



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2018/048
Judgment No.: UNDT/2020/043
Date: 19 March 2020
Original: English

Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René M. Vargas M.

QUATRINI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON LIABILITY

Counsel for Applicant:

Maria Teresa Cirelli

Counsel for Respondent:

Cornelius Fischer, LPAS, UNOG

Introduction

1. On 7 May 2018, the Applicant, a former Coordinator at the P-5 level in the Global Mechanism of the United Nations Convention to Combat Desertification (“UNCCD”), filed an application in which he contests various circumstances surrounding the non-renewal of his fixed-term appointment.

Facts and procedural history

2. The Applicant is a former Coordinator at the P-5 level in the Global Mechanism of the UNCCD. He joined the Organization on 1 September 1999. On 1 September 2013, the Applicant was appointed at the P-5 level under an initial fixed-term appointment (“FTA”); the appointment was further renewed and, eventually, by letter of 17 December 2015, it was renewed for a two-year period until 31 December 2017.

3. The Applicant’s workplan for 2017-18 outlined four goals: (a) “Coordination of the [Land Degradation Neutrality] Fund flagship product”; (b) “Development of technical assistance facilities”; (c) “Coordination of financial flows complementary product”; and (d) “Contribution to [Global Mechanism] development”. The Applicant’s first appraising officer, the Managing Director, signed his workplan on 20 July 2017, and the Applicant signed it on 30 August 2017.

4. In September 2017, the 13th Conference of Parties of the UNCCD (“the COP”) was held. The COP decided that the budget and staffing structure of the Global Mechanism, where the Applicant worked, was to continue for 2018-19 in exactly the same manner as in the biennium budget for 2016-17. A P-5 level position was therefore to remain with the Global Mechanism. In a “Note by the Secretariat” to the COP distributed on 21 June 2017, no specific indications were made to the effect that the Global Mechanism’s functions would be reduced or of changes to the functions of the P-5 position that the Applicant encumbered.

5. By job opening dated 1 November 2017, a reclassified post at the P-3 level with the Global Mechanism was signed.

6. By memorandum dated 6 November 2017 from the Chief of Administrative Services to the Applicant, the latter was informed that his P-5 level appointment would not be renewed because, referring to the Global Mechanism allegedly having its role in policy and investment analysis reduced, the Executive Director had decided to significantly change the functions of his position. Instead, the Applicant's P-5 level post would be reclassified to the P-3 level.

7. After a further extension of his fixed-term appointment, on 30 June 2018, the Applicant was separated from service with the Global Mechanism.

8. On 7 May 2018, the Applicant filed the application in the case at hand. The case was initially assigned to Judge Rowan Downing. On 12 June 2018, the Respondent filed his reply in which he submitted that the application is without merit.

9. Following each party filing an additional pleading, by Order No. 136 (GVA/2018) dated 7 September 2018, the Tribunal rejected a motion from the Applicant to file additional submissions in response to the latest pleading of the Respondent.

10. On 18 December 2019, a job opening for a post at the P-5 level as "Senior Partnerships and Resource Mobilization Coordinator" with the Global Mechanism was advertised.

11. On 10 January 2020, the Applicant filed a motion for interim measures. In his motion, the Applicant informed the Tribunal that the Organization had issued a vacancy announcement for a position that corresponded to the position he formerly encumbered. The Applicant requested the Tribunal to order the Respondent to withdraw the vacancy announcement and to order his reinstatement to that position or, alternatively, to put the selection process on hold pending a decision on his case.

12. On 15 January 2020, the Applicant's case was assigned to the undersigned Judge.

13. On the same day, the above-mentioned motion was transmitted to the Respondent who filed his response on 17 January 2020.

14. By Order No. 7 (GVA/2020) of 20 January 2020, the Tribunal rejected the motion with reference to art. 10.2 of its Statute and art. 14.1 of its Rules of Procedure.

15. By Order No. 15 (GVA/2020) dated 12 February 2020, the Tribunal ordered the parties to file their closing statements by 26 February 2020.

Consideration

Scope of the review

16. It is trite law that the Applicant must identify and define the administrative decision that s/he wishes to contest (see, for instance, the Appeals Tribunal in *Planas* 2010-UNAT-049 and *Farzin* 2019-UNAT-917). The Appeals Tribunal has, however, held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by an applicant and to identify the subject(s) of judicial review” (see para. 20 of *Fasanella* 2017-UNAT-765).

17. Under the heading “Details of the contested decision” in the application, the Applicant presents the contested administrative decision, referring to the following circumstances:

- a. “[T]o not renew his contract at his grade/level (P5) for two years – i.e. for the same duration as for all other UNCCD core budget staff – despite the fact that his post and budget were approved for the 2018-2019 biennium”;
- b. “[T]o offer him an appointment at the P3 level without maintaining his personal grade/level, salary and entitlements”; and
- c. “[W]ithout making effective efforts to identify a suitable alternative position for the [A]pplicant, while at the same time excluding him from the selection process for the D1 position at [the Global Mechanism]”.

18. Based thereon, the Tribunal finds that the crux of the Applicant's case is whether the non-renewal of his fixed-term appointment at the P-5 level was lawful. The issues of the present case can be defined as follows:

- a. Was the non-renewal of the Applicant's fixed-term appointment at the P-5 level proper?
- b. In case the non-renewal was unlawful, what remedies is the Applicant entitled to under art. 10.5 of the Dispute Tribunal's Statute, including in terms of pecuniary and non-pecuniary (moral) damages?

Was the non-renewal of the Applicant's fixed-term appointment at the P-5 level proper?

19. The Respondent submits that the Applicant was informed on 6 November 2017 that the functions associated with his position were changed significantly by decision of the Executive Secretary, in consideration of the outcomes of the decisions taken at the 13th COP in September 2017. In consideration of the reduced role of the Global Mechanism in policy and investment analysis, the COP decided to create an independent Land Degradation Neutrality Fund outside of UNCCD. A private entity, independent from UNCCD, was chosen to host the Land Degradation Neutrality Fund. The role of the Global Mechanism was, as a result, limited to serving as a liaison between UNCDD, the private entity administering the Land Degradation Neutrality Fund, and other stakeholders. Changing operational needs, which reflected on the functions associated with the post encumbered by the Applicant, justified the reclassification of the post at the P-3 level in the time leading up to the non-renewal of the Applicant's fixed-term appointment upon its expiration.

20. The Applicant, in essence, submits that the justifications given by the Respondent for not renewing his appointment at the P-5 level were not supported by facts. The main reason provided by UNCCD was that the Applicant's P-5 level post was reclassified to the P-3 level as the job duties substantially changed following a restructuring of the Global Mechanism, but no such restructuring occurred, nor could any restructuring have happened without the endorsement by the COP.

21. The Respondent recalls that the Organization, to meet changing needs and economic realities and to achieve greater efficiency, has broad discretion to reorganize its operations and to restructure some or all of its departments or units, and that these powers include the abolition of posts, the creation of new posts and the redeployment of staff. The Dispute Tribunal cannot substitute its own views for those of the Secretary-General on matters such as how to reorganize the Organization's operations or the renewal of appointments but should limit its review to whether the non-renewal decision was lawful. The same considerations apply to the reclassification of posts and the non-renewal of a fixed-term appointment upon their expiration.

22. The Tribunal is aware that a fixed-term appointment does not carry any expectancy of renewal and expires automatically without prior notice on the expiration date pursuant to staff regulation 4.5(c) and staff rules 4.13(c) and 9.4. The Administration is, nevertheless, required to provide a reason for such a non-renewal upon the relevant staff member's request, and this reason must be lawful and based on correct facts (see, for instance, the Appeals Tribunal in *Islam* 2011-UNAT-115 (paras. 29-32), *Pirnea* 2013-UNAT-311 (para. 34), *Obdeijn* 2012-UNAT-201 (paras. 33-39), *Matadi et al* 2015-UNAT-592 (para. 16) and *Jafari* 2019-UNAT-927 (para. 35)).

23. The Appeals Tribunal has also previously held that a restructuring exercise constitutes a legal justification for not renewing a fixed-term appointment (see, for instance, *Islam*), and the Administration has "broad discretion to reorganize its operations and departments to meet changing needs and economic realities" (see *Timothy* 2018-UNAT-847, para. 25).

24. In the present case, the Respondent argues that the non-renewal decision was based on the COP's change of the Global Mechanism at its 13th session and the resulting reorganization of its work. The Applicant contends that this was, in fact, not the case.

25. The Tribunal notes that as evidence, the Respondent refers to the memorandum from the Chief of Administrative Services to the Applicant dated 6 November 2017, in which was stated in relevant part (emphasis added):

Further to the meeting on 3 November 2017 with the Deputy Executive Secretary and the Chief of Administrative Services, this is to confirm that *the job functions of your current post (post number 305233A1) have been changed significantly by decision of the Executive Secretary* in consideration of the *outcomes of the decisions taken at COP 13 in September 2017* and noting *the reduced role of the Global Mechanism in policy and investment analysis*. As a result, the functions of your post have been classified at the P-3 level, which would take effect on 1 January 2018. A copy of the job description is submitted for your reference.

26. In the Respondent's closing statement, there is no further reference to any documentation that would corroborate his submission that the COP had decided to limit, or otherwise change, the functions of the Global Mechanism and the Applicant's post. The question is therefore whether as a matter of fact, the COP took any decision(s) during its 13th session by which the functions of the Global Mechanism were reduced, and which justified the non-renewal of the Applicant's P-5 level appointment.

27. The Tribunal notes that to the application, the Applicant appended a document titled "Decision 10/COP.13 Programme and Budget for biennium 2018-19". In its table 2, "Staffing requirements", is explicitly indicated with reference to the Global Mechanism that in 2017, there was "actual[ly]" a P-5 level position and that in 2018 and 2019, a P-5 level position would be "required". Nowhere in the document is reference made to any changes to the function of this P-5 level position, which must be assumed is the one that the Applicant encumbered.

28. The Applicant also annexed the above-mentioned "Note by the Secretariat" regarding a "Comprehensive multi-year workplan for the Convention (2018–2021) and two-year costed work programme for the Convention (2018–2019)" with document number ICCD/COP(13)/8-ICCD/CRIC(16)/2 ("the Note").

29. The Secretariat sets out the proposed “Core budget of the Global Mechanism for the biennium 2018-2019 by object of expenditure” in table 7 of the Note. From this table follows that the “Approved budget” of 2016-17 was EUR3,640,300 and that the “Proposed budget” for 2018-19 was exactly the same. In line herewith, the Secretariat indicates that the “Percentage Variance” is “0.0”. The Secretariat indicates the proposed “Staff costs” in “Annex II” of the Note, and states therein that the “Standard salary costs by biennium” for 2016-17 and 2018–19 for the P-5 position were also to be entirely unchanged, namely EUR315,500.

30. In the narrative explanation to the Note, the Secretariat states nothing about the Global Mechanism’s roles and functions being reduced in 2018-19, as otherwise submitted by the Respondent. Rather, it generally follows that *“In recent years, the UNCCD has gone through a process of change.* Its foundations have been considered and its value to global development and intergovernmental cooperation objectives has been assessed and found to be significantly high” (see para. 5, emphasis added). The Secretariat states that the Global Mechanism and the Secretariat *“have also evolved – they have acquired more specialized skills, sharpened their focus, improved coherence and increased effectiveness”* (see para. 5, emphasis added) and that “[a]s a result of this change process, *the UNCCD now emerges as a stronger intergovernmental tool*” (see para. 6, emphasis added). Based on this, the Secretariat notes that “the overall aim for the coming years will be to *expand and intensify* the implementation of the UNCCD at the national level” and that the Global Mechanism and the Secretariat *“within the limits of their mandates, are committed to generating real impact”* (see para. 7, emphasis added).

31. Specifically, regarding the Global Mechanism, the Secretariat does not indicate that its operations will be limited in any manner whatsoever; if anything, it actually appears that the objective was to enhance them. For instance, the Secretariat states that the Global Mechanism’s *“operational work in supporting Parties on project design and implementation will be substantially scaled up, without the [Global Mechanism] becoming directly involved in the management of country-level projects”* (see paras. 12 and 13, emphasis added).

32. Concerning the Land Degradation Neutrality Fund to which the Respondent refers, the Secretariat states in the Note that the Global Mechanism has “spearheaded” the Fund and once “launched, the Global Mechanism will not “be involved in its management but will continue to work closely with it and facilitate access to [its] financing for the public and private project promoters of Parties” (see para. 58). The Secretariat further indicates that the role of the Global Mechanism will be “two-fold” as it will “continue to support” the Fund on “further capitalization” and “also directly work with Parties to facilitate access to financial resources provided by [the Fund] through training, and tailored advice, and by connecting project promoters”. No indications are made as to whether this would mean the workload and functions of the Global Mechanism would be reduced or require any structural changes to its organization, such as to the Applicant’s former P-5 level position.

33. Accordingly, the Tribunal finds that the reason for not renewing the Applicant’s P-5 level post as stated in the 6 November 2017 memorandum by the Chief of Administrative Service concerning the significant change to “the job functions” of the Applicant’s “current post” and “the reduced role” of the Global Mechanism has no factual basis in any of the submitted underlying documents regarding the Global Mechanism for the relevant period.

34. Finally, it has to be recalled that the Organization issued a job opening for a post at the P-5 level as “Senior Partnerships and Resource Mobilization Coordinator” with the Global Mechanism on 18 December 2019. It follows from the job opening that under “the direct supervision of the Managing Director”, the incumbent would, *inter alia*, be responsible for leading “the design, development and implementation of the [Global Mechanism] partnerships strategy”.

35. The Applicant, in his request for interim measures, claimed that the advertised position corresponds to the position he encumbered; he alleged that the P-5 level position was never removed from the UNCCD core staffing table, was budgeted for the 2020-21 biennium, and was reconfirmed for longer. The Applicant, moreover, submitted that the job opening contributes to demonstrating that the alleged “restructuring” of the Global Mechanism and abolition of the Applicant’s position was

spurious. The Respondent did not demonstrate specifically what the difference is between the two positions at the P-5 level: the one encumbered by the Applicant and the later one advertised by the Organization.

36. The Tribunal, when comparing the roles and functions of the Applicant in his former P-5 level position in the Global Mechanism with those reflected in the job opening for the new P-5 level post in the Global Mechanism, notes that no substantive and/or remarkable difference between the two positions can be detected; the incumbent in both positions is to report to the Managing Director and to work on “partnerships” (see the job opening for the new P-5 level post), such as assumedly the Land Degradation Neutrality Fund.

37. Such a finding definitively demonstrates that the functions that the Applicant performed within the UNCCD are still required today and in the foreseeable future.

38. The facts do not support that any restructuring was ever required and, instead, show that (a) continuing budgeting for the Applicant’s former P-5 level position existed and (b) the subsequently advertised P-5 level post was substantially the same. All these factors, considered alone and together, confirm the failure of a factual basis for the reclassification of the position formerly held by the Applicant and, consequently, for the non-renewal of his fixed-term appointment.

39. In conclusion, in accordance with the caselaw of the Appeals Tribunal as outlined above, the Tribunal finds that the provided reason for not renewing the Applicant’s P-5 level appointment was not properly based on facts for which reason the impugned decision was unlawful.

40. The Applicant also submits that the impugned decision was tainted by ulterior motives; in particular, he alleges that his Executive Secretary made the decision not to renew the applicant's appointment at his personal grade/level and salary (at the P-5 level) as punishment and retaliation for him reporting misconduct against her.

41. It results from the records that the Ethics Office, although excluding it was a case of retaliation, found a possible case of abuse of authority (also for having reclassified the Applicant's post from the P-5 level to the P-3 level without following the procedures laid out in ST/AI/1998/9 (System for the classification of posts) and referred the case to the Secretary-General for possible disciplinary or other appropriate measure.

42. While the Tribunal is indeed puzzled by the circumstances surrounding the non-renewal of the Applicant's appointment, in light of the findings above, it is not necessary to further examine this claim, which has also been reviewed by the Ethics Office, or the Applicant's third claim regarding the failure to make "effective efforts to identify a suitable alternative position for the [A]pplicant" (see para. 17(c) above).

Conclusion

43. In light of the foregoing, the Tribunal DECIDES that:

- a. The application is granted on the merits;
- b. Before determining the issue of remedies, by separate written order, the Tribunal will instruct the parties to file their final submission thereon, taking into consideration the findings made in the present Judgment.

(Signed)

Judge Francesco Buffa

Dated this 19th day of March 2020

Entered in the Register on this 19th day of March 2020

(Signed)

René M. Vargas M., Registrar, Geneva