
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/030

Judgment No.: UNDT/2024/014

Date: 14 March 2024

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

Introduction

1. The Applicant is a former staff member of the United Nations Population Fund. On 2 June 2022, she filed an application contesting the decision to terminate her appointment for facts anterior to the appointment.
2. On 29 June 2022, the Respondent filed a reply urging the Tribunal to dismiss the application in its entirety.
3. On 19 July 2023, the case was assigned to the undersigned Judge.
4. The parties filed their respective closing statements on 22 January 2024.
5. For the reasons set out below, the Tribunal dismisses the application.

Facts

6. In late 2020, UNFPA advertised the position of Country Representative in the Republic of Guinea, at the P-5 level.
7. One of the questions on the application form read:

Have you ever been, whether as an employee, (international) civil servant, individual independent contractor or otherwise, subject to any disciplinary measure, contract termination, contract non-renewal or non-extension, or have you resigned while under investigation or during disciplinary proceedings, for or in connection with (allegations of) fraudulent, collusive, coercive, obstructive or unethical practices, misconduct, harassment, sexual harassment, abuse of authority, sexual exploitation or sexual abuse, retaliation, or poor or inadequate performance?
8. The Applicant submitted her application for the position on 8 December 2020.
9. The Applicant passed a written assessment and on 29 January 2021, she was interviewed for the position.

17. On 28 August 2021, the Applicant assumed the post of UNFPA Country Representative in Guinea.

18. On 31 August 2021, the Applicant indicated her acceptance of the appointment by signing and returning the letter on 1 September 2021.

19. On 15 September 2021, a reporter from *The New Humanitarian* an online news publication, sent UNFPA an email seeking information about the of Country Representative. TNH stated that it had previously written

35. The Tribunal will therefore apply the above criteria in reviewing the facts and circumstances on which the contested decision was based.

Whether the Applicant was afforded due process

36. call without putting the staff member on notice of what it is about, cannot in any way be considered an adequate

due process

, because

any findings and its purpose was to request some information, rather than asking

ied,

the retained counsel

confidentiality obligation that

37. The Applicant further asserts

She states

that the termination decision appears to have been based on the notes of the telephone conversation she had with

the Applicant admitted that she was under investigation and was suspended by Oxfam. The second opportunity was via an email from the DDHR dated 26 November 2021, which referenced *The Times* article of June 2021 indicating that the Applicant was under investigation. The Applicant failed to take advantage of these opportunities to present any relevant exculpatory evidence but instead referred the DHR to her lawyer.

39. The Respondent also submits that the contested decision was lawful because UNFPA acted in conformity with the provisions of the statutory framework allowing the Secretary-General to terminate the appointment of a staff member if

to light which, if they had been known at the time of the appointment, should have precluded the appointment. UNFPA applied the standard established by the Dispute Tribunal for the review of cases involving termination on grounds of facts anterior to the appointment.

40. The Tribunal recalls that under the standard established by the Dispute Tribunal, the Administration is required to grant a staff member the opportunity to respond to any facts relied upon to act against him or her (see *Songa Kilauri*, para. 30). The Tribunal also recalls the jurisprudence of the Appeals Tribunal holding that before taking action against a staff member, the Administration is required to respect his or her right to due process, fairness and transparency by adequately apprising the staff member of any allegations against him or her and affording him or her a reasonable opportunity to make representations before the action is taken (see, for instance,

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could have done so by addressing the three specific issues asked of her. It is clear from the context that the Applicant was being instructed to provide relevant information on an important matter, but she declined the opportunity to comment. Rather than the Applicant requiring the DDHR to contact her retained counsel, it was incumbent on her to instruct her counsel to provide the relevant information to UNFPA concerning facts anterior to [her] appointment and relevant to [her] suitability or concerning facts relevant to [her] integrity, conduct and service as a staff member, as required under staff rule 1.5(e). The Tribunal therefore finds that the breach of integrity by the Applicant was so serious that any breach of her due process rights should not lead to the rescission of the contested decision (see *Millan*, para. 86).

45. Accordingly, the Tribunal concludes that the Applicant was afforded due process in the present case.

Whether there was sufficient evidence to support a factual finding that the Applicant had engaged in the alleged conduct

46. The Applicant submits that in light of consequences of terminating an appointment for facts anterior, which are the applicable standard of She further submits that the termination decision shockingly

Applicant. Similarly, with According to

allegations or awaited the outcome of Ox She also asserts that it has not been established that she deliberately failed to disclose information related to her Oxfam employment during the UNFPA hiring process.

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60. It is not clear from the record before the Tribunal whether the Applicant was already under investigation by Oxfam on 8 December 2020 when she submitted her application for the post of UNFPA Country Representative. Nonetheless, the question asked on the application form regarding whether the Applicant had ever should have put her on notice that these are important considerations for the Organization. Additionally, once she became a staff member, she had an ongoing obligation, under the Charter as well as the Staff Regulations and Rules of the United Nations, to inform the Secretary-General of any changes in her status.

61. What is clear from the record is that sometime in March 2021, the Applicant

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65. The application is dismissed.

(Signed)

Judge Joelle Adda

Dated this 14th day of March 2024

Entered in the Register on this 14th day of March 2024

(Signed)

Isaac Endeley, Registrar, New York