

Judgment No. 2018-UNAT-849



Counsel for Mr. Kule Kongba: Self-represented

Counsel for Secretary-Gene

THE UNITED NATIONS

16 December 2010, where he scored second out of the three shortlisted candidates. The *ad hoc* committee designated the Applicant as its preferred choice for the advertised post since he was an internal candidate.

... On 11 January 2011, Mr. David Lawson, UNFPA Resident Coordinator, informed the Applicant that he had been selected for the position at the NO-B grade, step 1, effective 1 April 2011, on a one[-]year fixed-term appointment.

... On 13 January 2011, Ms. Odile Ambrose, UNDP Human Resources Manager in Brazzaville commenced the Applicant's onboarding process and on 5 May 2011, he was issued with a Letter of Appointment (LOA) by Mr. Lamin Manneh, UNDP Resident Coordinator, which he signed on the same day. The Applicant continued to serve on his fixed-term appointment which was renewed annually.

... On 14 March 2015, the Applicant suffered a heart attack. Thereafter, he underwent a series of medical checks at the University Hospital Center in Brazzaville, as a result of which he was advised that he travel to Pretoria, South Africa, for further medical treatment. Mr. Victor Kaya-Mandzila, UNFPA Officer-in-Charge of Operations in Brazzaville, scheduled the Applicant's appointment for 5 May 2015.

... Between 22 April 2015 and 11 May 2015, the Applicant and the UNFPA Administration exchanged emails in relation to travel arrangements to Pretoria. Accordingly, the Applicant provided the UNFPA Administration with his residency card which then dispatched a *Note Verbale* to the South African embassy in Brazzaville so that the Applicant could be issued with a visa.

... On 12 May 2015, Ms. Barbara Laurenceau, UNFPA Resident Representative in Brazzaville, sent an email to Ms. Holly White, UNFPA Human Resources Strategic Partner, in which she noted the difficulty in obtaining a visa for the Applicant because it had emerged that he was not a citizen of the RoC but of the Democratic Republic of Congo (DRC). The communication reads in part:

In the course of preparation for his evacuation, I realized that he is actually not a citizen of Congo but of DRC. The immediate consequence is that it becomes quite complicated to obtain a visa for him to RSA and forced us to cancel several times the med appointment in RSA. I wanted to get your advice: what is the policy for [National Professional Officer (NPO)], can a non-national be NPO?

... In a memorandum dated 30 October 2015 to Mr. Mabingue Ngom, UNFPA

asserting that in the part related to the underpayment, the application was not receivable *ratione personae* and *ratione temporis*, and in the remaining part it was unsubstantiated.

4.

Submissions

Mr. Kule Kongba's Appeal

9. Mr. Kule Kongba contends that the UNDT was “solely concerned with protecting the organization from the errors and oversights of UNDP and UNFPA officials, with no concern for the damages [he] suffered”. He submits that the contested administrative decision and the

o

r

g

Administration commits an irregularity in the recruitment procedure, it falls to it to take such measures as are appropriate to correct the staff member's situation. It is only where such correction is manifestly impossible to effect owing to the nature or gravity of the irregularity that the Administration may terminate a staff member's appointment.

13. In the present case, for a person to be eligible for a position at the NO-B grade, he or she must have the nationality of the country in which the office is located. This requirement is set out in Staff Rule 4.4(b) and cannot be waived. Selecting and appointing a person who did not possess the nationality of the RoC for a position at the grade of NO-B in Brazzaville, RoC is, therefore, an irregularity which the Administration could only correct by not extending Mr. Kule Kongba's fixed-term appointment. Furthermore, as held by the UNDT and in accordance with Staff Rule 4.13(c), a fixed-term appointment does not carry any expectancy of renewal.

14. The UNDT correctly denied an award of compensation. The burden of proving improper motives, such as abuse of authority or harassment, in not renewing a fixed-term appointment rests with the person making the allegation. In the present case, Mr. Kule Kongba claimed compensation for the harm he was allegedly subjected to, by way of underpayment of salary, alleged harassment orchestrated by the Representative, UNFPA, RoC, work-related health problems, and the non-renewal of his appointment. It is clear from the record that the non-renewal decision was based solely on the fact that Mr. Kule Kongba did not satisfy the eligibility requirements and that the Administration corrected an error that it had committed in selecting, appointing and renewing him to a position for which he was not eligible. Mr. Kule Kongba has not provided any evidence that the non-renewal decision was improperly motivated.

15. Mr. Kule Kongba has failed to show any error by the UNDT warranting the reversal of the Judgment. Mr. Kule Kongba does not identify any errors or excess or failure of jurisdiction and merely refers to the claims, arguments and documents he presented before the UNDT. It is, however, not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the UNDT. Mr. Kule Kongba has failed to satisfy the requirements of Article 2(1) of the Appeals Tribunal Statute. His appeal is therefore not receivable.

16. The Secretary-General requests that the Appeals Tribunal affirm the Judgment and dismiss the appeal in its entirety.

Considerations

17. At the outset, we point out that the only part of the Dispute Tribunal Judgment challenged by Mr. Kule Kongba

22. In specific, the UNDT properly reviewed the contested decision in accordance with the applicable law. It noted that Staff Rule 4.4(b) of the Organization's Staff Regulations and Rules in relation to staff members in posts subject to local recruitment specifically provides: National Professional Officers shall be of the nationality of the country where the office concerned is located.³ The UNDT also referred to the VA for the NO

of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended. The jurisprudence requires this promise at least to be in writing.⁷

26. Nevertheless, an administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive.⁸ The staff member has the burden of proving such factors played a role in the administrative decision.

THE UNITED NATIONS

32. Moreover, the UNDT examined whether the contested decision stemmed from undue pressure, harassment or abuse of

Judgment

36. The appeal is dismissed and Judgment No. UNDT/2017/081 is hereby affirmed.

Original and Authoritative Version: English

Dated this 29th day of June 2018 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Halfeld

Entered in the Register on this 10th day of August 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar