



UU

Case No.: UNDT/NBI/2009/034

Judgment No.: UNDT/2010/105

## **Introduction**

1. The Applicant is a former staff member of the United Nations Development Programme (UNDP). His contract was not renewed beyond 31 December 2006 on the ground of non-performance. The Applicant appealed the decision to the Joint Appeals Board (JAB) which decided to make no recommendation. On 14 August 2008, the Respondent endorsed the decision of the JAB. The



harassment and abuse of authority; (c) the non-renewal of his contract. The Applicant was advised on the suspension of action and administrative review procedure.

10. On 22 April 2006, the Applicant filed a request for administrative review of the decision not to renew his appointment.
11. On 23 April 2006, the Applicant requested a meeting with UNDP Administrator to seek resolution of his alleged harassment and discrimination complaint.
12. On 4 May 2006, the Applicant was advised by the Director, OHR/BOM, that his complaint against his supervisor did not fall within the scope of the then UNDP Policy on Prevention of Workplace Harassment, Sexual Harassment and Abuse of Authority as the Applicant raised work-related issues which are not considered allegations of harassment. The Applicant was also informed that OHR was open to reconsider his case if he provided OHR with written information about an incident of harassment/abuse of authority that was not related to performance issues.
13. On 19 May 2006, the Applicant submitted additional documentation in support of his complaint of harassment and retaliation to the Harassment Focal Point, OHR/BOM, and the CRG.
14. On 31 May 2006, the CRG met for a second time to review the additional material provided by the Applicant in support of his claim that his performance was not properly reviewed.
15. On 6 and 8 June 2006, the Applicant provided further material to the CRG.

16. On 9 June 2006, the CRG met for the third time to review the Applicant's additional material and confirmed the rating "partially met expectations".

17. On 19 June 2006, the Applicant filed a rebuttal of his 2005 RCA. On 22 June 2006, OHR advised him that his contract would be extended until 31 July 2006 for the purpose of the rebuttal process.

18. On 21 June 2006, the Applicant reported allegations of misconduct against his supervisor to the then Office of Audit and Performance Review (OAPR)<sup>1</sup>.

19. On 22 June 2006, UNDP-OHR placed the Applicant on a Special Leave with

9464.56424(1)0.4499.5165--Fid 13631 (e) 2501 T 5 (26 Jun 28) 29.88 d d . 8 7 1 1 9 6 7 8 8 1 ( 5 7 1 5 6 4 2 9 ( 8 3 8 7 1 5 6 2 8 3 8 4 2 1 7 3 2 6 4 9 7 8 2 8 1 6 3 8

23. On 21 July 2006, OAPR advised the Applicant that they found no evidence in support of the allegations he had made against his supervisor.
24. On 28 July 2006, the CRG met for the fifth time and after review of the Applicant's case it confirmed the 'partially met expectations' rating. From 1 August 2006, the Applicant's contract was extended on a two-week basis in order to finalize the RCA rebuttal process. The Applicant was on SLWFP during this period.
25. On 12 August 2006, the Applicant signed the CRG final comments as communicated to him on 31 July 2006.
26. On 3 September 2006, the Applicant requested OHR/BOM to re-open his harassment case as he considered that the comments made by the CRG supported his complaint.
27. On 14 September 2006, the Director, OHR/BOM advised the Applicant that his request for reopening his harassment case was dismissed.
28. On 25 September 2006, the Rebuttal Panel started the review of the Applicant's RCA for the year 2005.
29. On 7 December 2006, the Rebuttal Panel issued its report upholding the 'partially met expectations' rating for 2005.
30. By letter from OHR/BOM on 18 December 2006, the Rebuttal Panel advised the Applicant that it had decided to uphold the rating and that his separation from UNDP was confirmed effective 31 December 2006.

31. On 9 January 2007, the Respondent responded to the Applicant's request for administrative review of 22 April 2006 and concluded that it could not find any factual n3ly 274.265513( )-109.798(9.796(ng( )-284.55609.796(n3l)0.441723798(y)27.12b8(y)

38. On 5 May 2008, the Chairperson of the UN Ethics Office decided not to review the case further.
39. On 18 June 2008, the JAB issued its report and unanimously decided to make no recommendation. The Applicant was communicated the report on 25 June 2008.
40. On 14 August 2008, the Applicant was informed of the Secretary-General's decision to endorse the decision of the JAB.
41. On 16 June 2009, the Applicant requested the United Nations Administrative Tribunal (UNAT) to waive the time-limits in his case.
42. On 17 June 2009, the Executive Secretary of the UNAT informed the Applicant that the President of the UNAT had decided to suspend the time-limits in the case until further notice.
43. On 31 August 2009, the Applicant filed an application with the UN Dispute Tribunal (UNDT) in New York. The case was transferred to the UNDT in Nairobi.
44. On 7 September 2009, the Applicant filed a motion in support of his application to the UNDT concerning the "receivability of his application and the competence of the UNDT", a "request to order the UN-Ethics Office Director to deliver his review and legal opinion of his case of whistleblowing retaliation", and a "request to order interim relief based on preliminary or final review of the case by the UNDT".

Case No. UNDT/NBI/2009/034

The deadline set by the Tribunal to file the reply was by 25 January 2010. On 25 January 2010, the Respondent filed a reply.

53. On 26 January 2010, the Tribunal through its Registry sent to the parties a set of guidelines for preparing the review of the case.

54. On 28 January 2010, the Applicant made a request for summary judgment in the matter and reiterated his request on several occasions.

55. On 8 February 2010, the parties replied to the guidelines to the parties and informed the Tribunal that they did not request a hearing since they had sufficiently documented their submissions.

### **Applicant's Submissions**

56. The decision not to renew his contract was based on bias, prejudice, discrimination and improper motives. His performance assessment and the decision not to renew his contract occurred against a backdrop of retaliation for his attempts to report misconduct on the part of his supervisors. Moreover, the Applicant was denied due process in the assessment of his performance.

57. The Applicant requests the UNDT to “order the Director of the UN Central Ethics Office and Chairman of the UN Ethics Committee to produce his legal review of the case based on the prior submission dated 13 December 2007.

Executive Office Director, former Director of the then Office of Legal and Procurement Support, and former Director of Energy and Environment Group to testify and certify that they reviewed the documents submitted to them.

59. In addition, the Applicant requests the UNDT to order (i) his reinstatement with direct promotion to the D-2 level as the new UNDP-GEF Executive Coordinator and Director of Environmental Finance; (ii) retroactive payment of salary at the D-1 level from July 2006 through June 2007 and at the D-2 level from June 2007 until date of assumption of duty; (iii) that all negative performance evaluations be expunged from the Applicant's personnel file; (iv) that the judgment be inserted in his file; (v) all applicant benefits be reimbursed to him including children's education expenses for the year 2006; (vi) that the Secretary-General apologize to the Applicant; and (vii) that the Applicant be awarded financial compensation in the amount of four years of pensionable salary.

### **Respondent's Submissions**

60. The non-renewal of the Applicant's 200-series appoi



66. Concerning the Applicant's allegations of harassment against his supervisor, the complaint was investigated and reviewed, but there was no evidence to substantiate the allegations.

67. The Respondent therefore requests the UNDT to reject this application in its entirety.

**Consid eg 1-9.8-56(r)4.0432(e)1.9651.96262(n)6.56290(h)-3.7169t(w)-7.87559(a)13173(g)16.8429(e)1.96**

70. Pursuant to UNDP “Results and Competency Assessment (RCA) Guidelines



76. Pursuant to ST/SGB/2005/21, an individual who believes that retaliatory action has been taken against him because he or she has reported misconduct should forward all information and documentation available to the Ethics



81. The Tribunal further takes note of the Applicant's argument that he should be granted a permanent contract for completing five years of continuous service. Based on the Applicant's employment history, the Tribunal recalls the provisions of former Staff Rule 204.3 (c) which reads that "Project personnel in intermediate-term status who complete five years of continuous service and whose appointments are extended for at least one further year shall be considered to be in long-term status with effect from the date on which they complete five years of continuous service". In the present case, the Applicant joined the Organization on 13 January 2003 and his contract was not renewed beyond 31 December 2006, which is clearly less than five years. Thus, the

was totally misconceived. Article 9 of the Rules of Procedure clearly states that a party may move the Tribunal for summary judgment when there is *no* dispute as to the material facts. Any party is entitled to a judgment as a matter of law. However, the Applicant had not shown in any