



TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2010-083

Beaudry
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

JUDGMENT

Before: Judge Luis María Simón, Presiding
Judge Kamaljit Singh Garewal
Judge Inés Weinberg de Roca

Judgment No.: 2010-UNAT-085

Date: 27 October 2010

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Bart Willemsen and Kevin Browning

Counsel for Appellant/Respondent: Phyllis Hwang

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21 June 2007 to 31 March 2008 and she received an overall performance rating of “fully successful performance”. She signed her e-PAS record for 2007-2008 on 17 June 2008.

4. On 23 July 2008, the CMS decided not to renew Beaudry’s appointment. On 23 September 2008, Beaudry requested an administrative review of the decision and on 25 September 2008, Beaudry submitted a request to the Secretary-General under former

7. The Dispute Tribunal also found that equality and fair dealing required that the practice of allowing a staff member to rebut individual evaluations of particular competencies in an e-PAS record, even where the staff member does not dispute the overall performance rating, should be applied to Beaudry's request for rebuttal. The Dispute Tribunal further held that if there was a decision not to allow an exception under former Staff Rule 112.2(b) to permit Beaudry to rebut her e-PAS for 2007-2008 after the expiry of the applicable time limit, it was rescinded; if there was no such decision, then one must be made. The Dispute Tribunal ordered the Assistant Secretary-General of the Office of Human Resources Management to "consider whether, in all the circumstances, there should be an exception in [Beaudry's] case of the time-limit provided by sec 15.1 of ST/AI/2002/3, such as to permit her now to commence rebuttal proceedings in respect of her e-PAS for 2007-2008, should she wish to do so. [Beaudry] is to inform the [Secretary-General] within seven days of her decision."

8. The Dispute Tribunal issued the Judgment on compensation on 18 August 2010 (Judgment No. UNDT/2010/146).

9. The Secretary-General filed an appeal against Judgment No. UNDT/2010/039 on 19 April 2010. Beaudry filed an answer to the appeal on 3 June 2010. On 7 September 2010, Beaudry filed a request for an oral hearing.

Submissions

Secretary-General's Appeal

10. The Secretary-General submits that the Dispute Tribunal erred on a question of law and exceeded its competence in finding that the Administration has a duty to provide reasons for non-renewal of fixed-term appointments and appointments of limited duration. The jurisprudence of the former Administrative

violations of due process, arbitrariness or other extraneous motivations on the part of the Administration; or (iii) where the Administration gave reasons for the non-renewal, in which case the reasons offered and the evidence must be consistent. The Secretary-General argues that none of these circumstances apply in this case. No commitment was made by the Administration to renew Beaudry's appointment of limited duration; as confirmed by the Judgment, the non-renewal decision was not motivated by any prejudice or improper motives; and the Administration did not offer any reasons for non-renewal in this case, which was found to be the primary failing by the Dispute Tribunal.

12. The Secretary-General contends that the Dispute Tribunal erred on a question of law in interpreting the decision of the former Administrative Tribunal in UNAT Judgment No. 1052, *Bonder* (2002) as giving rise to a general obligation to provide reasons for non-renewal of fixed-term appointments. Further, the facts of this case can be distinguished from the *Bonder* case.

13. The Secretary-General submits that the Dispute Tribunal erred on a question of law and exceeded its competence in requiring the Administration to waive the time limits and permit Beaudry to rebut the evaluation of her core values and competencies in her e-PAS record for 2007-2008. The Dispute Tribunal did not identify any exceptional circumstances that would warrant the exercise of the Secretary-General's discretion under former Staff

and was therefore unlawful. The appeal is directed at a statement in the Judgment that the Secretary-General must provide reasons for a decision not to renew a fixed-term appointment, at least when such reasons are requested by the staff member. Beaudry contends that this statement is *obiter dictum*, having no impact on the primary holding, and is not appealable.

16. Beaudry submits that the Secretary-General has not appealed the critical findings of fact made by the Dispute Tribunal regarding the circumstances in which the decision not to renew her appointment was made, and those findings are therefore *res judicata*. As the appeal is directed to an issue which does not found the legal or factual conclusions of the primary holding, Beaudry requests that the Appeals Tribunal affirm the Judgment.

17. Beaudry contends that the appeal in relation to the Dispute Tribunal's orders concerning the time limit for a rebuttal of her e-PAS record is premised on a misconception of the Judgment and ought to be summarily dismissed.

Considerations

18. As a preliminary matter, this Tribunal rejects Beaudry's request for an oral hearing as there is no need for further clarification of the issues arising from the appeal of the Secretary-General.

19. Beaudry joined the United Nations subject to an appointment of limited duration under the 300 series of the former Staff Rules. Former Staff Rule 304.4(a) stated, in part, that "[a]ppointments under these Rules carry no expectancy of renewal or of conversion to any other type of appointment." Further, under Rule 304.4(b), appointments for activities of a limited duration, such as Beaudry's appointment, "may be granted for a period not exceeding three years, subject to renewal, exceptionally, for a final period of one year".

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appointment, because the Staff Rules governing such appointments did not provide for the continuation of the appointment.

21. If, prior to the abolis(e ab n ogf(6(n)-3(t2-3(i)2 7(l)-f)3-5(th)-6(e abo(th)30(th)0o(th)se6(ior on 6(n)-s

25. In light of this evidence, the appeal filed by the Secretary-General should be allowed. Beaudry signed the document, thereby acknowledging that renewal of her appointment was not recommended, and the Administration was entitled to rely on her acknowledgment and acceptance of the recommendation of non-renewal. The UNDT erred on a question of fact resulting in a manifestly unreasonable decision in finding that the non-renewal of Beaudry's appointment was in breach of her rights.

26. Accordingly, there are no grounds to support the ruling in the UNDT's Judgment that Beaudry is entitled to compensation for the non-renewal of her appointment of limited duration.

27. The UNDT ordered the Administration to consider if there should be an exception granted to allow Beaudry to submit a rebuttal of her e-PAS record for 2007-2008 after the applicable time limit. Beaudry did not seek to challenge her performance rating of "fully successful performance"; instead she sought to challenge the critical comments made by her

Judgment

29. In view of the foregoing, the Tribunal vacates the Judgment under appeal and affirms the impugned decision not to renew Beaudry's appointment of limited duration.

Dated this 27th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Simón, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar