

Introduction

1. The applicant was employed as a G-2 level Security Officer by the Security and Safety Section of the United Nations Office at Geneva (UNOG), on a number of short-term contracts from February 2000 until his separation in February 2006. While still employed, he applied for a G-3 position, was interviewed for it, but was not selected. Based on information gathered at the selection process, it was decided that he did not have the necessary efficiency, integrity and competence to hold the position of a security guard and the decision was made to separate him.

2. The applicant appealed to the Geneva Joint Appeals Board (JAB). The JAB panel recommended the payment of one week of salary and two months for moral damage suffered by the applicant. The Secretary-General accepted this recommendation and paid the applicant CHF10,500.00.

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that although the procedure for separation was wron

(“Carabineros”) but was not himself a police officer. After moving to Switzerland, he worked from September 1991 until February 2000 as a “magasinier” at the International Civil Servants’ Cooperative (SAFI) located in the Palais des Nations, but was not a UN staff member at that time. His principal job at SAFI was to stack the shelves and give customer service. He was also required on occasions to keep a look out for shoplifters.

12. He entered the service of UNOG on 23 February 2000 as a Security Officer at the G-2 level in the Security and Safety Section on a short-term contract. At his initial recruitment, the applicant was not tested for technical competence and aptitude for work as a Security Officer. He was employed on the

was that the applicant did not have the standard of integrity required within the United Nations. In December 2005, the applicant was briefly interviewed by the Officer-in-Charge of the Security and Safety Section (SSS) who was reviewing the recommendations before making the final decisions.

25. The panel also recommended against the continuing employment of the applicant. This was revealed in a letter from the Officer-in-Charge, SSS, to the Officer-in-Charge, Human Resources Management Service (HRMS), dated 25 January 2006, which was produced by the respondent after the hearing.

26. On 9 February 2006, the applicant was called to a meeting with the Chief, SSS, the Assistant Chief, SSS, and a Human Resources Officer. The applicant wanted to have a representative of the staff union with him at the meeting but it was decided by the Administration that the staff union representative should not participate as it was just a working meeting. During the meeting, the applicant was informed verbally that not only had he not been selected for the post for which he had applied, but that his short-term contract would not be renewed beyond 10 February 2006. The same day, two personnel actions were approved concerning the applicant: the first one indicated that the applicant had been re-employed on 1 January 2006 and that his short-term contract would expire on 10 February 2006; the second one put into effect the separation of the applicant from the UN on 10 February 2006. Those actions were internal to the Administration and were not communicated to the applicant until the intervention of his lawyer when he was advised in writing of the decision taken by the UNOG

30. I find as a matter of fact that the applicant went through the selection process justifiably believing that all that was at stake was his selection or non-selection for the G-3 position. Although he was aware of the major structural changes in the organization of the Security and Safety Section, he was not advised nor was he aware that if he failed to be selected for one of the advertised posts, he

- e. Any award of moral damage must take into account the fact that the applicant had no expectancy of renewal. In any event, he has received compensation which is adequate.

Discussion of the issues

Issue 1. Who had the authority to terminate the applicant's employment?

33. The respondent was requested by the Tribunal to produce evidence that the Officer-in-Charge, SSS, UNOG, was authorised to recommend the separation of the applicant and that HRMS, UNOG, had the authority not to renew or to terminate the applicant's short-term contract.

34. The only document submitted by the respondent which refers to delegation of authority in the administration of the 300 series of the Staff Rules is a Note by the Secretary-General A/54/257 headed "Administrative issuance on delegation of authority" dated 18 August 1999, which counsel for the respondent submitted following the hearing¹. Paragraph 8 of the note reads:

Originally, the 300 series of the Staff Rules covered only short-term staff appointed for a period not exceeding six months. Short-term staff e festration x

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45. The selection process in the present case was conducted on the basis of a policy adopted and administered by UNOG. The termination resulted from the application of that policy and was carried out without reference to the Secretary-General. If the termination of the applicant were of the type specified in staff regulation 9.1, i.e. the abolition of posts and reduction of staff, unless the power lay with UNOG, it was reserved to the Secretary General.

Issue 2 (a). The reason for the termination of the applicant's short-term contract

46. The decision not to select the applicant for the G-3 post for which he had applied and the decision to terminate his contract were connected even though the interview panel only had the power to recommend selection or non-selection for the post. The evidence established without doubt that while the panellists were concerned about the applicant's competence, the primary reason for his non-selection was the perceived lack of the applicant's integrity. For this reason the panel not only recommended his non-selection, it also recommended that he should not be further employed by the UN. The panel believed that he had lied about his duties while employed at SAFI and about whether he had been employed by the "Carabineros". This was confirmed in the evidence of the External Security Officer Specialist to the Tribunal who, when asked for the reasons for non-selection, emphasised his serious concerns about the applicant's lack of integrity.

47. Following the interview process and prompted by the recommendation from the panel that the applicant should not continue to be employed by the UN, the Officer-in-Charge of the Security and Safety Section decided that the applicant lacked the necessary ability and integrity required for him to either be appointed to the new post or to continue as a Security Officer on short-term contracts and recommended his termination. This was confirmed by HRMS at UNOG.

48. I conclude that the termination was not because the applicant's post was being abolished or that staff were being reduced. It was because he was deemed to have breached the requirements of integrity required of an international civil servant and did not meet the standards of competence required.

in either separation from service without notice or compensation (former staff rule 310.1 (e) (iv)) or a summary dismissal (former staff rule 310.1 (e) (v)).

56. While the Administration has a broad discretion to determine what action is to be taken against a staff member in a specific case, such discretion is limited to deciding if disciplinary proceedings for misconduct are to be instituted. If the Administration decides to take a disciplinary measure against a staff member, then the rules require that certain basic requirements are met: notice in writing of the allegation, the right to seek the assistance of counsel and a reasonable opportunity to respond to the allegations. This was confirmed in D'Hooge (Judgment UNDT/2010/044). If these requirements are not met, then the decision is unlawful.

57. In this case, the decision was made that not only would his current contract not be renewed, but that he was not fit for further service with the UN because he lacked integrity. Although this was a disciplinary measure, the applicant received no written notice of the allegation, no advice of his right to seek the assistance of counsel and no opportunity to respond to the allegations that related to the termination. He did not know he was to be separated from the UN until the day it happened. Until then, he believed that he was only in jeopardy in relation to his application for the G-3 position.

58. The disciplinary measure had the detrimental result of abruptly ending the applicant's otherwise unblemished six-year employment and effectively precluded him from future employment with the UN.

59. I find that the separation of the applicant from service with the UN was unlawful for two reasons: first, the decision was made by a person who had no delegation to do so because the reason for termination was a disciplinary measure. Second, the procedure was in breach of the requirements for disciplinary measures in former staff rule 310.1.

Issue 3. Was the Panel influenced by bias?

60. The interview panel did not recommend the selection of the applicant for the G-3 position. Although the

previous negative experiences while employed at UNOG) that the panel was biased, there was not sufficient evidence of this. The constitution of the panel, the use of an independent expert to participate in the process, the transparent and thorough procedure and the willingness of the panel to give the applicant a second interview does not support the applicant's contentions.

Issue 4. Notice

61. If the applicant had been lawfully terminated at the expiry of his contract of short duration, he would have been entitled to notice as stipulated in the Staff Rules. Because his separation was unlawful, he lost that opportunity and the question for the Tribunal is the extent of any notice he should receive.

62. The principles of reasonable notice do not generally apply to termination of short-term contracts covered by the Staff Rules as the rules legislate for such notice as follows:

Former staff rule 309.3

(a) Staff appointed under these Rules whose contracts are to be terminated prior to the specified expiration date shall be given not less than one week's written notice in the case of locally recruited staff members and two week's written notice in the case of non-locally recruited staff members, or as otherwise provided in the letter of appointment.

(b) In lieu of the notice period, the Secretary-General may authorize compensation equivalent to salary and applicable allowances corresponding to the relevant notice period, at the rate in effect on the last day of service.

Conclusion

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