



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/089

Judgment No.: UNDT/2012/007

Date: 12 January 2012

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Anne Coutin, Officer-in-Charge

LECLERCQ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**ON APPLICATION FOR SUSPENSION
OF ACTION**

Counsel for Applicant:
Ammal OUMMIH, OSLA

Counsel for Respondent:
Carl Rogerson, ITC

Introduction

1. By an application filed on 21 December 2011, the Applicant requested suspension of the implementation of the decision not to renew his fixed-term contract, which was set to expire on 31 December 2011.

Facts

2. The Applicant has held a fixed-term appointment at the P-4 level since 1 January 2010 as Senior Trade Promotion Adviser at the International Trade Centre (“ITC”) in Geneva.

3. On 19 August 2010 he was assigned to the Poverty Reduction Unit, which led to a change of supervisor. On 16 December 2010, his new supervisor proposed to renew his contract for only six months. The Applicant requested a management evaluation of that decision in February 2011 and ITC rescinded the decision and granted him a one-year contract expiring on 31 December 2011.

4. In April 2011, the Applicant was assigned, at his request, to the Office for Asia and the Pacific, Division of Country Programmes.

5. On 2 November 2011, he was advised by the Chief of Human Resources that his contract would not be renewed beyond 31 December 2011 owing to a lack of funding. He was officially notified of the decision on 10 November 2011.

6. On 1 December 2011, he filed a complaint of harassment and abuse of authority against his immediate supervisor.

7. On 16 December 2011, the Applicant was placed on sick leave until 16 January 2012.

8. On 20 December 2011, he filed a request for management evaluation of the decision not to renew his contract.

9. By a decision of 22 December 2011, the Applicant’s contract was renewed until 16 January 2012 to cover the period of his sick leave.

Parties' submissions

10. The Applicant's contentions are:

Prima facie unlawfulness

a. The decision is unlawful because it does not respect his right to know the reasons for the decision not to renew his contract after more than 14 years of service in the Organization and nine years with ITC. The reason given in November 2011 for non-renewal of his appointment was a lack of funding, not the operational decision to phase down his programme, as claimed by the Respondent in his reply;

b. The Administration must show that the reasons for its decision are supported by facts. The Administration has provided no evidence of a lack of funding for the post he occupied;

c. Following the merger of the Export-led Poverty Reduction Programme ("EPRP")—the programme on which he was working—and the Ethical Fashion Programme, two of his former colleagues are still part of the Poor Communities and Trade Programme;

d. He has the right to be treated fairly and in good faith by the Administration. He should have been informed that the post to which he was being transferred might no longer be funded. His transfer to the Office for Asia and the Pacific was unrelated to the closing of EPRP, but resulted from the harassment to which he was subjected by his supervisor;

e. He recently learned that a new consultant was recruited by the Office for Asia and the Pacific to carry out the functions he was performing;

Urgency

f. His contract expired on 31 December 2011. Since being advised of the decision, he has sought to reach an agreement through mediation by the Ombudsman;

Irreparable damage

g. The contested decision will deprive him of income and that will cause irreparable damage to him and his family, which is financially dependent on him. He will also lose his health insurance, the education grant for his children and his residency permit in Switzerland. In addition, he will be unable to pursue the complaint he has filed against his supervisor.

11. The Respondent's contentions are:

Prima facie unlawfulness

a. Pursuant to staff regulation 4.5(c), a fixed-term appointment does not carry any expectancy of renewal, as confirmed by the case law of the Tribunal. Although the Administration is under no obligation to inform a staff member of the reason for non-renewal, in this case the Applicant was informed that the reason was the operational decision to phase down the project on which he was working. This decision, which was made in March 2011 by the ITC Senior Management Committee to take effect on 31 December 2011, was posted on the ITC intranet website and was communicated to the staff of the Division of Market Development;

b. The Applicant was transferred on 15 April 2011, at his request and with the same post, to the Office for Asia and the Pacific, Division of Country Programmes. The Applicant was informed in October 2011 that there would be no funding for his contract after December 2011;

c. The documents produced show that his contract was funded from EPRP and that this programme was closed on 31 December 2011;

Irreparable damage

d. As evidence of the irreparable damage he has suffered, the Applicant raises only financial matters that can be compensated at a later stage by the payment of sums of money;

e. His contention that his separation will preclude him from pursuing his harassment complaint is incorrect, as that complaint will follow its course.

Consideration

12. The Applicant requests suspension of the implementation of the decision not to renew his fixed-term contract, which expired on 31 December 2011. Since, on 16 December 2011, the Applicant's contract was extended until 16 January 2012 owing to sick leave which he had been granted until that date, the Tribunal considers that the decision before it is in fact the decision not to renew his contract beyond 16 January 2012.

13. Article 2.2 of the Statute of the Tribunal provides that:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend ... the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage ...

Lawfulness of the contested decision

14. The Applicant contends firstly that the decision not to renew his contract is unlawful because the Administration failed to inform him of the reasons for that decision. However, there is no provision in the Staff Regulations and Rules that requires the Administration to inform staff members whose contracts are not renewed of the reason for non-renewal.

15. Nevertheless, while staff regulation 4.5(c) states that “[a] fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service”, when a staff member contests the reason for non-renewal of an appointment before the Tribunal, the Administration must state the reasons for its decision and the Applicant is entitled to contest its lawfulness.

16. In this case, the Administration contends that the Applicant's fixed-term contract was not renewed following the operational decision taken on 23 March 2011 by the ITC Senior Management Committee to phase down, as of 31 December 2011, the programme on which the Applicant was working and therefore to cease funding the post he occupied.

17. It should be recalled that the Administration has discretion to organize its services and thus to finance or not to finance programmes, and it is not for the Tribunal to assess the merits of such decisions. When, as in this case, the Applicant claims that the real reason for the contested decision is a desire to have him separate from service on unlawful grounds, in particular because of the harassment complaint he had filed against his former supervisor, he must submit evidence to support his allegations.

18. In this case, he has not done so. On the contrary, the Respondent has produced documents which show that on 23 March 2011 a decision was taken to restructure the EPRP programme on which the Applicant was working, and the Applicant acknowledges that on 2 November 2011 he was informed that his post would no longer be funded as of 31 December 2011.

19. Therefore the Tribunal finds that the decision not to renew the Applicant's contract does not appear *prima facie* to be unlawful.

20. There being no need to establish whether the remaining two conditions for granting a suspension of action have been satisfied, the application must be rejected.

Conclusion

21. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 12th day of January 2012

Entered in the Register on this 12th day of January 2012

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry
