

Introduction

1. On 5 February 2019, the Applicant, a former Project Manager at the United Nations Office of Project Services (UNOPS) on a fixed-term contract, filed the application in which he contests abolition of his post and the non-renewal of his appointment. The case was not assigned to a Judge of this Tribunal.

2. On 8 March 2019, the Respondent duly filed his reply,

7. The parties duly filed their submissions on 22 April 2020 and, after some additional case management, also filed their closing statements on 27 April 2020.

8. For the reasons stated below, the Tribunal finds that the Applicant's claim regarding the abolition of his post is not receivable, while his claim concerning the non-renewal of his post is receivable.

Consideration

Scope of the case

9. The Appeals Tribunal [redacted] te Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify [redacted]. When defining the issues of a case, the Appeals Tribunal further held [redacted] bunal may consider the application as a whole [redacted] *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23.

10. In the application, in addition to the decisions regarding the abolition of the post and the non-renewal of his fixed-term appointment, the Applicant also challenges, in what appears to be a separate third claim, that he [was] retaliated [against] [redacted]. The Tribunal notes that circumstances such as those described above cannot be defined as distinctive administrative decisions that are appealable under art. 2.1 of the Statute of the Dispute Tribunal, but rather constitute assertions and/or arguments in support of the other decisions under review.

11. Furthermore, while the Applicant described the second contested decision in the application as that of good faith efforts not being made to find him a new post after the abolition of his post, his submissions rather refer to the decision not to renew his post.

12. The Tribunal, in this regard, notes that under the jurisprudence of the Appeals Tribunal (see *Nouinou* 2019-UNAT-902, para. 31) and staff rule 9.6(e), the obligation for the Administration to undertake efforts to find an alternative post only extends to a situation wBT/F1 12 Tf1 0 0 1 355.82 698.14 Tm0 g0 G[(the)] TJETQ7t

is a possibility/risk (not a certitude which allow him to file a Management Evaluation Request) to abolish his post and that a certitude (not a risk) is required to file a case of Management Evaluation Request . As evidence, he refers to an email of the same date (25 October 2018), which was appended to the Applicant's 22 April 2020 submission from him to the Senior Portfolio Manager and the Chief of the Enterprise Project Management Office in which he indicated that, [The Senior Portfolio Manager] -> said that is [sic] a possibility of [the Applicant] post abolishment [sic] . There is no evidence that the Senior Portfolio Manager and the Chief of the Enterprise Project Management Office ever endorsed, or even acknowledged, this summary.

21. At the outset, the Tribunal notes that even though, contrary to Order No. 76 (NY/2020), the Respondent failed to summarize his submissions on abolition of post, it is, nevertheless, required to examine its jurisdiction *sua sponte* (see, for instance, *l* 2011-UNAT-182 and *Harb* 2016-UNAT-643).

22. The Tribunal observes that the Applicant

application, he was evidently and without any reservations of the view that he was informed of the decision to abolish his post at the 25 October 2018 meeting, despite what he had previously stated in the email of the same date (25 October 2018). The Applicant's change of mind about what was said at the meeting therefore only occurred at the time of his closing statement and not at the relevant time of filing the management evaluation request.

25. Accordingly, the Tribunal rejects the Applicant's intended retraction of his earlier admission that he was informed of the decision to abolish of his post at the meeting of 25 October 2018.

26. Even if the Applicant had not been appropriately informed of the abolition decision at the 25 October 2018 meeting, the Tribunal, nevertheless, notes that the Appeals Tribunal in *Nouinou* 2019-UNAT-902, para. 37, found that the decision to abolish a certain post was not receivable and that the appealable decision was rather the final decision not to renew her fixed-term appointment, indicating that it was [t]he latter [decision], following on from the abolition, [that] was the administrative decision subject to judicial review.

27. Consequently, with reference to *Nouinou*, the Tribunal also finds that the abolition decision is not a decision that can be appealed separately in the present case as the decision not to renew the Applicant's contract is also und G[W*BT/F4 12 Tf1 0 0 1 395.93 40

only stated that it was agreed that the Applicant would receive a written notification, with a minimum of two months in advance if the Applicant's post were abolished.

36. The Tribunal further notes that under the test of *Auda*, all relevant facts must, or should have been known in a clear and unambiguous manner and with sufficient gravitas. Neither the Senior Portfolio Manager nor the Chief of the Enterprise Project Management Office, however, in any of their respective communications, unconditionally express that the Applicant was informed of the non-renewal of his post. Rather, both of them qualify their respective statements with disclaimers such as "I cannot remember exactly what I said but I am quite sure" or "[t]o my best recollection". Furthermore, the Tribunal notes both written statements were produced *ex post facto* for the purpose of the present proceedings and not at the time of the contested decision(s) and that their evidentiary weight is therefore limited, particularly considering that the Respondent has failed to produce any contemporary evidence.

37. Accordingly, with reference to *Auda*, the Tribunal finds that the Respondent has not proved that the Applicant was appropriately informed about the non-renewal of his fixed-term appointment at the 25 October 2018 meeting. Since no other communication regarding the non-renewal has been submitted in evidence except the separation letter dated 22 January 2019, the Applicant's request for management evaluation of 23 January 2019 was therefore timely pursuant to staff rule 11.2(c).

The Respondent's request for the Applicant to produce an audio recording to which he referred in his 20 April 2020 submission

38. On 24 April 2020, the Respondent requested that the Applicant produce an audio recording to which he referred in his 22 April 2020 submission. In the Respondent's subsequent closing statement, he submits that, "When a party fails to take reasonable efforts to disclose all relevant facts, a party fails

using Times New Roman, font 12 and 1.5 line spacing. It must be solely based on previously filed pleadings and evidence, and no new pleadings or evidence are allowed at this stage.

44. Unless otherwise ordered, on receipt of the aforementioned statements in this Order or at the expiration of the provided time limits, the Tribunal will adjudicate on the matter and deliver Judgment based on the papers filed on record.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 13th day of May 2020

Entered in the Register on this 13th day of May 2020

(Signed)

Nerea Suero Fontecha, Registrar