



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/GVA/2010/057  
(UNAT 1711)  
Judgment No.: UNDT/2011/052  
Date: 14 March 2011  
English  
Original: French

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**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

BEHLULI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Bart Willemsen, OSLA

**Counsel for Respondent:**  
Stephen Margetts, ALS/OHRM, UN Secretariat

## **Introduction**

1. By application filed with the secretariat of the former United Nations Administrative Tribunal on 6 July 2009, the Applicant contests the decision not to renew his fixed-term appointment beyond 31 December 2005.

2. He requests the Tribunal:

a. To rescind the contested decision;

b. To award him compensation against the Respondent for the material damage suffered.

3. The case, which was pending before the former Administrative Tribunal, was transferred to the United Nations Dispute Tribunal on 1 January 2010 pursuant to the transitional measures set forth in General Assembly resolution 63/253.

## **Facts**

4. The Applicant entered the service of the United Nations Interim Administration Mission in Kosovo (“UNMIK”) on 1 April 2001 with an appointment of limited duration (200 series of the Staff Rules then in force) as a Driver at level G-3. His appointment was renewed several times and converted into a 100-series fixed-term appointment, which expired on 31 December 2005.

5. On 21 October 2005, the Chief Civilian Personnel Officer, UNMIK sent the Applicant a memorandum informing him that his appointment would not be renewed after 31 December 2005 because of the need to reduce the number of posts in the Transport Section.

6. On 9 November 2005, the Applicant sent a letter to the Chief Civilian Personnel Officer asking her to review his case and consider the possibility of extending his contract. The letter began: “I am writing to you to request clarification since my immediate supervisor was not able to provide me. I am

asking for an appeal for my downsizing.” The Applicant concluded: “Please consider this case and see if it possible to extend my contract.”

7. On 11 November 2005, the Applicant wrote to the Officer-in-Charge of Administrative Services to complain about the non-renewal of his contract, alleging that the decision had been taken in retaliation for a complaint he had made against his supervisor. He also complained that another driver had been guilty of stealing fuel, but no measures had been taken against him. He asked the Officer-in-Charge of Administrative Services to “reconsider [his] situation” and adopt “a very constructive approach”, failing which he would not hesitate to “turn to the highest level”.

8. On 15 November 2005, the Applicant sent a letter to the Resident Auditor of UNMIK to inform him that another driver had been stealing fuel but that no steps had been taken against him. He asked why his appointment was being renewed while the driver he was reporting had been kept on.

9. On 16 November 2005, the Chief Civilian Personnel Officer replied to the Applicant’s letter of 9 November 2005, informing him that, after a review of his case, the decision stood, as the downsizing criteria had been correctly applied by the Staff Joint Review Body.

10. On 24 March 2006, the Applicant sent a letter to the Special Representative of the Secretary-General and Head of UNMIK complaining that the decision not to renew his appointment had been taken without account being taken of his qualifications and asking him to reconsider it, having noted that the Officer-in-Charge of Administrative Services had failed to act on a similar request by him.

11. Between 24 March 2006 and 16 May 2006, the Applicant wrote to the Chief Civilian Personnel Officer in reply to her letter of 16 November 2005, expressing his disagreement. He stated, in conclusion, that if the answer of the Special Representative of the Secretary-General to his letter of 24 March 2006

were not satisfactory, he would not hesitate to send the documents relating to his case to the Secretary-General in New York, or even to the media.

12. On 16 May 2006, the Chief Civilian Personnel Officer, UNMIK replied to the Applicant on behalf of the Special Representative of the Secretary-General and Head of UNMIK, repeating that the downsizing criteria had been correctly applied by the Staff Joint Review Body, and that the decision stood.

13. On 30 May and 10 September 2006, the Applicant wrote to the Ombudsman informing her that the decision not to renew his appointment had been taken in violation of his rights and as retaliation by his supervisor at the time.

14. Around 30 May 2007, the Administrative Law Unit, UN Secretariat, New York, received from the Applicant a letter addressed to the Secretary-General, dated 7 May 2007. In that letter, he complained, without giving any further details, about the behaviour of certain international United Nations staff members posted to Kosovo. On 11 June 2007, the Administrative Law Unit wrote to the Applicant asking him to give details of his allegations.

15. On 22 June 2007, the Applicant replied to the Administrative Law Unit that he was contesting the decision of UNMIK refusing to renew his appointment and on 26 July 2007, the Administrative Law Unit replied to him, on behalf of the Secretary-General, that if what he wished to do was use the appeal process under staff rule 111.2, he was most probably time-barred as the decisions he appeared to be contesting dated from 2004-2005. The Applicant wrote again to the Administrative Law Unit on 14 August 2007, which in turn suggested that he contact the Joint Appeals Board (“JAB”).

16. On 5 September 2007, the Applicant submitted an incomplete appeal to the JAB, then on 26 November 2007 a complete appeal.

17. The JAB submitted its report to the Secretary-General on 10 June 2008. It recommended that he reject the appeal as time-barred.

18. By letter of 13 August 2008, the Deputy Secretary-General notified the Applicant of the Secretary-General's decision to follow the recommendation of the JAB and reject his appeal.

19. On 11 November 2008, the Applicant filed an application with the former Administrative Tribunal that did not comply with the criteria laid down in article 7 of the Tribunal's Rules. After a number of exchanges with the Tribunal, the Applicant finally submitted a regularised application on 30 June 2009.

20. On 18 December 2009, having sought and been granted two extensions of time by the Administrative Tribunal, the Respondent filed his answer to the application.

21. The case, which could not be heard by the Administrative Tribunal before its abolition on 31 December 2009, was transferred to the United Nations Dispute Tribunal on 1 January 2010.

22. On 8 January 2010, the Applicant submitted observations to this Tribunal on the issue of receivability *ratione temporis* of the application raised by the Respondent in his answer.

23. On 8 February 2011, the Tribunal informed the parties that it would hold a hearing on 11 March on the issue of receivability of the application.

24. On 11 March 2011 a hearing was held, in which Counsel for the Applicant and Counsel for the Respondent took part by videoconference.

### **Parties' contentions**

25. The Applicant's contentions are:

a. The JAB was in error in considering his request for review to be time-barred;

b. The Respondent gives too restrictive an interpretation to staff rule 111.2(a) and the reference therein to the Secretary-General. The *ratio legis*

of staff rule 111.2(a) was to ensure that the Administration was notified within a prescribed time limit of the intention of the staff member to contest an administrative decision in order for the Administration to be able to set in motion its internal review mechanism. The reference in that provision to the Secretary-General is symbolic, and it is not reasonable to expect a staff member to know that he must communicate his discontent with an administrative decision to the Secretary-General in person;

c. In the present case, the Applicant wrote, within the two months allowed by the provision cited above, to three senior UNMIK officials expressing his discontent with the decision contested, namely (i) the Chief Civilian Personnel Officer, the author of the decision, on 9 November 2005, (ii) the Officer-in-Charge of Administrative Services on 11 November 2005, and (iii) the Resident Auditor on 15 November 2005. The Administration was thus duly informed of the Applicant's intention to contest the decision in question;

d. By those letters, the Applicant had *de facto* requested the UNMIK Administration to review the contested decision, and even if his letters were not addressed to the Secretary-General, it was obvious that he was contesting the decision not to renew his contract;

e. Despite having received the abovementioned letters, the UNMIK Administration failed in its duty to inform the Applicant about the procedure to be followed to contest the decision not to renew his contract; this constitutes exceptional circumstances, especially because, in his situation, he could not know all the rules of procedure;

f. The contested decision is unlawful as it amounts to retaliation against him for having filed an official complaint against his supervisor.

26. The Respondent's contentions are:

a. The application is not receivable because it is time-barred, as the request for review was submitted to the Secretary-General outside the two-

month time limit laid down in staff rule 111.2(a). The Applicant learned on 21 October 2005 that his appointment would not be renewed beyond 31 December 2005; he therefore had until 21 December 2005 to submit his request to the Secretary-General; in fact, he submitted it only on 30 May 2007, more than one and a half years late;

b. There were no exceptional circumstances that would justify a waiver of the two-month deadline, and ignorance of the time limit does not constitute an exceptional circumstance.

### **Consideration**

27. The Applicant contests the decision to separate him from service.

28. Staff rule 111.2(a) in force at the time of the challenged decision provides:

A staff member wishing to appeal an administrative decision pursuant to staff regulation 11.1 shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing.

(i) If the Secretary-General replies to the staff member's letter, he or she may appeal against the answer within one month of the receipt of such reply;

(ii) If the Secretary-General does not reply to the letter within one month in respect of a staff member stationed in New York, or within two months in respect of a staff member stationed elsewhere, the staff member may appeal against the original administrative decision within one month of the expiration of the time limit specified in this subparagraph for the Secretary-General's reply.

29. It is not disputed that the Applicant was informed on 21 October 2005 by the Chief Civilian Personnel Officer, UNMIK that his appointment would not be renewed after 31 December 2005 because of the need to reduce the number of posts in the Transport Section. It was only by an email dated 7 May 2007 that the Applicant wrote to the Secretary-General to complain, without giving any more detail, about the behaviour of United Nations staff members in Kosovo. Thus, even assuming that that latter request could be regarded by the Tribunal as a

request for review of the decision refusing to renew his contract, it was made outside the two-month time limit laid down in the provision cited above.

30. However, in order to counter the argument raised by the Administrative Law Unit, the JAB and the Respondent that the claim is inadmissible as it is time-barred, the Applicant maintains that he had already submitted a letter on 9 November 2005 to the UNMIK Administration which, even though it was not directly addressed to the Secretary-General, should have been treated by the Administration as a request for review as provided in the abovementioned text and should therefore have been forwarded to the Secretary-General.

31. While the Applicant is entitled to argue that the Administration should not be excessively formalistic and insist that every request for review must without fail be addressed to the Secretary-General in order to be treated as such, the request must, on the other hand, be sufficiently clear for its recipient to see that it is in fact a request for review, in other words the first mandatory phase of the appeal procedure laid down in the said staff rule 111.2(a), and, as such, must be forwarded to the Secretary-General.

32. In fact, in his letter of 9 November 2005 addressed to the Chief Civilian Personnel Officer, UNMIK, the Applicant complained about the non-renewal of his contract and asked for his situation to be reviewed. While such a letter would undoubtedly have been considered as a formal request for review if it had been addressed to the Administrative Law Unit or the Secretary-General, the fact that it was sent to the Chief Civilian Personnel Officer, UNMIK, the very person who notified him of the contested decision, means that it could only be viewed as a mere request for reconsideration of his position, and not as a formal request for review.

33. Even if it were accepted, as Counsel for the Applicant claimed at the hearing, that it had been the Applicant's intention, by that letter, to make the appeal contemplated by staff rule 111.2(a) cited above, the request must still be found to be time-barred as, in the absence of a reply by the Secretary-General to his request, according to subparagraph ii) of that same staff rule, the Applicant



would have had to submit his appeal to the JAB not later than 9 February 2006. In fact, he wrote to the JAB for the first time only on 5 September 2007, in other words almost 19 months late.

34. Though the Applicant maintains that, given his skill levels, he was entitled not to know that appeals were subject to time limits and that the Administration failed in its duty to inform him, which amounted to an exceptional circumstance, it must be remembered that there is no instrument requiring the Administration to inform staff members of the conditions for contesting an administrative decision and that the Appeals Tribunal, in its Judgment *Diagne et al.* 2010-UNAT-067, reiterated that staff members could not plead ignorance of the applicable texts in order to justify their failure to comply with them.

35. The conclusion from all the above considerations is that the application must be held inadmissible on the grounds that it is time-barred.

### **Conclusion**

36. In view of the foregoing, the Tribunal DECIDES:

The application is dismissed.

*(Signed)*

Judge Jean-François Cousin

Dated this 14th day of March 2011

Entered in the Register on this 14th day of March 2011

*(Signed)*

Víctor Rodríguez, Registrar, Geneva