

Introduction

1. On 27 November 2018, the Applicant, a former Programme Management Assistant at the G-5 level, step 6, who previously worked on a temporary appointment in the Office for Counter-Terrorism , filed an

Consideration

Scope of the case

14. Based on the submissions, by Order No. 47 (NY/2019), the Tribunal defined the issues in this case as follows:

- a.
undertaken in a proper manner?
- b.
correctly implemented?
- c.
with OCT lawful?

15. Neither party subsequently challenged the definition of the issues. However, in the Applicant closing statement, she deviates from the outline and structures

considering, short-listing and hiring the Applicant. He acted as the *de facto* hiring manager for the large part of the recruitment process, although the final selection decision was formally to be made by another Chief, namely the FRO, who was the hiring manager, in accordance with Temporary Job Opening and against which the Applicant was subsequently hired and to which her personnel action

f. The Chief of Strategic Planning, who has no human resources background, did not have the legitimate authority to take a decision on the methodology for the Applicant's assessment and selection or with regard to her eligibility to work at the United Nations in the U.S. This authority lays with the OHRM and the government of the host country.

g. The post to be filled by the Applicant was vacant and I-ACT () was not a busy unit compared to other units in the OCT. The Chief of Strategic Planning caused delays to the recruitment and the FRO was not involved in the process and did not object thereto. The Chief of Strategic Planning appears to have hired the Applicant in I-ACT to indirectly fulfil his Hidden Spy Agenda . When drafting and advertising the TJO, the OCT managers demonstrated unethicality and lack of integrity . It is glaringly apparent that a central review body might have not been convened since no candidate was picked while waiting for the Applicant two months to start working despite the Work Permit obstacle . The Chief of Strategic Planning was clearly in bad faith, had improper motives and acted in his own self-interest.

h. Given () express desire to freely hire the Applicant and fire her, no credibility whatsoever can be given to either her recruitment process or her contrac

conflict of interest with, would foster ethics and transparency EO and OHRM, nevertheless, endorsed each statement and recommendation provided by the Chief of Strategic Planning without reviewing documents that he must have produced to justify [the Applicant] to come in and crucify her to go out .

j. The Chief of Strategic Planning lied to the Applicant when stating that he simply was in charge of administration and did not tell her that, in fact, he was in charge of recruiting her. Neither did he declare to the OCT that he knew and had previously met her. Had the Applicant known about the Chief of Strategic Planning in her recruitment process, she would have rejected the job. Although, after joining OCT, the Applicant raised her concerns

(see, for instance, *O'Neill* 2011-UNAT-182, *Tintukasiri et al.* 2015-UNAT-526 and *Harb* 2016-UNAT-643).

19. Firstly, the Tribunal notes that, if required, pursuant to staff rule 11.2(c), a staff member must file a request for management evaluation within 60 calendar days from the date on which s/he received notification of the impugned administrative decision, although this deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman. In this regard, the Tribunal further

26. Reiterating also the above submissions against non-receivability, the principal additional contentions may be summarized as follows:

a. staff
regulation 1.2(c), staff members may be assigned to any activity

Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process.

29.

October 2018, she makes no mention anywhere of her performance appraisal. This is only logical as this performance appraisal was not signed before on 12 November and,

Neither is any mention made of her performance appraisal in the management evaluation response dated 8 November 2018. According to the submissions and documentation on record, the Applicant has made no subsequent request for management evaluation of her performance appraisal.

30. Accordingly, as the Applicant has not requested management evaluation of her performance appraisal, her appeal against this appraisal is not receivable under art. 8 of the Statute of the Dispute Tribunal and staff rule 11.2.

31. However, e

appraisal, her main argument appears to be that it was issued too late, namely on 12 November 2018. As also stated by the Respondent, staff members holding temporary appointments shall have the temporary

under sec. 6.1 of ST/AI/2010/4

submissions follows that her appointment ended on 9 November 2018, it would therefore appear to the Tribunal that the performance evaluation was actually undertaken in due time.

32.

of work tasks as she appears to submit that this was not done in a proper manner.

Despite this matter is not mentioned in the Ap

question was nevertheless to be adjudicated upon, the Tribunal notes that, as a general matter, the Applicant has the onus to substantiate a claim for breach of her employment contract (see, for instance, the Appeals Tribunal in *Obino* 2014-UNAT-405, para. 19,

of proving non-compliance

with the terms of his appointment or his contract of employment . However, the Applicant has entirely failed to do so. The Tribunal further observes that, in the TJO, it was indicated that, in addition to a range of specific responsibilities, the selected candidate was expected to, Perform other duties . In this regard, the Tribunal finds that none of the tasks that were subsequently assigned to the Applicant, as described by herself, would appear to have been unreasonable for someone in her position as a Programme Management Assistant in OCT. As a matter of substance, the

The lawfulness of not renewing the Applicant's temporary appointment with OCT

33. s may be summarized as follows:

a.

The OCT always had a work backlog, did not suffer from lack of funds and prior United Nations experience. The Applicant was promised that her appointment would be renewed after six months. The Administration was obliged to consider whether it was in the Organization s interest to fulfill this promise in accordance with her letter of appointment in which was

b. Before taking up the temporary appointment, the Applicant had a case before the Dispute Tribunal involving the Office of Internal Oversight Services, which had -years fixed-

c. The decision not to renew the Applicant's appointment was *prima facie* unlawful. The FRO returned from official travel in May 2018 and expressed strong disagreement with Deputy Director, who had tasked the Applicant to assist other programme managers upon her arrival to OCT. The FRO had already then expressed her disagreement with the Chief of Strategic Planning and asked him to leave her out of [the] recruitment delay caused by Applicant's Work P .

d. For temporary appointments at the United Nations, when staff are hired for short time periods of around six months, they are subsequently to be renewed subject to availability of funds and their performance. This promise clearly falls within the ambit of countervailing circumstances according to the former United Nations Administrative Tribunal Judgment No. 885, *Handelsman* (1998) and created a legitimate expectation of renewal for every staff .

e. The decision to terminate the Applicant's appointment was *ultra vires* because it was taken without proper delegated authority. It was also malicious.

g. The Applicant's post continued to exist, and the job description remained the same in the subsequent job opening for the fixed-term post. This concerned the fatal fact that her recruitment in OCT was a [p]lot to orchestrate a [t]arnished [i]mage of the Applicant in the Organization

w. The suspension of action
[the] OCT retaliated against her acting as [staff

x. The Respondent has failed to disclose any evidence on why the job opening to fill [redacted] post was advertised before 364 calendar days had been reached.

y. [redacted] -
life image through the DSS Notice [sic]

34. The [redacted] principal contentions may be summarized as follows:

a. An appointment with a finite term does not carry an expectation of renewal. Temporary appointments may be granted for a period of less than one year for specific short-term requirements, which include temporarily filling a vacant position pending the finalization of the regular selection process.

b. On 16 January 2018, the TJO was issued for the position of Programme Management Assistant at the G-5 level with the OCT, and it was specified that the position was available for only six months. The purpose of the TJO was to allow OCT to fill the position expeditiously while it completed a selection exercise under ST/AI/2010/3.

c. The Organization did not retaliate against the Applicant for her staff representative activities, and she has not shown any nexus between her union activities and the decision not to renew her appointment.

d. The Head of Department selected the Applicant for the TJO and, on 24 April 2018, the Organization granted her a temporary appointment for six months with an expiration date of [redacted] appointment, the OCT then issued a job opening for the position in accordance

with the provisions of ST/AI/2010/3. Subsequently, O

2018-UNAT-849). A similar requirement would therefore also necessarily *mutadis mutandis* apply to a temporary appointment which, unlike a fixed-term appointment, per definition is of interim nature.

40. In addition, the Appeals Tribunal has found that

53. Accordingly, the Tribunal finds that the Applicant has failed to substantiate that the reason provided for the non-renewal of her temporary appointment was unlawful.

Conclusion

54. In light of the above, the Tribunal rejects the application in its entirety.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 1st day of May 2019