
Before:

Introduction

1. Because of the urgency of the application, it was heard by me on 31 December 2009 and an *ex tempore* judgment was given at the time of the hearing. That judgment follows, with some editorial changes of no substance.

Background

2. The applicant is employed as a local officer on a twelve-month fixed-term contract at UNICEF, Jamaica. Her contract was due to expire

was influenced, if not entirely controlled, by information from the Deputy Representative which was biased against the applicant for reasons of personal ill will.

8. I should mention that there had also been a mid-term review (MTR) of the office's performance undertaken during September–November of 2009, during the course of which the applicant was complimented by the Representative on her presentation in respect of her program.

9. One's immediate response to the line of reasoning proposed by counsel for the applicant is that it seems unlikely, not in respect of the significance of the PER, but because it seems irrational and unreasonable that the Deputy Representative would have been motivated to, in effect, destroy the career prospects of the applicant for reasons of personal pique. Of course, such things have occurred, but they are rare.

10. The Deputy Representative has not had an opportunity to respond to the allegations against her and in the circumstances the respondent had not had the advantage of that evidence. It is immediately obvious though, that had a decision been made as a result of the MTR not to renew the applicant's contract, and if hitherto the Deputy Representative (who must have been aware of that decision) and the applicant had had a good relationship, the non-communicativeness of the Deputy Representative might well have been due to embarrassment — a perfectly normal human reaction and one which to my mind is more likely to explain the Deputy Representative's behaviour than the explanation proposed on the applicant's behalf. However, the applicant also gave evidence that in November 2008, thirteen months before the expiration of her contract, the Deputy Representative received an email requesting that the applicant be allowed to attend training in February 2009, but that the Deputy Representative indicated that she would not consent to the applicant's attendance and would not respond to the email, stating that someone else should attend the training instead. The applicant said that the Deputy Representative told her that

[the applicant] was no good and as far as she was concerned [the applicant] did not add anything to the staff – if [the applicant] was removed [she] would not be missed...she will fix it so that after the MTR next year [to which I have already referred] [the applicant] would not have a job.

This, if accepted, shows that the negative attitude of the supervisor towards the applicant's performance preceded by almost a year the issue that arose concerning the allowance. Of course, I am not in a position to assess whether the Deputy Representative's assessment of the applicant's performance was fair. Certainly, the language in which it was expressed, if the applicant's evidence is to be accepted, did not reflect objectivity and the closing remark about "fixing", if made, is certainly suggestive of ill will.

11. The respondent submitted, but was not in a position to prove at the time of the hearing, that

[t]he management decided not to renew the contract at this time to reconsider the key assignments of the post. We informed [the applicant] on 30th November 2009 that her contract would not be renewed. At no time did we state that the contract would not be renewed based on performance.

12. There are hints in the applicant's evidence suggesting that the MTR was relevant as a consideration of the assignments at the post. However, there is also positive evidence from the applicant that the Deputy Representative did state, more than once, and in more than one way, that the contract would not be renewed because of shortcomings in her performance. I am far from convinced that the explanation for the non-renewal of the applicant's contract is indeed that for which counsel for the applicant contends, however, I consider that on balance it is a reasonably arguable case. Accordingly, the prerequisite of prima facie unlawfulness for suspension of action is satisfied.

management evaluation and it is therefore in the hands of the respondent, to a significant degree, to limit the cost of such an order.

16. If the management evaluation is adverse to the applicant and she seeks to contest the administrative decision in the Tribunal, of course she can seek a further suspension. However, she should have no expectation that a further suspension would be granted under article 14 of the Tribunal's Rules of Procedure.

Conclusion

17. I have concluded, on balance, that the suspension of action should be granted until the management evaluation is completed and notified to the applicant.

(Signed)

Judge Adams

Dated this 31st day of December 2009

Entered in the Register on this 6th day of January 2010

(Signed)

Hafida Lahiouel, Registrar, New York