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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/095

Judgment No.: UNDT/2016/120

Date: 1 September 2016

Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:**



8.

September 2013, UNICEF's management evaluation upheld the administrative decision not to renew the said contract.

### **The hearing**

16. The Tribunal held an oral hearing of the case on 2 and 3 June 2015. The Applicant testified on her own behalf while her former supervisor Mr. Melandri and Ms. Hyde testified for the Respondent.

17. When the Applicant started working for UNICEF JCO in September 2012, she performed duties in all the sectors of the country office under general TORs taken from standardized documents.

18. Before the end of her secondment and at the request of her supervisor at the time, Mr. Leighton, she assessed the IM needs of the office and created TORs for required posts. She recommended one international IM Specialist for each sector and another for non-specific sector work. She recommended also that some national staff be hired.

19. She was selected for a six-month TA and was told that two international and two national IM Specialists would be recruited. Between March and May 2013, two others were brought in on secondment. While one of the new ones was completely dedicated to the Child Protection and Gender-based violence sectors,

those of an IM Specialist consisting of processing and presenting data for the different departments or sectors at the JCO.

22.

supervised by Mr. Melandri. She never said she did not want an extension of her contract. She did not know at that time that there were mechanisms for dealing with harassment and so did not make a formal complaint.

27. When on 17 June 2013 the Applicant wrote to Mr. Melandri to ask her if her contract was to be renewed, it was the CR who responded to say that it would not be renewed and that she (Applicant) had told her that she was not interested in staying at the JCO. She replied to the CR denying telling her so and the CR invited her to a meeting. She was not given any notice of non-renewal.

28. Before the meeting would take place, the Applicant was given a separation letter on 26 June 2013. On 27 June 2013 she met with the CR who again told her that her contract was not renewed because she said she did not want the renewal. The CR added that Mr. Melandri found her conduct challenging and said that the Agency for Technical Cooperation and Development (ACTED) had complained about an email she wrote. The CR never said that the functions of her post were no longer needed.

*imony*

29. The witness said he was deployed on 1 February 2013 as a Humanitarian Affairs Specialist at the UNICEF JCO. In that position, he became the Applicant's supervisor or First Reporting Officer (FRO).

30. He stated that the Applicant's TORs included two main areas of responsibility which were capacity building of national IM staff and the management of the IM REACH PCA. The Applicant's defined tasks and duties were to be accomplished within six months because her TA was established for the initial setting up of IM capacity at the start of the emergency declared in January 2013.

31. At the start of his work at the JCO, the Applicant told him of a need to expand the IM unit through the recruitment of three IM unit thr

hand over her responsibilities at the end of her six-month TA. The Applicant did not like this strategy and resigned a few days later.

32. When he later held a meeting with the CR and the Applicant on the 16LW\*<sup>n</sup>0 1 185.18 727576

38. The witness testified also that the Applicant refused to attend a meeting with him and the CR on 2 July 2013 to discuss her complaints against him. He then discussed the Applicant's PER with her in the presence of a Human Resources (HR) Officer on 3 July 2013, a few days to the end of her contract. He recognized her technical competencies and achievements and noted that she needed to improve in the core competencies of Communication and Working with People. The Applicant refused to sign it.

39. A new temporary P-3 international post was created for an IM Specialist in the M&E sector but the Applicant did not apply. She had the opportunity to activate the recruitment for national capacity but there was no national IM officer at the JCO.

*Ms. Hyde*

40. The witness was the CR at the JCO at the times material

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50. The Applicant's testimony concerning the flexible nature of the work of IM Specialists was not challenged. Apart from her uncontested testimony that she

of her contract. This fact in itself contradicts the Respondent's assertion that the functions of the Applicant's post were finite and completed.

56. The claim by the CR in her oral testimony that at the time of asking the Applicant if she would continue beyond the expiry of her contract she only suggested a one-month renewal cannot be believed. This was neither



**The Respondent's case**

*The Applicant had no legitimate expectation of renewal of her TA. Her functions were no longer required as IM capacity was decentralized.*

69. The Applicant had no legitimate expectancy of the renewal of her TA. The UNICEF policy on “Types of Appointments and Categories of Staff” states that TAs expire on the date specified in the letter of appointment and do not carry any expectancy of renewal.

70. The Applicant was hired to assist in providing IM services and specifically to contribute towards the provision of emergency assistance. One of her major tasks was the training and capacity building of a national professional with the perspective to hand over the IM responsibility at the end of her six months assignment.

71. UNICEF has the discretionary authority to decide whether there was an organizational need for the continuation of short-term services. In order to respond to the developing humanitarian emergency crisis in the country, UNICEF JCO reviewed the office structure in May 2013 and proposed changes for decentralizing the IM functions.

72. It decided that no international IM post would be created and that IM capacity would be dedicated to national professionals. A new TA for a National Officer in the Education sector was created to address the needs of the emergency in the children refugee crisis. A new temporary P-3 International position for an IM Specialist in the M&E sector was created, but the Applicant did not apply for it.

73. The Applicant's temporary position was not funded and no IM post was established in the JCO budget. The selected candidate for the new position was a Jordanian national since UNICEF JCO aimed at building national capacity.

74. In May 2013, the Applicant's supervisor told her that her contract would not be renewed due to the changing priorities in the IM services. She was in the meetings of UNICEF JCO and therefore knew that an international post in IM



main IM partner, REACH, and at one point refused to deal with them or supervise their work and in that way was neither accountable nor responsible.

82. From April 2013, the CR asked Mr. Melandri to report to her any issues regarding the Applicant's behaviour and performance. Since then, he decided not to have any private meetings with the Applicant in order to prevent potential complaints from her.

83. The REACH Director made an informal complaint to UNICEF JCO in June 2013 about the Applicant sending him an email from her personal email account to make certain inquiries. The Director felt that she was seeking explanations from REACH in a non-transparent manner by doing so through a personal email.

84. The CR arranged a meeting on 2 July 2013 with the Applicant and her supervisor to discuss the Applicant's complaints. The Applicant sent an email on the day before the scheduled meeting to say she did not want to attend.

85. About two days before the end of the Applicant's contract, Mr. Melandri met with her in the presence of a HR representative for a performance evaluation discussion. He recognized her technical competence but stated that she needed improvement in the core competency of Communication and working with others. The Applicant refused to sign the appraisal.

*There was no harassment or personal animus on the part of the Supervisor.*

86. The Applicant while alleging that the decision not to renew her contract was based on communication issues with her supervisor and harassment on his part has not offered proof to substantiate her allegation.

87. Even after two IM Specialists were brought on board in March and April 2013, the Applicant continued to ask for the recruitment of internationals for the IM team but was always told that it was not feasible.

88. Mr. Melandri had found himself supervising the Applicant who though on a TA, wanted a long-term contract. The refusal of UNICEF JCO to change its management priorities to accommodate the Applicant's desire to extend her contract resulted in her making false allegations of harassment against Mr. Melandri.

89. The Applicant did not file any allegations of harassment as required under the UNICEF policy. She has also not discharged the burden of proof required to establish harassment or personal animosity.

90. The Applicant is not entitled to any compensation because she has not shown that she suffered any harm. The Application ought to be dismissed in its entirety.

### **Considerations**

91. It was submitted by the Respondent that the Applicant did not have any expectancy of renewal of her TA. It was also submitted that the Organization did not give the Applicant any promise that her contract would be renewed. Both submissions correctly depict both the state of the applicable law and the facts in this case.

92. But there are other considerations. The principal issue that arises for determination here is whether in view of all the surrounding circumstances, the non-renewal of the Applicant's T



***Were the reasons given by the Respondent for the non-renewal of the  
the evidence?***

93. In considering this question, the Tribunal will review the email exchanges between the Applicant and the CR, Ms. Hyde, on the subject of renewal of the Applicant's TA. The Tribunal will also review the pleadings, testimony and submissions of the Parties as well as the relevant letter of offer.

94. The records show that the first time the issue of a renewal or non-renewal of the Applicant's TA arose was on 17 June 2013 when in an email to her FRO Mr. Melandri, the Applicant asked if her contract would be extended. Although Mr. Melandri did not respond, the CR Ms. Hyde replied to the Applicant by email on the same day.

95. Essentially, her response was that the TA would not be renewed because the Applicant herself told her in conversation about 10 days earlier that she (Applicant) did not want to remain at the JCO "under the current structure." The Applicant responded on the same day and affirmed

98. At the oral hearing of this case, the two witnesses for the Respondent adopted their written witness statements. They also gave additional evidence and were cross-examined.

99. They gave three reasons for not extending the Applicant's contract. These

Respondent have changed over time and do not correspond to the facts. It was







126. The Applicant's efforts to enlist the intervention of Ms. Hyde who was her SRO failed because Mr. Melandri's attitude of completely ignoring his supervisee was ostensibly supported by Ms. Hyde. Rather than help to resolve their differences and encourage the Applicant and her supervisor to work well together, Ms. Hyde helped to destroy whatever working relationship they had when she instructed him to bring her reports on the Applicant's behaviour, performance and complaints.

127. Four unhappy emails from the Applicant written on 8 April 2013 to her supervisor and other work colleagues were clearly not addressed by Mr. Melandri who at that time was (by his own admission) no longer talking to the Applicant. This state of affairs appears to have been fuelled by Ms. Hyde's directive that Mr. Melandri seek out, report and document every mis-step of the Applicant.

128. The same was the case with regard to the emails in Annex 4 concerning the Applicant's private communication with an NGO. While the Respondent claims that the Applicant wrongfully made private enquiries regarding a UNICEF project, the issue was never addressed with her by her supervisors. The first time it was mentioned to her was in the meeting between the Applicant and the CR, only one week to her separation, to discuss the non-extension of her TA.

129. The Respondent argued that there were performance issues with the Applicant's work and that Mr. Melandri properly made observations to that effect in her performance appraisal which did not amount to personal animus but merely a manager managing his supervisee.

130. The Tribunal disagrees with that submission. The Tribunal rather finds that while Mr. Melandri was quick to appraise the Applicant's performance and to rate her as 'developing proficiency' in the two competencies of 'Communication' and 'Working with People', he had not supervised her work for at least three of the five months she worked under him and had therefore failed in his duty to the Applicant.

131. Managerial competencies in this Organization are recognized to include building trust and managing performance. In building trust, a manager is expected

to provide an environment in which his or her supervisee can talk and act without fear of repercussion. The manager must also operate with transparency and without a hidden agenda.

132. Also in managing performance, the manager needs to regularly discuss performance and provide feedback and coaching to his or her supervisee. He must also monitor the progress of his supervisee effectively using milestones and deadlines.

133. A manager in the United Nations Organization is not supposed to set his or her supervisee up for failure as was done in this case. Rather, the manager has a duty to help the supervisee by affording him or her opportunity to improve in any area that his or her performance is found unsatisfactory.

134. In the case of *Das*<sup>8</sup>, UNAT held that Managers are required to record unsatisfactory performance and bring it to the attention of the staff member in a timely manner in order to offer the staff member an opportunity to improve his or her performance.

135. The manager's duty to bring unsatisfactory performance to the attention of a supervisee in a timely manner in order to help him or her improve applies in a TA as much as it applies in a fixed-term contractntTsv0600470058005712(-)269(sG35)-9(.)ked





