



UNITED NATIONS DISPUTE TRIBUNAL

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

AZZOUNI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:

Duke Danquah, Office of Staff Legal Assistance (OSLA)

Counsel for respondent:

Susan Maddox, Administrative Law Unit/Office of Human Resources
Management (ALU/OHRM), United Nations Secretariat

Application

1. The applicant, through her counsel, appealed to the New York Joint Appeals Board against the decision of the Executive Secretary of the United Nations Economic and Social Commission for Western Asia (ESCWA) not to renew her fixed-term contract.

2. She requested:

- (a) Reinstatement in her post or another post at the same level;
- (b) Substantial compensation for the moral damage caused and the injury to her dignity;
- (c) That the necessary measures should be taken to draw to the attention of the Executive Secretary the irreparable injury he had caused to the applicant and her family and to prevent him from harming other staff members and the Organization in general.

Facts

3. The applicant entered the service of the United Nations on 27 November 2005 at ESCWA, in Beirut, Lebanon, as an Adviser at the P-5 level with the ESCWA Centre for Women, on a five-week short-term contract under the 300 series of the Staff Rules. Her contract was extended by three months, from 1 January 2006 to 31 March 2006, and she then received an appointment under the 200 series of the Staff Rules applicable to technical assistance project personnel, from 1 April 2006 to 30 June 2006, still as an Adviser with the ESCWA Centre for Women.

4. On 7 June 2006, the applicant was appointed Chief (P-5) of the ESCWA Centre for Women on a two-year fixed-term appointment (100 series of the Staff Rules). Her contract was therefore due to expire on 6 June 2008.

5. In the applicant's Performance Appraisal System (ed .vhoe 0 TD.0t-10.4(a)-2d5.2(tc5(T)6.h9(

Board to request a suspension of action on the decision not to renew her contract beyond 6 June 2008.

13. On 30 May 2008, the applicant's contract was extended until 6 July, at the request of the Panel on Discrimination and Other Grievances, and no action was therefore taken on the first request for suspension of action, mentioned above.

14. On 18 June 2008, the applicant filed a second request for suspension of action with the Joint Appeals Board, this time regarding the non-renewal of her contract beyond 6 July.

15. On 25 June 2008, the rebuttal panel issued its report on the rebuttal process initiated by the applicant. Based on the documents provided and interviews conducted with the applicant's subordinates and colleagues, as well as with the applicant and the Executive Secretary, the panel concluded that there were no grounds to change the original overall rating, i.e. "fully successful performance", but that 8 of the 14 core values and competencies rated "developing" by the Executive Secretary should have been given a "fully competent" rating.

16. On 26 June 2008, when a Joint Appeals Board panel was to have met to consider the applicant's request for suspension of action, the Joint Appeals Board was informed that the applicant's contract had been extended until 6 August 2008. No action was taken on the second request for suspension of action.

17. On 26 June 2008, the Chief of the ESCWA Administrative Services Division wrote to the Administrative Law Unit of the United Nations Secretariat to ask whether changes should be made to the applicant's PAS record, noting that, under section 15.3 of administrative instruction ST/AI/2002/3 on the Performance Appraisal System, the rebuttal panel is mandated to determine whether the original appraisal rating should or should not be maintained, but not to issue an opinion on the evaluation of core values and competencies. On 30 June 2008, the Policy Support Unit of the United Nations Secretariat replied that, pursuant to administrative instruction ST/AI/2002/3, the observations of the rebuttal panel regarding

Secretary-General, Office of Human Resources Management. The report concluded that there was inadequate evidence to support the allegations of discrimination and harassment but that the decision not to renew the applicant's contract was vitiated by prejudice and abuse of authority.

26. On 30 October 2008, the applicant lodged an appeal with the Joint Appeals Board in New York.

27. Under the transitional measures contained in United Nations General Assembly resolution 63/253, the case was referred to the United Nations Dispute Tribunal on 1 July 2009.

28. On 6 October 2009, the Dispute Tribunal asked the respondent to produce the files of the rebuttal panel and the Panel on Discrimination and Other Grievances on the applicant's case, including the reports on the interviews conducted by the two panels.

29. On 13 October 2009, the respondent produced some of the documents relating to the work of the Panel on Discrimination and Other Grievances on the applicant's case, and on 14 October 2009, it produced all the documents relating to the work of the rebuttal panel.

30. On 20 November 2009, the counsel for the applicant sent the Dispute Tribunal an e-mail containing a list of nine people who could testify on the applicant's behalf.

31. On 24 November 2009, the Dispute Tribunal made an order requiring the presence of the Executive Secretary and the former Secretary of ESCWA at a hearing.

32. On 24 December 2009, following several reminders by the Dispute Tribunal, the respondent retrieved from the archives and transmitted to the registry the complete file of the Panel on Discrimination and Other Grievances on the applicant's case. However, apart from what appeared to

(d) The Panel on Discrimination also concluded that the applicant could claim a legitimate expectation of contract renewal;

(e) The Chief of the Administrative Services Division offered her a one-year contract in the Social Development Division if she agreed to withdraw the complaint she had filed with the Panel on Discrimination. The decision to transfer her to another post 10 days before the end of her contract was humiliating and an act of retaliation by the Executive Secretary following the applicant's complaints.

35. The respondent's main contentions are as follows:

(a) The applicant cannot claim a legitimate expectation of contract renewal. Rule 104.12 (b) (ii) of the Staff Rules states that "the fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment" and rule 109.7 (a) provides that "a temporary appointment for a fixed term shall expire automatically and without prior notice on the expiration date specified in the letter of appointment". No special circumstances exist in the applicant's case that could have created a legitimate expectation of renewal. The United Nations Administrative Tribunal constantly reiterated its jurisprudence that good performance is irrelevant with regard to the renewal of a fixed-term contract. According to that jurisprudence, employment with the Organization ceases on the expiration of a fixed-term appointment and a legal expectancy of renewal would not be created by efficient or even outstanding performance. The United Nations Administrative Tribunal also held that the extension of the workload beyond the expiration date of the contract did not justify the renewal of a fixed-term appointment. Contrary to the claim made by the counsel of the applicant, the Panel on Discrimination did not conclude in its report that the applicant had a legitimate expectation of renewal;

(b) The decision not to renew the applicant's contract was proper. Such a decision must not be based on improper motives. In

the case under consideration, the Panel on Discrimination concluded that there was no evidence of a consistent pattern of discrimination and harassment and that the allegations of the applicant fell within the scope of performance issues under the Performance Appraisal System. With regard to the allegation that the decision was based on improper motives and constituted an abuse of authority, the burden of proof lies with the applicant, according to the jurisprudence of the United Nations Administrative Tribunal;

(c) With regard to her performance appraisal, the applicant benefited from the guarantees of due process since she was able to initiate a rebuttal process. In any event, the rating “fully successful performance” does not imply that a fixed-term appointment will be automatically renewed.

Judgment

36. The applicant is appealing before the Dispute Tribunal the decision not to renew her contract.

37. Rule 104.12 (b) (ii) of the Staff Rules then in force states that “the fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment” and rule 109.7 (a) provides that “a temporary appointment for a fixed term shall expire automatically and without prior notice on the expiration date specified in the letter of appointment”. However, the judge is required to determine whether the

39. According to established jurisprudence, even though the staff member does not have a right to the renewal of his or her contract, that decision may not be taken for improper motives. The Dispute Tribunal is therefore required to consider whether the motives for the decision were proper.

to the author of the contested decision from August 2007, had on several occasions behaved in a manner that showed she was not suited to her duties. For example, she had submitted to him for publication a study on the

of the applicant's contract in order to end a conflictive situation that was bound to adversely affect the efficient functioning of the Centre for Women.

47. The applicant maintains, however, that the real reason why her contract was not renewed is that she is Christian and the Executive Secretary considered that a Christian woman could not, as a matter of principle, serve as the Chief of the Centre for Women in a mainly Muslim environment. While the discriminatory nature of such a motive means that its existence would, in itself, vitiate the contested decision, it is the applicant's responsibility to prove the discrimination to which she was allegedly subject.

48. In support of her statements, first of all she cites the Executive Secretary's refusals, described above, to approve the study for which she was responsible and to intervene on behalf of a Saudi Arabian woman. However, the fact that the Executive Secretary criticized the content of a study handling sensitive religious issues related to sharia should not in itself be considered to demonstrate religious discrimination. Similarly, the Executive Secretary's criticism of the applicant for having taken an interest in the fate of a Saudi Arabian woman sentenced by her country after she had been raped cannot be considered an act of religious discrimination against the applicant.

49. The applicant also maintains that the Executive Secretary had stated publicly that he placed the values of Islam above the values of the United Nations. However, this allegation is strongly denied by the Executive Secretary.

50. At the hearing, the former Secretary of the Commission -6.7(n2 a16(-6.7[49)-6(e)/eu)-9.6(n

51. The applicant has therefore failed to establish that the decision not to renew her contract was taken solely because of her Christian faith. Furthermore, although the file contains the report of the Panel on Discrimination and Other Grievances on the complaint submitted by the applicant after she had been informed of the contested decision, the conclusions of that report are contradictory and insufficiently substantiated, and cannot in any case be binding on the Dispute Tribunal, which must reach its conclusion based on all the documents in the file and the oral proceedings.

52. Since a conflictive situation and a mutual loss of confidence existed between the Executive Secretary and one of his senior managers, the efficient functioning of the service was bound to be adversely affected, which in itself justified bringing that situation to an end as soon as possible, especially when the applicant's contract was to expire. In addition, the applicant has failed to demonstrate that the decision was discriminatory or that any of the motives for that decision were improper. Consequently, the application is rejected in its entirety.

Decision