



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/54
Judgement No.: UNDT/2010/007
Date : 19 January 2010
Original : French

Judge : Juge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

SAKA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Amal Oummih, Office of Staff Legal Assistance (OSLA)

Counsel for Respondent:

Shelly Pitterman, Director,
Division of Human Resources Management (DHRM),
Office of the United Nations High Commissioner for Refugees (UNHCR)

Application

1. The applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), submitted an application to the United Nations Dispute Tribunal on 26 August 2009 in which she requested it to:
 - a. Rescind the decision in which UNHCR refused to renew the applicant's fixed-term contract, which expired on 31 December 2006;
 - b. Pay an indemnity in compensation for that unlawful action;
 - c. Reinstatement her as a staff member of the United Nations in a post commensurate with her grade and skills.

Facts

2. The applicant joined UNHCR in May 2002 as a senior protection clerk (G-5) in Ankara, Turkey, on a temporary assistance contract of a few months' duration which was renewed several times until December 2003. After a break in service in January 2004, she received one contract for a month and a half and another for two weeks during 2004, still as a senior protection clerk (G-5). After another break from April 2004 to July 2005, the applicant again entered the service of UNHCR in Ankara, this time as a G-3 legal clerk, on a one-month temporary assistance contract that was renewed on a monthly basis until 31 December 2006.
3. In November 2006, the applicant mentioned to her supervisor her concerns about her future maternity leave. As she did not receive a reply, she requested advice from the UNHCR Mediator.
4. By an e-mail dated 12 December 2006, the Administration informed the applicant that, as she was employed on a temporary assistance contract, she was not entitled to maternity leave. She then contacted the Staff Council to ask for support.
5. On 19 December 2006, the UNHCR Representative in Turkey informed the applicant that her contract would not be renewed because the "post was needed elsewhere". By a letter

dated 21 December 2006, the applicant was formally notified that her contract would not be renewed beyond 31 December 2006.

6. On 29 December 2006, the applicant wrote to the Secretary-General to request an administrative review of the decision not to renew her contract.

7. On 31 December 2006, the applicant left the service of UNHCR. At that time, she was about six months pregnant.

8. By a letter dated 30 January 2007, the Officer-in-Charge of the Administrative Law Unit of the United Nations Secretariat acknowledged receipt on 23 January 2007 of the applicant's request for review and informed her of the procedure for appeal to the Joint Appeals Board (hereinafter referred to as JAB).

9. The applicant gave birth on 2 April 2007.

10. By a letter dated 25 September 2008, in the absence of a response from the Secretary-General within the prescribed time limits, the applicant submitted a statement of appeal to the JAB in Geneva, which was received on 1 October 2008.

11. On 30 April 2009, the JAB adopted its report on the applicant's appeal. It concluded, *inter alia*, that the appeal was inadmissible owing to non-compliance with time limits.

12. By a letter dated 27 May 2009, the Deputy Secretary-General sent the applicant a copy of the JAB report and notified the applicant of her decision to accept the recommendation of the JAB.

Applicant's submissions

13. The main submissions of the applicant are as follows:

- a. Her state of health prevented her from submitting her appeal to the JAB within the prescribed time limits. She claims that her circumstances were exceptional;
- b. As for the merits of the appeal, the decision not to renew her contract was arbitrary and an abuse of authority as the decision was taken when she informed her superiors of her pregnancy with a view to receiving maternity

leave. She claims that she had legitimate reasons to expect her employment to be renewed and that she was notified at a very late stage, on 21 December 2006, of the non-renewal of her contract;

- c. An internal UNHCR report drafted in 2006 had recognized the need to maintain the post that she had occupied. She had been replaced in her functions by United Nations volunteers, which demonstrated that the real reason for the contested decision was her pregnancy;
- d. Furthermore, despite being a UNHCR employee, she had not received any health care or social coverage and the Organization had refused to grant her maternity leave. She claims that these working conditions are contrary to Turkish labour law and to international law.

Respondent's observations

14. The main submissions of the respondent are as follows:

- a. The application is late and therefore not receivable. The Administrative Law Unit received the request for review from the applicant on 23 January 2007 and in accordance with rule 111.2(a)(ii) of the Staff Rules then in force, the applicant was required to file an appeal with the JAB by 23 April 2007 at the latest. However, the appeal was filed by a letter dated 25 September 2008. The respondent submits that the circumstances mentioned by the applicant do not justify the late submission of her appeal;
- b. Although she was informed by the Administrative Law Unit of the JAB appeal procedure, the applicant hired a lawyer in December 2006 and filed a lawsuit against UNHCR before an Ankara court;
- c. The position occupied by the applicant was abolished because it was financed from funds assigned for other posts, a situation that was unsustainable. Thus the applicant, who was not entitled to have her contract renewed even if she was pregnant, has not established that the reason for the contested decision was her condition.

Judgment

15. The applicant, who was employed as a legal clerk with UNHCR in Ankara, comes before the Tribunal to challenge the decision not to renew her contract beyond 31 December 2006.

16. Although she claims that the contested decision is contrary to Turkish legislation and international law, it is clear that the internal regulations of the United Nations alone are applicable to disputes involving its staff members.

17. Provision 104.12(b)(ii) of the Staff Rules then in force stipulated that "the fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment" and rule 109.7(a) provides that "a temporary appointment for a fixed term shall expire automatically and without prior notice on the expiration date specified in the letter of appointment."

18. The applicant submits that, because she was pregnant, the Administration could not refuse to renew her contract.

19. Chapter 6.3.1 of the Staff Administration and Management Manual (hereinafter referred to by its acronym SAMM) provides that staff members on active duty who hold an indefinite or a fixed-term appointment will be entitled to maternity leave with full pay for a total period of 16 weeks, comprising a pre-natal period and a post-natal period. The same chapter provides that when the expiry date of staff member's fixed-term appointment, which is not considered for renewal, falls before the beginning of the six-week period prior to the delivery date, there will be no entitlement to maternity leave.

20. The documents in the file indicate that the applicant's contract expired on 31 December 2006 and that, according to her own statements, by that date the applicant had been pregnant for 26 weeks. Accordingly, the date of expiry of her contract was more than six weeks before the expected date of delivery. She therefore cannot claim that she was entitled to maternity leave under the above rule.

21. Chapter 6.3.18 of the SAMM provides that expectant staff members will be considered for extension or conversion of their appointment under the same criteria as other

staff. When consideration is being given as to whether an appointment is to be extended or converted to another type of appointment, the fact that the staff member is or will be on maternity leave should not be a factor in that consideration. The same chapter stipulates that if, on the basis of other considerations, a decision is made not to renew an appointment which is due to expire during the period of maternity leave, the appointment will be extended solely to cover the full duration of the maternity leave, the appointment will be extended solely to cover the full duration of the maternity leave. Finally, if an appointment which is not to be renewed expires before the beginning of the six weeks prior to the expected delivery date, chapter 6.3.18 specifies that the appointment need not be extended as there is no entitlement to maternity leave.

22. In the light of the above cited provisions, the fact that the applicant had been pregnant gave her no particular right to have her contract extended, in view of the estimated number of weeks prior to the delivery.

23. Although the applicant claims that the refusal to renew her contract deprived her of all social and health care coverage, that circumstance, however unfortunate it may be, would not be sufficient to establish that the contested decision was unlawful.

24. The applicant claims that in view of the previous renewals of her contract, the quality of the work she performed and the needs of the service, she had every reason to expect that her contract would be extended. Even if those allegations were correct, only an actual promise from the Administration, which is not apparent in this case, could create a right for a staff member's contract to be renewed.

25. However, it is established jurisprudence that, even if a staff member is not entitled to contract renewal, the decision must not be taken for unlawful reasons. The Tribunal must therefore consider the lawfulness of the reasons given by the Administration, as reflected in the file.

26. The applicant submits that as she had always received positive feedback on her work and the mission for which she had been employed had not been completed, the refusal to renew her contract was necessarily linked to the fact that she was pregnant. However, the

Administration notes in its defence that the position she had occupied since July 2005 was financed from funds assigned to other posts and that that budget anomaly was unsustainable. Therefore, the Administration established that the decision not to renew the applicant's contract had been taken for sound management reasons and not for discriminatory reasons relating to her pregnancy.

27. It follows from the above that the applicant has not established the unlawfulness of the contested decision and therefore, without any need to rule on the admissibility of her application for reasons of time, there are grounds to reject it on the merits.

Decision

28. For these reasons, the Tribunal DECIDES:

The application is dismissed.

(signed)

Jean-François Cousin
Dated this 19th day of January 2010

Entered in the Register this 19th day of January 2010

(signed)
V́ctor Rodŕguez, Registrar, UNDT, Geneva