



16 September 2008, she was informed that her application for the posts had been rejected and that her contract, which would expire on 31 October 2008, would not be renewed.

7. Megerditchian's request for administrative review to the Secretary-General was rejected. Her appeal to the Joint Appeals Board was transferred to the UNDT, which issued its Judgment on 26 February 2010.

8. The UNDT found that it was not competent to consider the application in so far as it concerned a decision not to award her a project associate service contract since such contract is awarded to non-staff members. It, however, found that it was competent to consider the application in so far as it concerned the decision not to renew her fixed-term appointment. It stated that under Rule 104.12(b)(iii) of the Staff Rules, in effect at the time of the contested decision, a "fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment"; and under Staff Rule 109.7(a), in effect at the time of the contested decision, a "temporary appointment for a fixed-term shall expire automatically and without prior notice on the expiration date specified in the letter of appointment". It recalled that the former Administrative Tribunal held that decisions concerning non-renewal of fixed-term contracts lie within the discretion of the Secretary-General, but must not be taken arbitrarily or for unlawful reasons.

9. The UNDT found that Megerditchian did not establish the unlawfulness of the decision not to renew her contract. It, however, noted that the Administration had made promises to Megerditchian which it failed to keep. The Programme Manager had announced that a job fair would be held in order to fill staff posts and service contracts. The memorandum he issued stated that only UNDP-ACT staff affected by the reclassification could apply for the internal vacancies, whereby 100 series contract holders would have "priority consideration". The UNDT considered that such a promise could only be understood by Megerditchian to mean that she would receive a service contract if she applied and if her qualifications corresponded to the requirements. It noted that

the work required of holders of this type of contract is substantially similar to the work that [Megerditchian] was doing and that [she] had the necessary qualifications to receive the contract. Thus, in light of the commitment made by the Administration in its memorandum of 19 August 2008, [she], who unlike the selected candidates, held a 100 series contract, could in good faith consider that there was every likelihood that she would receive a service contract, and thus a salary from the Organization.

T

performance at the interview, the Organization acted in accordance with Article 101(3) of the Charter in not awarding her a contract.

15. The Secretary-General further contends that the UNDT erred in placing undue emphasis on the similarity between the terms of reference of the posts for which Megerditchian applied and of the post she held. Pursuant to the reasoning of the UNDT, substantive similarity between the terms of reference of the post would have been sufficient and an interview was not required. According to this reasoning, Megerditchian should have been offered a service contract based on the terms of reference alone which would contravene the principles set forth in the Charter.

16. Furthermore, the memorandum set out the steps for the envisioned job fair, including “[c]areful screening of the applicants; and [a] competitive selection that emphasizes merit and the required competencies for the job”. The “competitive selection” included an interview and the “required competencies” were tested during such sessions. Megerditchian scored poorly compared with other candidates during her competency based interview.

Megerditchian’s Answer

17. Megerditchian responds that the UNDT did not err in law on the issue of receivability. Contrary to the Secretary-General’s assertion, the crux of the case is not about the award of the service contract, but the arbitrariness of the decision not to renew her fixed-term appointment. The Secretary-General does not contest the UNDT’s finding that the Organization breached its promise to give priority consideration to internal candidates. Megerditchian points out that the basis on which the UNDT considered itself competent was that “the Tribunal must also consider whether the Administration made the Applicant promises that it did not keep”. These promises were made to a staff member.

18. Because Megerditchian was a staff member at the time of the contested decision and the contested decision related to a promise by the Administration to give her priority consideration, the award of a service contract is only incidental and not central to her legitimate expectancy of continued employment with the Organization.

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2010-UNAT-088

23. The Dispute Tribunal rightly found that it was not competent to consider the application as far as it concerned the decision not to award her a project associate service contract since such contracts are awarded to non-staff members.

24. The Dispute Tribunal however considered that the Administration made Megerditchian promises that it did not keep and awarded damages on that basis. However, this question ultimately concerns the award of a service contract. The UNDT had therefore no competence to consider Megerditchian's application and erred in law in doing so. The UNDT Judgment must therefore be reversed on that basis.

Priority Consideration

25. The Appeals Tribunal notes that, in any event, the UNDT also erred in its interpretation of the term "priority consideration" as contained in the memorandum.

26. The memorandum stated in part: "Only UNDP-ACT staff affected by the reclassification can apply for the internal vacancies, whereby 100 series contract holders have priority consideration." The UNDT considered that such a promise meant that Megerditchian would receive a service contract if she applied and if her qualifications corresponded to the requirements.

27. We note that the memorandum clearly set out that there was to be a "[c]areful screening of the applicants" and a "competitive selection that emphasizes merit and the required competencies for the job" including an interview. It was therefore clear from the memorandum thatdo0001 U3(iTn19.557doqd2l c 0.1nd thns)JTJa.65e0 Tw 0 -.atrequn2517 alsoar

29. The Appeals Tribunal therefore holds that the UNDT erred in finding that the Administration caused harm to Megerditchian who could legitimately believe that at the end of her appointment, she would receive a service contract and thus a salary.

Judgment

30. For the foregoing reasons, the Appeals Tribunal allows the appeal, rescinds the UNDT Judgment, and vacates the award of damages.