



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2012/064

Judgment No.: UNDT/2012/117

Date: 31 July 2012

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

MAJOUL-HUNTER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:

Erol Arduc, Office of Staff Legal Assistance

Counsel for Respondent:

Introduction

1. By application filed on 31 July 2012, the Applicant, a Language Teacher in the Staff Development and Learning Section (“SDLS”) of the United Nations Office at Geneva, sought suspension of action, pending management evaluation, of the decision not to renew her contract beyond its expiry on 31 July 2012.

Facts

2. The Applicant joined SDLS in April 2011 under a fixed-term appointment.

3. On 18 November 2011, the Applicant’s first reporting officer conducted her midpoint performance review for the period from 1 April 2011 to 31 March 2012. During their meeting, it was agreed to develop a performance improvement plan to address the shortcomings identified by her first reporting officer in relation to the following competencies: communication, teamwork and planning and organizing.

4. A written performance improvement plan was signed by the Applicant and her first and second reporting officers on 6 January 2012.

5. On 17 April 2012, the Applicant’s first reporting officer completed the end-of-year performance appraisal, giving her the overall rating of “partially meets performance expectations”. Both the Applicant and her second reporting officer signed the appraisal on the same day. The Applicant did not submit a rebuttal statement to challenge this rating.

6. With effect from 18 April 2012, the Applicant’s appointment was extended for three months and two weeks until 31 July 2012.

7. On 9 May 2012, the Applicant as well as her first and second reporting officers agreed to extend the performance improvement plan until 12 June 2012, noting that the Applicant still needed to focus on the competencies of communication and planning and organizing.

8. The performance improvement plan was reviewed on 20 June 2012. On this occasion, the Applicant's first reporting officer observed that she had improved in the competency of planning and organizing but that she had not been able to improve the communication competency.

9. By memorandum dated 29 June 2012, the Applicant was informed that, following the outcome of her performance improvement plan, it had been decided not to extend her appointment beyond its expiry on 31 July 2012.

10. On 30 July 2012, she sought management evaluation of the decision not to extend her appointment.

11. At 9.49 a.m. (Geneva time) on 31 July 2012, she filed with the Tribunal the application for suspension of action which forms the subject of this Judgment.

Applicant's contentions

12. The Applicant's primary contentions may be summarized as follows:

Prima facie unlawfulness

a. The justification given for the non-extension of her appointment is the outcome of the Applicant's performance improvement plan of 6 January 2012. However, in her case, the relevant rules to assess her performance have been ignored. First, she was not given an opportunity to develop and finalize an individual workplan as provided for in section 4.1 of administrative instruction ST/AI/2010/5 (Performance Management and Development System). Further, she signed the performance improvement plan on 6 January 2012 without knowing that she was not obliged to sign a plan which had not been discussed with her. In addition, the end-of-cycle appraisal "should have not given immediate reason to enforce the performance improvement plan" as she had met two of the three goals identified in the performance improvement plan and she had been assessed as fully competent in the core values. Besides, she was not advised that she could avail herself of the opportunity to file a rebuttal

statement to challenge her performance appraisal. Lastly, the manner in which she was treated by her colleagues was contrary to staff regulation 1.2 and the comments they made affected the fluidity of professional communication, thus leading to a negative assessment of her communication skills;

b. There is good reason to believe that the Applicant's performance was not the real reason for her non-extension. The hostile attitude towards her, her colleagues' unwillingness to support her in situations where teamwork was at stake as well as her first reporting officer's lack of understanding constitute harassment and abuse of authority within the meaning of ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority);

Urgency

c. The Applicant's appointment will expire on 31 July 2012. After that date, she will no longer be eligible to compete for UNOG posts as an internal candidate and SDLS will certainly fill her post from the roster of qualified and available candidates;

Irreparable damage

d. If the decision is implemented, the Applicant will face immediate financial distress affecting her family situation and she will suffer damage to her professional reputation and loss of career prospects. Further, if SDLS fills her post, she will be permanently deprived of the staff benefits to which she was entitled.

Consideration

13. Article 2.2 of the Statute of the Tribunal provides that it may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable

damage. The Tribunal can suspend the contested decisions only if it finds that all three requirements have been met.

Urgency

14. In *Woinowsky-Krieger* Order No. 59 (GVA/2010), as reiterated in *Suliqi* UNDT/2011/120, the Tribunal held:

[A]n applicant ... has the obligation to enable the Tribunal to give the other party the possibility to reply within a reasonable period of time. If the applicant does not comply with this obligation, he has to bear the consequences from the fact that a full and fair assessment of the application is not possible because of the applicant's own delay. Normally, such an application cannot be successful.

15. In addition, as was recently recalled by the Tribunal in *Maloka Mpacko* UNDT/2012/081:

If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (*Villamorán* UNDT/2011/126, *Dougherty* UNDT/2011/133, *Jitsamruay* UNDT/2011/206).

16. The Applicant in this case was informed of the decision not to extend her appointment by memorandum dated 29 June 2012, though she indicates in the application form that she had already been notified of this decision on 27 June 2012. She then waited almost five weeks before she filed her application on 31 July 2012. The Applicant did not provide any reason to explain why she filed her application on the very day of the expiry of her appointment.

17. In the circumstances, the Tribunal considers that the urgency is self-created, and it finds that the Applicant has failed to meet the test of urgency.

18. The above notwithstanding, the Tribunal is not satisfied that the Applicant established a serious and reasonable doubt about the lawfulness of the contested decision.

19. Sections 10.1 and 10.3 of administrative instruction ST/AI/2010/5 (Performance Management and Development System) respectively provide:

10.1 When a performance shortcoming is identified during the performance cycle, the first reporting officer, in consultation with the second reporting officer, should proactively assist the staff member to remedy the shortcoming(s). Remedial measures may include ... the institution of a time-bound performance improvement plan, which should include clear targets for improvement, provision for coaching and supervision by the first reporting officer in conjunction with performance discussions, which should be held on a regular basis.

10.3 If the performance shortcoming was not rectified following the remedial actions indicated in section 10.1, a number of administrative actions may ensue, including ... the non-renewal of an appointment ...

20. It appears from the documents on file that the Applicant accepted and signed her successive performance improvement plans. She subsequently failed to submit a rebuttal statement to challenge her performance rating. Since she failed to challenge the outcome of her performance appraisal, she cannot now claim that the relevant rules to assess her performance were ignored.

21. Before the Tribunal, she contends that she was not advised that she could avail herself of the opportunity to submit a rebuttal statement. However, the Appeals Tribunal has confirmed that ignorance of the law is no excuse (*Diagne et al.* 2010-UNAT-067).

22. Lastly, the Applicant's general allegations that she was the victim of harassment and abuse of authority and that she worked in a hostile work environment are not supported by sufficient evidence.

Conclusion

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

(Signed)

Judge Thomas Laker

Dated this 31st day of July 2012

Entered in the Register on this 31st day of July 2012

(Signed)

René M. Vargas M., Registrar, Geneva