



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

BATRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former Editorial and Desktop Publishing Assistant with the Department for the General Assembly and Conference Management (“DGACM”), contests the decision not to renew her temporary appointment as well as the decision to place her latest performance appraisal in her personnel file.

2. For the reasons stated below, the Tribunal finds that the Applicant’s performance appraisal was conducted in accordance with the applicable norms and that the decision not to extend her temporary appointment was lawful. The Tribunal therefore rejects the application.

Facts and procedural history

3. The Applicant’s temporary appointment elapsed on 13 December 2018, 364 days after the initial appointment. As DGACM did not opt to extend the appointment further, the Applicant was separated from the Organization.

4. An evaluation of the Applicant’s performance was completed on 13 December 2018 pursuant to ST/AI/2010/4/Rev.1 (Administration of temporary appointments) covering the period from 16 April to 13 December 2018 with the overall rating of “partially meets performance expectations”. The performance appraisal document was placed in the Applicant’s official file.

5. On 22 January 2019, the Applicant requested management evaluation of the decision not to extend her temporary appointment and the decision to place her performance appraisal document, which she claimed was completed in violation of the applicable legal framework, in her official file.

6. On 18 April 2019, the Management Evaluation Unit notified the Applicant that the Under-Secretary-General for Management, Strategy, Policy and Compliance upheld the contested administrative decisions.

7. On 13 May 2019, the Applicant submitted a complaint under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment and abuse of authority) to the Under-Secretary-General of DGACM (“USG/DGACM”). On 26 June 2019, the USG/DGACM informed the Applicant that she had convened a fact-finding panel to investigate her complaint.

Consideration

The parties’ submissions

8. The Applicant states, in essence, that the contested decisions were made in retaliation for her having been “open and vocal about expressing misconduct [that she] witnessed and ways [she] thought the unit could improve”. She further states that she was bullied by the “Director of [her] Division” as well as by the focal point for women and “deterred from seeking equal opportunities and justice”. In her application, she clarifies that she filed a complaint pursuant to ST/SGB/2018/5 reporting that one man made racist and sexist remarks during a diversity training and that another one, who was subsequently promoted, allowed interns to sleep at his house and “vaped in [her] face” at a work party.

9. The Applicant further claims that she was only given 15 days’ notice of the non-renewal of her contract which, in her view, is not sufficient.

10. The Applicant goes on to state that her “right as an employee to serve as juror without being penalized at work was violated”.

11. The Respondent replies that the Applicant’s appointment had reached the maximum 364 days and that there were no exceptional circumstances under sec. 14 of ST/AI/2010/4/Rev.1 that would have justified extending her temporary appointment further.

12. Moreover, the Respondent argues that in the absence of satisfactory performance, it was lawful for DGACM not to renew her appointment.

13. With respect to the Applicant's performance appraisal of 13 December 2018, the Respondent explains that the Applicant did not respond positively to the feedback from her supervisors and was repeatedly late for her shifts. Furthermore, the Respondent states that the Applicant did not show progress in acquiring the skills necessary to perform the functions of her position. He cites as example the fact that the Applicant's average productivity was 3,200 words per day when the standard output for her unit is 7,200 words per day.

14. The Respondent states that the Applicant's performance evaluation document was placed in her official file pursuant to sec. 6.2 of ST/AI/2010/4/Rev.1.

15. With respect to the Applicant's allegations of reported misconduct, the Respondent states that the Applicant's Second Reporting Officer ("SRO") assessed the Applicant's reports and addressed them confidentially with the staff members concerned. At the time of the filing of the reply, the Respondent explained that the fact-finding into the Applicant's complaint of 13 May 2019 was ongoing.

16. With respect to the Applicant's allegations that she was retaliated for having taken time for jury duty, the Respondent states that DGACM granted her appropriate leave. Moreover, her participation in jury duty was not a consideration for not extending the Applicant's contract.

Legal framework and the issues of the case

17. A temporary appointment does not carry any expectancy of renewal, irrespective of length of service in accordance with staff regulation 4.5(b) and staff rule 4.12(c).

18. The Appeals Tribunal has stated in *Ncube* 2017-UNAT-721, paras. 17-18, that where performance is the reason provided for the decision not to extend the applicant's appointment, the Administration is required to provide a performance-related justification for its decision.

19. In *Sarwar* 2017-UNAT-757, para. 74, the Appeals Tribunal reiterated its long-standing jurisprudence stating that in reviewing the Administration's appraisal of a staff member's performance, the Dispute Tribunal may not review such appraisal *de novo*, substituting its judgment for that of the Administration.

20. As the Applicant held a temporary appointment, the appraisal of her performance was governed by sec. 6.1 of ST/AI/2010/4/Rev. 1, which provides that, "At the end of the temporary appointment, regardless of duration, the programme manager shall issue a performance evaluation on a standard performance evaluation form for staff members holding temporary appointments". Section 6.1 further states that, "The form should state what was expected of the staff member and whether the staff member and the supervisor discussed those expectations. Signed hard copies of the standard performance evaluation form shall be included in the official status file of the staff member concerned".

21. If a staff member on a temporary appointment disagrees with the performance rating given at the end of his/her temporary appointment, in accordance with sec. 6.2 of ST/AI/2010/4/Rev.1, s/he may "within seven calendar days of signing the completed performance appraisal form, submit a written explanatory statement to the respective Executive Office at Headquarters, or to the Chief of Administration elsewhere" and "[t]he performance evaluation form and the explanatory statement shall become part of the official status file of the staff member".

22. In light of the parties' contentions and the applicable law, the Tribunal must review (a) whether the Applicant's performance appraisal was lawful and (b) whether the decision not to renew her temporary appointment was tainted by ulterior motives.

Was the Applicant's performance appraisal lawful?

23. In the 13 December 2018 performance appraisal, the Applicant's First Reporting Officer ("FRO") commented as follows:

In the course of her temporary contract (G-4 [Temporary Job Opening]), [the Applicant] received training in processing parliamentary documents. While she showed progress in acquiring text-processing skills, that progress, especially in terms of formatting, did not continue as expected. Her performance was, unfortunately, marred by a pattern of problems with attendance and punctuality, both of which are key to an essential service such as a text-processing unit.

24. The Applicant submitted emails from her supervisor raising the issue of her lateness and the Applicant herself acknowledged that she arrived late for her shift on several occasions.

25. The Applicant's productivity statistics further show that her output was consistently below the expected output from April to December 2018.

26. Based on this evidence, the Tribunal is satisfied that the Applicant's performance appraisal was fair and supported by facts in evidence.

Was the decision not to extend the Applicant's tainted by ulterior motives?

27. The Respondent states that the decision not to extend the Applicant's appointment was based on two reasons: on the one hand, there were no extraordinary circumstances justifying an exceptional extension of the contract beyond 364 days under sec. 6(2) of ST/AI/2020/4 and, on the other hand, the Applicant's performance was not satisfactory.

28. The Tribunal has already stated that the Applicant's performance was lawfully evaluated. Therefore, DGACM was justified in deciding not to extend the Applicant's appointment because of her poor performance.

29. The Tribunal further notes that there is no evidence of any exceptional circumstances that would have justified the extension of the Applicant's temporary appointment beyond the maximum 364 days.

30. With respect to the allegations of misconduct, the Tribunal notes that the Applicant filed her complaint of harassment after she had received the response from

the Management Evaluation Unit. She has therefore not been able to show any link between her complaint and the decision not to renew her contract, given that said decision occurred months before the filing of the complaint.

31. There is also no evidence whatsoever that the contested decisions were in any way influenced by the Applicant having voiced concerns of alleged misconduct in her unit or division prior to the contested decisions.

32. The Tribunal is therefore satisfied that the contested decisions were procedurally correct and based on facts. The Tribunal is not satisfied that the contested decisions were tainted by ulterior motives.

Conclusion

33. In light of the above, the application is rejected.

(Signed)

Judge Joelle Adda

Dated this 1st day of September 2020

Entered in the Register on this 1st day of September 2020

(Signed)

Nerea Suero Fontecha, Registrar