



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Case No. 2010-161



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6. On 3 October 2007, the Task Force in its final report set forth the criteria to be used by programme managers when deciding on the retention of staff, and the points to be assigned to each criterion. Using these criteria, the French Court Reporters Unit adopted its own specific criteria to determine which staff members were essential for the successful and timely completion of the work of the ICTR. In April 2008, the Court Management Section Committee on Staff Retention (Staff Retention Committee) evaluated Onana as a French Court Reporter on the basis of these specific criteria. Onana ranked last within that Unit, with a rating of 22, whereas the staff member who ranked second to last had a rating of 47. Accordingly, the Staff Retention Committee recommended the abolition of Onana's post as French Court Reporter, together with 338 other posts, and the non-renewal of his contract beyond 31 December 2008.

7. In June 2008, the United Nations General Assembly approved supplementary funds for the ICTR to meet an unexpected increase in the workload brought about by new arrests. Onana's appointment was subsequently extended until 30 September 2009, together with the appointment of the other 338 staff members whose posts had been similarly slated for abolition.

8. In June 2009, the Registrar of the ICTR requested that the programme managers identify which of the 339 posts were deemed critical and required further extension beyond 30 September 2009. As a result, 297 of the 339 posts, which had initially been slated for abolition, were considered to be "critical". But Onana's functions in JRAU were not deemed to be "critical to (and directly supporting) the completion of ongoing trials". According to the Respondent, Onana could not be considered as "critical" for the French Court Reporters Unit as he was not performing the functions of a French Court Reporter. On 26 June 2009, Onana was notified of the non-renewal of his contract beyond 30 September 2009.

9. On 28 August 2009, Onana filed a request for management evaluation of the non-renewal decision. On 12 October 2009, the Under-Secretary-General for Management informed Onana that the contested decision had been taken properly.

10. On 22 September 2009, Onana filed an application to suspend the implementation of the decision not to renew his appointment before the Dispute Tribunal. This request was granted on 13 October 2009 "until the [Appellant's]

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15. On 9 November 2010, Onana appealed the UNDT Judgment. On 23 December 2010, the Secretary-General filed an answer.

16. On 23 May 2011, the Registry wrote to Onana with copy to the Secretary-General seeking clarification as to when his former Counsel sent him the e-mail included in Annex No. 5 of his appeal.¹ Not having heard from either party, the Registry forwarded the e-mail of 23 May to Melluish for clarification, with copy to Onana and the Secretary-General. On 25 May 2011, both Onana and Melluish provided their e-mail exchanges between 2 August and 5 August 2010.

Submissions

Onana's Appeal

17. Onana submits that his appeal is receivable even if it was filed after the mandatory 45-day time limit because he did not receive the Judgment from the UNDT Registry. Onana claims that his former Counsel had failed to share information with him about the UNDT Judgment or the recourse procedure. He maintains that he did not request any extension of the 45-day time limit as he had never received any notification of the UNDT Judgment.

18. On the merits, Onana reiterates his argument that the non-renewal decision was not in conformity with the ICTR's staff retention guidelines or with his due process rights. He claims that the decision was based on improper motives. Onana further submits that the Administration should have given him one month's notice before separating him from service. Finally, Onana states that the UNDT committed several procedural errors, thereby vitiating the Judgment. Onana requests the rescission of the non-renewal decision, as well as the payment of compensation in the amount of two years' net base salary.

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Secretary-General's Answer

19. The Secretary-General submits that Onana's appeal is time-barred and therefore not receivable as it was filed after the expiry of the relevant response period for filing an appeal.

20. On the merits, the Secretary-General submits that the following conclusions of the UNDT were correct: 1) that Onana's post as French Court Reporter was abolished in conformity with the ICTR's completion strategy and staff retention process and with Onana's due process rights; 2) that the decision not to renew Onana's appointment was proper and that he had no expectancy of renewal of his appointment beyond 30 September 2009; and 3) that the abolition of Onana's post and the non-renewal of his appointment were not based on improper motives or other extraneous factors. The Secretary-General maintains that Onana was not entitled to one month's notice prior to his separation from the ICTR. Nor has Onana established any procedural errors. The Secretary-General requests the Appeals Tribunal to affirm the UNDT Judgment, and to dismiss the appeal in its entirety.

Considerations

21. This Tribunal considers that the appeal is not receivable because it was not filed within 45 calendar days of the receipt of the Judgment of the UNDT as required by Article 7(1)(c) of the Statute of the Appeals Tribunal.

22. While the impugned UNDT Judgment was e-mailed to Onana's former Counsel on 30 July 2010, there is no doubt that Onana knew the content of the Judgment, posted on the UNDT website on 2 August 2010. He was again informed about the issuance of the Judgment the following day, by the former Counsel, who on 5 August 2010 formally let Onana know that OSLA would not be assisting him in any appeal that he was planning to file.

23. Therefore, even when Onana's case is viewed in the most favorable light, he was perfectly aware, since 5 August 2010, of the need to file his appeal without OSLA's assistance before the end of 19 September 2010.

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Judgment No. 2011-UNAT-157

Judgment

28. This Tribunal declares the appeal not receivable and dismisses it in its entirety.

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Courtial

Entered in the Register on this 29th day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar