



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/011

Order No.: 081 (NY/2023)

Date: 11 September 2023

Original: English

Before: Duty Judge

Registry: New York

Registrar: Isaac Endeley

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON CASE MANAGEMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Lucienne Pierre, AS/ALD/OHR, UN Secretariat

Notice: This Order has been amended pursuant to Order No. 50 (GVA/2025).

Introduction

1. By Order No. 027 (NY/2023) of 3 April 2023, the Duty Judge granted the Applicant's motion for an extension of the deadline to file her application. The Applicant, a former Legal Officer at the P-3 level in the General Legal Division of the Office of Legal Affairs ("GLD/OLA"), subsequently filed the application on 18 May 2023 contesting the decision not to renew her fixed-term appointment beyond 23 December 2022.

2. On 20 June 2023, the Respondent filed his reply stating that the application was without merit and that the contested decision was lawful since a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service. The Respondent also asserted that the Applicant, "by her own actions, rendered herself unsuitable for reappointment," among other things, by being "chronically absent from work without a proper reason or excuse," by failing to complete her assignments, and by refusing to cooperate when given the opportunity to take remedial action to improve identified performance shortcomings.

Considerations

3. The Appeals Tribunal has held that "[t]he starting point of a judicial review of a non-renewal of a fixed-term appointment is that a fixed-term appointment carries no expectancy of renewal or conversion" (see *Barud* 2022-UNAT-1204, para. 32). Nevertheless, an administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive against the staff member. The staff member has the burden of proving that such factors played a role in the administrative decision (see also *Said* 2015-UNAT-500, para. 34).

4. However, the Administration's exercise of its discretion is not unfettered and is subject to judicial review. When judging the validity of the Secretary-General's exercise of discretion in administrative matters, as in the case of a non-renewal decision, the Dispute Tribunal determines if the decision is legal, rational,

procedurally correct, and proportionate. The Dispute Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered and can also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him, nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General (see *Farhadi* 2022-UNAT-1203, paras. 33-35, *Said* 2015-UNAT-500, para. 40).

5. Pursuant to art. 19 of the Rules of Procedure of the Dispute Tribunal, the Tribunal may at any time issue any order or give any direction which appears to be appropriate for the fair and expeditious disposal of a case and to do justice to the parties.

6. Having examined the parties' submissions, the Tribunal considers that it is in the interests of justice to grant the Applicant the opportunity to file a rejoinder to the Respondent's reply.

7. Further, while the Tribunal does not believe that any additional evidence, including witness testimonies at a hearing, is necessary in this case, it would nonetheless like to have the parties' views on this point before making a final decision thereon. In the event that the parties wish to have a hearing, the Tribunal will invite them to state the purported objective of such a hearing and to submit their respective lists of proposed witnesses along with a statement indicating the facts on which each witness will testify.

8. In light of the above,

IT IS ORDERED THAT:

9. By **4:00 p.m. on Monday, 25 September 2023**, the Applicant is to file a rejoinder to the Respondent's reply at a maximum of five pages, using Times New Roman font, at 12 points and 1.5 line spacing.

10. By **4:00 p.m. on Wednesday, 11 October 2023**, each party is to submit whether it wishes to have a hearing, and if so, state:

- a. The purported objective of the hearing; and/or
- b. The identity of the witness(es) the party wishes to call, and what disputed facts each of these witnesses is to give testimony about, also setting out a written summary of the proposed witness's testimony.

11. Upon receipt of the above-referred submissions, the Tribunal will issue the relevant instructions for further case management.

(Signed)

Judge Joelle Adda

Dated this 11th day of September 2023

Entered in the Register on this 11th day of September 2023

(Signed)

Isaac Endeley, Registrar, New York