



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

CHOLLET

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a former Functional Analyst at the P-4 level, Umoja project, Department of Management, contested the decision not to renew his fixed-term appointment, which expired on 31 January 2014. The Applicant submits that the contested decision to not renew his contract was notified to him on 6 December 2013 and was made in retaliation for his reports of abuse of authority against his supervisors and despite the protections afforded to him under ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations).

2. The Respondent submits that the application is not receivable because the Applicant did not file his request for management evaluation within 60 days of the date of notification of the contested decision, as required by staff rule 11.2. The Respondent submits that the Applicant was notified of the contested decision on 19 June 2013, but requested management evaluation only on 15 January 2014, well beyond the 60-day period.

Facts

3. On 10 January 2013, the Applicant signed a letter of appointment accepting a one-year fixed-term appointment to work on the Umoja project, which is a UN-wide project aiming to harmonize and streamline the way that the Secretariat manages its human, financial and material resources. The effective date of the Applicant's appointment was 1 February 2013. The letter of appointment stated that the appointment "expire[d] without prior notice" on 31 January 2014. It further noted that "[a] Fixed-Term Appointment, irrespective of the length of service, does not carry any expectancy, legal or otherwise, of renewal".

4. In March and April 2013, the Applicant met the Assistant Secretary-General, Enterprise Resource Planning (“ASG/ERP”), Department of Management, to inform him that he was harassed by his supervisor for having made various reports of alleged improprieties in the office. The Applicant stated that his supervisor had threatened to remove him from the job in retaliation for these reports.

5. On 30 May 2013, the Applicant had a meeting with Ms. ML, Office of Human Resources Management (“OHRM”), who informed him that there would be no further extension of his appointment beyond 31 January 2014. On 30 May 2013, Ms. ML sent an email to the ASG/ERP, apparently copying the Applicant and stating:

[The Applicant] was advised that he is being released on assignment to OHRM on his unpaid leave until the expiry date of his current fixed-term appointment (i.e. 31 January 2014). He was further informed that OHRM has no funding to absorb this assignment or any extension beyond 31 January 2014.

6. In an email to the ASG/ERP, dated 10 June 2013, the Applicant stated (emphasis in original):

I am coming back to you further to our meeting of Wednesday 29 May in your office, at your invitation.

You informed me that OHRM had identified a possible position for transfer following

On Thursday 30 May I met with Mrs. [ML] from OHRM

Mrs. [ML] explained that a transfer could be done from Umoja to OHRM immediately; she confirmed that the post will be funded by Umoja up to end of January 2014.

She then stated that there will ~~be~~ *be further extension beyond 31 January as my post will be cut*. Therefore she invited me to look for another job.

...

It now *appears evident that the offer to transfer me to OHRM* (and consequently remove me from Umoja) ~~and~~ *then cut my*

reconsider it. OHRM will be contacting you to arrange a meeting.

As to the situation of your Umoja functions, the Umoja project is now progressing to new phase leaving behind the design and build stages, with different emerging requirements, which demands the need to re-purpose the teams to support deployment and post-implementation, assigning all funds available to that endeavor. With this in mind and given the sparse resources available to Umoja, *the functions for which you were hired in Umoja are not projected to be required in 2014. Thus the guidance provided from OHRM and myself, to encourage you to apply to any vacancy announcements of your interest, both within and outside the Secretariat.*

I wish to assure you that *the conclusion regarding your functions, as in all other cases we manage, has been arrived at in the best interest of the Organization after a review of the critical needs of the Project so as to ensure it moves forward in an efficient and proper manner.*

8. On 25 July 2013, the Applicant submitted to the Ethics Office a request for protection from retaliation. In this request for protection, the Applicant alleged that his report of misconduct to the ASG/ERP on 26 March 2013 had led “to the decision of not renewing his contract”. The Applicant also stated (emphasis omitted):

This can be perceived as a clear act of retaliation for the following reasons: the list of emails exchanged between [the ASG/ERP] and myself shows very clearly the succession of facts and the direct link between my complaint of harassment and retaliation, and the decision to terminate my appointment (confirmed on his email dated 19 June 2013).

9. On 8 November 2013, the Director of the Ethics Office provided a report to the Applicant detailing the Ethics Office’s evaluation of his request for protection from retaliation. The Ethics Office found that there was insufficient evidence to support *prima facie* case of retaliation against the Applicant.

10. On 21 November 2013, the ASG/ERP ~~and~~ the Applicant stating:

Following meetings with me and OHRM in May 2013, when your assignment to OHRM was proposed, and as reflected in my email to you dated 19 June 2013, this is to reconfirm that your fixed-term appointment with Umoja expires on 30/01/2014.

11. The ASG/ERP further noted in his ~~and~~ that he had designated a staff member as a focal point to assist the Applicant and “all other affected staff members in Umoja” with aspects related to career advancement, including, for example, interviewing workshops.

12. On 6 December 2013, the Applicant received a letter from the Executive Officer, Department of Management, stating:

Reference is made to the ~~and~~ notifications of 19 June 2013 and 21 November 2013 from ~~the~~ ASG/ERP], informing you that your Fixed-Term Appointment will not be extended beyond 31 January 2014. The reason for the non-extension of your appointment is due to the impending completion of your tasks associated with the project ~~from~~ as the project moves to a different phase as per its mandate. ~~This~~ This letter thus serves as advance notice for the non-~~exte~~ extension of your fixed-term appointment.

13. On 15 January 2014, the Applicant requested management evaluation of the decision not to renew his fixed-term appointment beyond 31 January 2014. In his request, the Applicant stated that he became aware of the “final decision” to separate him from service only on 6 December 2013.

14. On 20 January 2014, the Applicant filed an application for suspension of action, pending completion of management evaluation, of the decision not to renew his appointment.

15. By Order No. 21 (NY/2014), dated 27 January 2014, the Tribunal rejected the application for suspension of the application, finding that it failed to meet the test of urgency under art. 2.2 of the Dispute Tribunal's Statute.

16. By letter dated 31 January 2014, the Chief of the Management Evaluation Unit ("MEU") informed the Applicant that his request for management evaluation was not received because it was not filed within 60 calendar days of notification of the contested decisions.

Procedural background

17. On 30 April 2014, within 90 days of MEU's response of 31 January 2014, the Applicant filed an application with the Tribunal. As his application was missing a number of annexes, he was directed by the Tribunal to file the missing documents, which he did on 1 May 2014.

18. On 2 May 2014, the Registry transmitted the application to the Respondent. On 2 June 2014, the Respondent filed a reply to the application.

19. tion.

He submits that he filed his request for management evaluation on 15 January 2014, which was within the applicable 60-day time limit from the date of notification of the administrative decision. The Applicant further submits that earlier exchanges concerning the date of expiration of his contract did not include a final decision on non-renewal as the issue was still under consideration.

27. In his reply to the application, the Respondent submits that the application is not receivable as the Applicant failed to file a timely request for management evaluation of the decision not to renew his contract. The Respondent submits that the Applicant was first informed that his contract would not be renewed beyond 31 January 2014 in a meeting with OHRM, held on 30 May 2013. He was further notified of the non-renewal of his contract by email dated 19 June 2013 from the ASBP, which should be considered to be the official date of notification of the non-renewal decision. The Respondent further submits that the Applicant's actual knowledge was further demonstrated by his actions following his receipt of the written notification of the contested decision. On 25 July 2013, approximately one month after receiving the email of 19 June 2013, the Applicant submitted a retaliation complaint to the Ethics Office alleging that a report he had made to the ASG/ERP at the meetings of 26 March and 29 April 2013 "directly led the decision of not renewing his contract" and explaining that his goal was to "[o]btain a reversal of the decision on non-renewal of [his] current contract". The Respondent submits that the 60-day time limit for requesting management evaluation expired on 19 August 2013 and the request for management evaluation was filed on 15 January 2014, nearly five months after the expiry of the time limit.

28. The Respondent submits that, even if the 60-day time limit were viewed as running from 25 July 2013, the date of the Applicant's retaliation complaint, the time limit to submit a request for management evaluation expired on 23 September 2013, and on this basis, the Applicant's request for management evaluation was nearly four months late. The subsequent confirmations of the contested decision from 21 November and 6 December 2013 did not constitute new administrative decisions and therefore did not restart the time limits for requesting management evaluation. w [TJ -17.47aluati5(01Tu3-

079; *Ajdini et al.* 2011-UNAT-108). Reiterations or repetitions of the same administrative decision in response to

the decision of not renewing [his] contract. The Applicant further stated that one of the purposes of his complaint to the Ethics Office was to “[o]btain a reversal of the decision on non-renewal of [his] current contract”.

38. Notably, the Applicant’s complaint to the Ethics Office, dated 25 July 2013, was not provided to the Tribunal by any party in the context of the suspension of action proceedings that were closed by Order No. 21 (NY/2014), dated 27 January 2014. Accordingly, the Tribunal could not have taken it into consideration when making a pronouncement in Order No. 21 (NY/2014) regarding the date of notification of the contested decision.

39. The complaint to the Ethics Office was made available to the Tribunal for the first time as part of the Applicant’s application on the merits, filed on 30 April 2014 and completed on 1 May 2014. The language of the Applicant’s complaint makes it clear that the Applicant himself considered that the non-renewal decision was notified to him by email of 19 June 2013. The Applicant’s averment in the application on the merits that the application is receivable because the contested decision was notified to him on 6 December 2013 is a reiteration of his position expressed in his suspension of action application and is based on preliminary conclusions in Order No. 21 (NY/2014), which are no longer relevant as they have been contradicted by the Applicant’s own recognition in the complaint to the Ethics Office that the non-renewal decision was notified to him on 19 June 2013.

40. Thus, from the documents before the Tribunal, there is no doubt that the Applicant was notified in writing, by 19 June 2013 at the latest, that his contract would end on 31 January 2014 and he clearly understood the nature and the effect of the contested decision from that date. As correctly stated by the Respondent, the 60-day time limit for requesting management evaluation

expired on 19 August 2013 (see staff rule 2(c)). However, the Applicant filed his management evaluation request on 15 January 2014, nearly five months after the expiry of the applicable time limit.

41. The Tribunal further finds that the communications sent to the Applicant after the email of 19 June 2013, including the letter of 6 December 2013, were mere reiteration of the decision not to renew his contract. As such, they did not reset the time limits for the filing of his management evaluation request (*Sethia; Aliko*).

42. Finally, the Tribunal notes that the Applicant did not reply to Orders No. 203 (NY/2015) and No. 254 (NY/2015). Accordingly, the Respondent's final submissions on receivability stand uncontested, particularly in view of the language of the Applicant's complaint to the Ethics Office.

43. It follows from the above that the Applicant failed to submit a timely request for management evaluation, and, as a result, one of the mandatory and cumulative conditions of art. 8.1 of the Statute has not been fulfilled. The Tribunal does not have jurisdiction, pursuant to art. 8.3 of its Statute, to waive or extend the deadlines for management evaluation requests (*Costa; Trajanovska; Sethia; Ajdini et al.*). The application before the Tribunal is not receivable *ratione materiae* and is to be rejected. Accordingly, the Tribunal will not further analyze the parties' submissions on the merits.

Conclusion

44. In the light of the foregoing, the Tribunal DECIDES:

45. The application is not receivable and is rejected.

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