

Introduction

1. On 20 April 2011, the Applicant filed an application with the United Nations Dispute Tribunal in Nairobi (“the Tribunal”) seeking the suspension of the decision not to renew her contract with the United Nations Environment Programme (“UNEP”) beyond 2nd May 2011 on the ground of “unsatisfactory performance”.

2. Having considered that the Applicant should be given an opportunity to complete the rebuttal process of her e-PASes for the period 2009-2010 and 2010-2011, the Tribunal issued Judgment UNDT/2011/076 dated 29 April 2011 wherein it decided that the impugned decision would be suspended during 14 working days following the date on which notification of the report(s) of the Rebuttal Panel(s) is/are made to the Applicant.

3. Subsequently, the Applicant filed her requests for the rebuttal of her e-PASes and her contract was renewed on a month to month basis. On 20 June 2011 and 21 July 2011 respectively, the Rebuttal Panels issued their decisions in respect of the e-PASes for 2009-2010 and 2010-2011.

4. On 22 July 2011, the Applicant filed an application with the Tribunal seeking further suspension of the decision of the same decision. The application was acknowledged and served on the Respondent on 26 July 2011.

Facts

5. The Applicant joined the Organization on 3rd May 2009 on a one year Intermediate Term Appointment at the L-5 level, step 5, as Senior Task Manager/Sub Programme Coordinator, Division of Environmental Policy Implementation (“DEPI”) in UNEP.

6. The Applicant relocated to Nairobi to take up her assignment and worked under the supervision of the Deputy Director and Head of the Freshwater and

20. On 11 March 2011, the First Reporting Officer confirmed to the Human Resources Management Services of UNON (“HRMS/UNON”)¹ that the Applicant’s contract would not be renewed for ‘unsatisfactory performance’.

21. On the same day, the Applicant uploaded her final work plan for the performance cycle ending 31 March 2011.

22. On 21 March 2011, the Applicant sent a request for management evaluation of the decision not to renew her current appointment with UNEP beyond 2

- b. First, the Applicant argues that both e-PAS cycles were “unfair, unrepresented and vitiated by procedural impropriety and bias”. Whilst the Applicant accepts that that the rating of the 2010-2011 e-PAS was fair, she asserts that the 2009-2010 appraisal was tainted by procedural irregularities, in violation of Sections 10.1 and 10.2 of ST/AI/2010/5.
- c. Moreover, it is the Applicant’s view that this application is of particular urgency as she expects the Administration to not renew her appointment very soon because the rebuttal process has now been completed. Should the decision be implemented, she would be separated without the possibility to explore the channels of informal resolution in the light of the first e-PAS’ positive outcome.
- d. Finally, the Applicant states the decision can cause her irreparable harm in terms of her reputation and career prospects that cannot be remedied by a monetary award alone. Further, she argues that if she is separated on the basis of “poor performance” she will lose the prospects of applying to job openings as an internal candidate within the UN system.
- e. For the above reasons, the Applicant moves the Tribunal to grant the application.

HEARING

33. For the purpose of the present application, the written submissions of the Parties are thorough and comprehensive and a hearing is not warranted.

WAS THE DECISION UNLAWFUL?

34. When the decision was taken not to renew the Applicant on 11 March 2011 the decision was based on the ground of unsatisfactory performance as a result of her e-PAS rating “Partially meets performance expectations” for the period 2009-2010.

35. The Rebuttal Panel has found that the rating of the Applicant’s e-PAS for 2009-2010 did not properly reflect the Applicant’s performance. For this reason it changed the rating from “Partially meets performance expectations” to “Fully meets performance expectations”.

36. The Applicant also filed a request with the Rebuttal Panel in respect of her e-PAS for the period 2010-2011 which was rated “Partially meets performance expectations”. However, this time, the rating remained unchanged and the Applicant states in her pleadings that she accepts this review as being fair.

37. Considering that the Respondent’s allegation that the Applicant’s contract was not renewed for unsatisfactory performance during the period 2009-2010, the Tribunal notes that the rating “Partially meets performance expectations” has been considered by the Rebuttal Panel as unfair and changed to “Fully meets performance expectations”. In the light of this finding the Tribunal takes the view that the decision not to renew the Applicant’s contract on the ground of unsatisfactory performance for the year 2009-2010 cannot stand anymore.

38. For the above reasons, the Tribunal considers that the decision is *prima facie* unlawful.

URGENCY ELEMENT

39. Since the contract of the applicant is due to come to an end on 2nd August 2011 this element is satisfied.

IRREPARABLE DAMAGE

40. As stated in Judgment UNDT/2011/076, the Applicant has stated in her submissions that the non-renewal of her employment will impact adversely on her professional integrity, her career prospects especially as she would be terminated without having been given a chance to seek the opportunity to resolve the pending dispute through an agreed agreement.

41. For these reasons the Tribunal is satisfied that the Applicant has satisfied that test too.

DECISION

42. For the above reasons, the Tribunal considers that the decision should remain suspended.

(Signed)

Judge Vinod Boolell

Dated this 29th day of July 2011

Entered in the Register on this 29th day of July 2011

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi