secretary-General’s decision] to reject [the Applicant’s] appeal against UNHCR’s [United Nations High Commissioner for Human Rights] actions and decisions endorses and prolongs the consistent and comprehensive denial of [the Applicant’s] right to fair and due process:

2.

a) by UNHCR in refusing to recognize [the Applicant’s] acquired right to an indefinite contract upon interagency transfer from WFP [World Food Programme] contract and request for review;

b) by UNHCR, in accepting the recommendation of [the Applicant’s] supervisor to remove [her] from the post of Senior Investigation Officer ... and not to extend [her] contract, based on a procedurally flawed and substantively contested PAR [Performance Appraisal Report];

c) by UNHCR, which although in receipt of the report of the Rebuttal Panel constituted to review [the Applicant’s] 2003-2004 PAR, failed to act on the Panel’s recommendation to submit the matter to OIOS for investigation, whereby it effectively precluded the full review of the contested PAR;

- d) by OIOS [Office of Internal Oversight Services], which .... has not followed-up [on] the request of a member of the said Rebuttal Panel to examine the issues raised...;
  - e) by UNHCR, in failing to appropriately follow-up [on the Applicant's] complaints of harassment ....;
  - ....
  - g) by the Ethics Office, to which [she] addressed a request for protection against retaliatory action (separation from service) ..., which failed to give consideration to [the Applicant's] request within the prescribed time limits...thereby de facto, and regardless of its illogical conclusion, depriving [the Applicant] of protection against the Organization's questionable decision and actions.
3. ...that the conclusions and recommendations of the Joint Appeals Board [JAB] and the decision of the Secretary-General to accept them are flawed in fact and in law....
- ....
4. ...[R]equest[s] that the Tribunal:
- 5.
- a) order that the decision of the Secretary-General ...be rescinded;
  - b) overrule the refusal of UNHCR to recognize [the Applicant's] indefinite contract upon transfer to WFP on 2 September 2003;
  - c) annul the decision to remove [the Applicant] from the post of Senior Investigation Officer;
  - d) order that the [Applicant] be reinstated in the service [of] UNHCR, effective 1 June 2006, with an indefinite contract ... with all ... rights and entitlements;
  - e) award appropriate compensation....;
  - f) award appropriate punitive damages ....;
  - g) award costs."

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 26 December 2007, and once thereafter until 28 January 2008;

Whereas the Respondent filed his Answer on 24 January 2008;

Whereas the Applicant filed Written Observations on 30 July 2008;

Whereas the Applicant filed an additional communication on 2 July 2009;

The Tribunal, having deliberated from 26 October to 25 November 2009, now pronounces the following Judgement:

I. The Applicant requests that the decision of the Respondent of 27 October 2006 accepting the conclusions and recommendations of the Joint Appeals Board be rescinded. This Application was listed for consideration by the Tribunal at its Fall 2009 session, having been postponed from the Summer 2009 session.

II. The Application raises two issues:

- (1) whether the Applicant's appeal against a decision of 8 October 2003 not to grant her an indefinite appointment upon her transfer from the World Food Programme (WFP)

to the United Nations High Commissioner for Human Rights (UNHCR) was not receivable by the JAB as time-barred; and

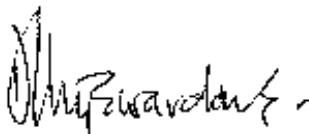
(2) whether the decision of the UNHCR not to renew the Applicant's fixed-term appointment, upon its expiry on 1 September 2004, violated her rights.

III. The Applicant presented a further application (No. 1680) to the Tribunal on 23 January 2009 in respect of the Respondent's decision of 11 August 2008 accepting the JAB's recommendations to reject an appeal against a determination by the Ethics Office in her case of alleged retaliation. This application has not yet been listed for consideration by the Tribunal. In view of General Assembly Resolution 63/253, this application will be transferred to the United Nations Dispute Tribunal (UNDT) as from the abolishment of this Tribunal on 31 December 2009.

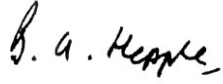
IV. The Tribunal has read the pleadings and studied the records in both cases as necessary for the present Judgement. It is clear from both cases that there is a direct overlap between the facts alleged in respect of the decision not to renew the Applicant's fixed-term appointment in 2004, and the facts alleged in respect of the determination by the Ethics Office. Both applications concern events that took place during the period when the Applicant was employed by the UNHCR Inspector-General's Office between 2 September 2003 and 1 September 2004. The issue of non-renewal of her contract is closely related to a negative Performance Appraisal Report for the year 2003-2004, and the issues with which the Ethics Office's determination was concerned included the allegation that this PAR was retaliation against her while she was engaged in protected activities.

V. There is a conflict of evidence in relation to these events, and the Applicant has requested oral proceedings to determine both applications. It appears that determinations of fact made in respect of one application may have a direct impact on the other application. It is therefore desirable, in the interests of justice, that these two applications should be considered together. Accordingly, the Tribunal orders the postponement of the present case *sine die*, with the consequence that it will be transferred, in accordance with GA Resolution 63/253 to the UNDT.

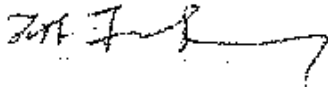
(Signatures)



Dayendra Sena **Wijewardane**  
President



**Bob Hepple**  
First Vice-President



**Goh Joon Seng**  
Second Vice-President

New York, 25 November 2009



**Tamara Shockley**  
Executive Secretary