



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2012/033

Judgment No.: UNDT/2012/180

Date: 19 November 2012

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

Introduction

1. The Applicant was a staff member of the United Nations International Criminal Tribunal for Rwanda (“ICTR”) in Arusha, Tanzania. He worked as an Associate Translator/Interpreter on a fixed-term appointment at the P2 level in the Language Services Section (“LSS”).

2. On 2 November 2011, the Applicant received an interoffice- memorandum from the Chief of Human Resources and Planning Section notifying him that his fixed-term appointment was not going to be renewed beyond 31 December 2011.

3. The Applicant brought an Application for Suspension of Action with the Tribunal on 24 December 2011 and the Respondent filed his reply on 29 December 2011. On 29 December 2011 the Tribunal rejected the Application for Suspension of Action and communicated to the parties that a reasoned judgment would be issued in due course. The reasoned judgment in the suspension of action application was subsequently issued on 12 January 2012.

Facts

4. The facts which remain substantially the same as stated in the suspension of action judgment are again re-stated for the records. The ICTR was established on 8 November 1994 by Security Council Resolution 955. In 2003, the ICTR initiated a completion strategy which *inter alia*, was geared towards downsizing the organization’s human resources capacity. In this regard, the Registrar of the ICTR established an *ad hoc* Staff Retention Task Force (SRTF) on 16 July 2007 following two Security Council Resolutions of the United Nations General Assembly in 2003 and 2004. Criteria established by the SRTF were promulgated by the ICTR and circulated among its entire staff by way of the Information Circular no. 77 of 3 October 2007.

5. The SRTF was to develop the criteria which would enable Programme Managers to determine the composition of the staff members they would need during the final phase of the Tribunal’s mandate and to ensure that the downsizing of staff members was done in the most transparent, consultative and objective

manner. A Retention Panel was established to conduct standard evaluation of staff members.

Applicant's personnel ratings. However, the Applicant did not attend the said meeting, because according to him, he had met with some of the panelists and was not satisfied with their explanations and that he had written to the Appeal Panel.

13. On 23 December 2011, the Applicant filed a request for management evaluation of the decision not to renew his fixed-term appointment beyond 31 December 2011.

14. The next day, 24 December 2011, the Applicant filed his Application for suspension of action in which he was not successful. A judgment rejecting the Application was issued on 12 January 2012.

15. A substantive application dated 10 May 2012 challenging the decision not to extend the Applicant's fixed term contract was subsequently filed. The Respondent in turn sought to challenge its receivability. The essence of the receivability motion was that the Applicant's substantive Application was late by one day. While the Applicant claimed that he had first received the Tribunal's confirmation that his Application was received on 11 May 2012, the Respondent submitted that even if that was the case, the Application was still one day over the time limit.

16. Having given thought to the issue of time limits and whether this Application was indeed late by one day, the Tribunal has decided to resolve the matter of receivability by simply taking the Application at face value. The date of the Application is 10 May 2012, the last day on which a filing of the Application can properly be allowed. I accordingly find the Application receivable.

Applicant's case

17. The Applicant's case is hereunder summarized as follows:

- a. The decision to separate him from the Organization was characterized by irregularities, errors and omissions. Relevant facts were not taken into account, discretionary powers were abused by the Respondent's agents who had in the process of downsizing of the mission unjustly engaged in favouritism and other improper considerations.

- b. The *Manyara Accord* and other staff retention criteria earlier

Issue

20. The singular question for determination here is whether the decision to abolish the Applicant's post was unlawful.

Hearing of the Application

21. The issues having been joined on both sides, this Application was set down for oral hearing on 18 and 19 September 2012. The Applicant applied

of an evaluation by the said Panel in which he was shown to have received the least scores.

26. While he alleged irregularity in the process that saw him leave the ICTR, the Applicant was unable to meet the lower threshold of *prima facie* unlawfulness required to grant his earlier suspension of action application.

27. In the present Application on the merits, the Applicant needs to prove, at least on the balance of probabilities, that the Retention Panel was unfair in its evaluation of him and was discriminatory. Not only did he fail in his earlier suspension of action application to give particulars of the irregularities, errors, omissions and favoritism which he alleged made the decision not to renew his fixed-term contract unlawful, he has not tendered additional evidence in this present Application.

28. As in the previous application, with respect to the personnel ratings which showed the evaluation of certain staff members in which the Applicant obtained

