



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/120

Judgment No.: UNDT/2011/157

Date: 6 September 2011

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Anne Coutin, Officer-in-Charge

LORAND

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Amal Oummih, OSLA

Counsel for Respondent:

Shelly Pitterman, UNHCR

Introduction

1. On 20 June 2011, the Applicant, a staff member of the United Nations High Commissioner for Refugees (“UNHCR”), filed with the Tribunal an application against the decision to terminate her indefinite appointment effective 1 January 2011.

2. At the time the application was filed, the Deputy High Commissioner had already rescinded the contested decision on 21 March 2011, as a result of the management evaluation, following a Tribunal’s order granting suspension of action on the contested decision.

3. The Applicant requests compensation in the amount of USD30,000 for the violation of her rights and the moral damage suffered.

4. The Respondent requests the Tribunal to reject the application in its entirety and to make a determination in accordance with article 10.6 of its Statute as to whether the Applicant has manifestly abused the proceedings before it and, in the affirmative, to award costs against her.

Facts

5. The Applicant joined UNHCR in September 1999 on a three-month short-term appointment (300 series of the former Staff Rules) and in January 2000, like all UNHCR staff members at the time, she was granted an indefinite appointment under rule 104.12(c) of the then applicable Staff Rules. When the contested decision was taken, she was working in the Global Issues Unit of the Brussels office, as a Senior Secretary at level G-5.

6. By letter dated 18 March 2010, the Head of Unit informed her that due to a “reorganization of responsibilities in the Global Issues Unit”, the office intended to discontinue the post she encumbered. The letter added that upon approval of the proposal by the Budget Committee, she would be informed of the effective date of the discontinuation of her position.

7. In another letter of 28 May 2010, the Head of Unit informed the Applicant that the decision had been made on 17 May 2010 to discontinue her post with effect from 30 November 2010. She was advised to apply for any suitable vacant position in Brussels and that in the absence of a new appointment, the office would initiate a comparative review process in accordance with established guidelines. The Applicant did not contest this decision.

8. In October 2010, the Regional Appointments, Postings and Promotions

endorse the CRP recommendation not to retain the Applicant in service. On the same day, the Director of the Division of Human Resources Management (“DHRM”) endorsed the Assistant High Commissioner’s decision.

12. By letter dated 29 December 2010, the Applicant was informed that following the comparative review, it had been determined that “her services could [not] appropriately be utilised on another post” and that her indefinite appointment would therefore be terminated effective 1 January 2011, with compensation in lieu of notice.

13. By email dated 30 December 2010, copied to the Director of DHRM and the Staff Council, the Applicant submitted to the Deputy High Commissioner a request for management evaluation of the decision to terminate her indefinite appointment. On the same day, she filed with the Tribunal an application requesting it to suspend the implementation of the contested decision.

14. By Order No. 93 (GVA/2010) of 31 December 2010, the Tribunal suspended, during the pendency of the management evaluation, the implementation of the decision to terminate the Applicant’s appointment effective 1 January 2011.

15. On 4 March 2011, the Applicant was placed on special leave with full pay as there was “no requirement in the office for staffing support in [her] specific skills area”.

16. By memorandum dated 21 March 2011, the Deputy High Commissioner notified the Applicant of the outcome of her request for management evaluation. Adopting the findings of the Tribunal in Order No. 93 (GVA/2010), he concluded that “certain procedural irregularities were present in the comparative review process leading to the termination of [the Applicant’s] contract”, in particular “the

17. On 20 June 2011, the Applicant filed the present application and on 19 July, the Respondent submitted his reply.

18. On 5 September 2011, after seeking and obtaining leave from the Tribunal, the Applicant filed observations on the Respondent's reply.

19. Both parties agreed that an oral hearing was not necessary.

Parties' submissions

20. The Applicant's contentions are:

On receivability

a. The rescission of a decision that does not put the applicant in the same position he or she would have been in had the Organization complied

itself or provide acceptable remedies in cases where there has been flawed decision-making and to reduce the number of cases that need to proceed to formal litigation. The Organization has demonstrated its good faith, impartiality and fairness in correcting itself in the context of the management evaluation. However, the Applicant continues to litigate against a decision which no longer affects her rights, thus abusing the proceedings before the Tribunal;

On the merits

c. In view of the outcome of the management evaluation, it is unnecessary to comment on the Applicant's submissions regarding the "unlawfulness of the contested decision";

d. Concerning the Applicant's requests for relief, it must be noted that: (i) The infringement of UNHCR policies has been remedied by the rescission of the contested decision; (ii) With respect to moral damages as claimed by the Applicant, the Appeals Tribunal stated in *Hastings2011-UNAT-109* that "moral damages may not be awarded without specific evidence supporting the award", whereas the Applicant did not substantiate, let alone give evidence of any moral damage; (iii) As regards the alleged damage in relation to the placement on special leave with full pay, this decision has been reviewed in the context of another request for management evaluation filed by the Applicant on 22 March 2011, it has been upheld by the Deputy High Commissioner's letter dated 14 April 2011, but it has not been appealed by the Applicant and is consequently not under the Tribunal's scrutiny; in addition, the Applicant did not provide evidence of any damage allegedly caused by this decision; (iv) The Applicant has remained employed at all times; and (v) the Applicant did not identify which complaints have allegedly been handled with delay, let alone substantiate any damage resulting from such alleged delay.

informed of its rescission; it states that the Applicant suffers from insomnia due to the sudden termination of her appointment and that medication has been prescribed as from 15 July 2011. The second medical certificate is dated 5

Entered in the Register on this 6th day of September 2011

(Signed

Anne Coutin, Officer-in-Charge, Geneva Registry