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Introduction

1. By application filed on 12 May 2017, the Applicant requests suspension of action, pending management evaluation, of the decision “to terminate the fixed-term appointment [of the Applicant], i.e. the withdrawal letter”.

2.

1. **Project Manager (Consultant) for the Secretariat of the United Nations Secretary-General's Special Envoy for Road Safety (>UNECE) for Africa**
2. **Hach Lange GmbH Berlin (D) / Geneva (CH), industrial project water measurement,**
3. **Collaborating with the advisory project on Public Private Development Partnerships (PPDPs) for Bolz&Partner working for Swiss Agency for Development and Cooperation. New strategy proposal for developing countries.**
4. **Advisor to the Geneva Canton government for the Lake crossing and ring road project (as Public Private Partnership (PPP) with user charges) and within a multi-modal transport strategy. In charge of the economic and financial part of the framework study (October 2015, updates 2016).**
5. **Trainer for UN agencies in PPP and transport logistics (multimodal, including road and maritime) for UNECE,**

fixed-term appointment from 1 May 2017 to 30 April 2018 as Senior Economic

sufficiently clear to allow for an accurate determination of his status with the Organization during the assessment of his candidature. She further informed the Applicant that he would be paid for the work already performed. The letter was notified to the Applicant on 11 May 2017. No letter of appointment had been signed by the Applicant or an official of the Organization.

12. The Applicant stopped working for ECE effective 11 May 2017. He requested management evaluation of the contested decision on 12 May 2017.

applicant's contentions

13. The Applicant's primary contentions may be summarized as follows:

Prima facie unlawfulness

a. The unilateral decision to terminate his appointment is unlawful and breaches his contractual rights; the offer of appointment from ECE and the subsequent correspondence contained all the essential terms of the agreement. He accepted the offer unconditionally on 6 April 2017 and satisfied all its conditions; he also reported for duty and performed the functions, therefore, a valid contract was formed between the Applicant and the Organization (Gabaldon 2011-UNAT-120; Fagundes 2012/UNDT/056);

b. The suggestion by the Administration that new facts were discovered which render the Applicant ineligible is improper and cannot justify the decision; the Organization was well aware of his status, since he was working as a consultant in the same Division and Section where the post is located hence the hiring unit and HRMS could not have reasonably ignored his status; his description of duties in his PHP clearly mentions his status as

Urgency

c. The decision has not yet been implemented; he has not been provided with any notice period prior to the termination of the appointment; the Tribunal in other cases criticised thirty minutes notice for non-renewal of a contract of employment;

d.

Common System entity”, and “Consultant” as the “type of appointment or relationship with the organization”, he would have been automatically disqualified from the selection process;

d. The Administration strictly adheres to sec. 3.15 of ST/AI/2013/4 (Consultants and individual contractors);

e. The Applicant’s argument that he was never informed that there were any actual or potential obstacles for his appointment is not correct; section 1 of his Contract for the services of a consultant or individual contractor refers in the Terms of reference of work assignment to sec. 3 of ST/AI/2013/4, which contains the above restriction to reemploy consultants as staff members; ignorance of the law is no excuse and, hence, no defence;

f. In view of the high volume of applications processed by the Administration, it relies on applicants as a first instance of control for submitting correct information; since the Applicant did not respect that obligation, his ineligibility was discovered lately by HRMS; that cannot lead to a situation where the Administration ignores an unlawful situation;

g. In case of withdrawal of a letter of offer, the latter only creates legal obligations if certain conditions are met, namely that the candidate (1) has accepted the conditions of the offer, (2) has satisfied all of the conditions of the offer, i.e. those mentioned in the letter of offer itself, those arising from the relevant rules of law for the appointment of staff members of the Organization, and those necessarily associated with constraints in the implementation of public policies entrusted by the Organization, and (3) is acting in good faith;

h. Since the Applicant did not provide complete information concerning his status as a consultant, and did not satisfy the conditions of the offer and did not act in good faith, the offer does not create any legal obligations, and its withdrawal was lawful; since he had already taken up his functions, he will be paid for the work performed, on the basis of a

Consequat

Receivability ratione personae

15.

(b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

19. The Appeals Tribunal held in *Gabaldon 2011-UNAT-120* that (emphasis added):

22. In that regard, this Court recalls that an employment contract of a staff member subject to the internal laws of the United Nations is not the same as a contract between private parties (*James*, Judgment No. 2010-UNAT-009). The aforementioned provisions confer upon the Secretary-General the power to engage the Organization in this matter. These provisions stipulate that the legal act by which the Organization legally undertakes to employ a person as a staff member is a letter of appointment signed by the Secretary-General or an official acting on his behalf. The issuance of a letter of appointment cannot be regarded as a mere formality (*El Khatib*, Judgment No. 2010-UNAT-029).

23. However, this does not mean that an offer of employment never produces any legal effects. Unconditional acceptance by a candidate of the conditions of an offer of employment before the issuance of the letter of appointment can form a valid contract, provided the candidate has satisfied all of the conditions. The conditions of an offer are understood as those mentioned in the offer itself, those arising from the relevant rules of law for the appointment of staff members of the Organization, as recalled in article 2, paragraph 2 (a) of the UNDT Statute, and those necessarily associated with constraints in the implementation of public policies entrusted to the Organization.

...

28. On the other hand, a contract concluded following the issuance of an offer of employment whose conditions have been fulfilled and which has been accepted unconditionally, while not

30. Access to the new system of administration of justice for

Has the decision been implemented?

22. The Tribunal further recalls that a suspension of action is only possible regarding decisions that have not yet been implemented (see Abdalla Order No. 4 (GVA/2010), Neault Order No. 6 (GVA/2011) and Quesada-Rafaraso Order No. 20 (GVA/2013)).

23. To examine whether the contested decision has already been implemented, the Tribunal first has to determine the nature of the contested decision.

24. The Applicant states in his application that he is seeking suspension of the “decision to terminate the fixed-term appointment ... i.e. the withdrawal letter”. A decision to terminate an appointment presupposes that a valid contract has been concluded and exists. As stated above, and under the terms of Gabaldon, in situations like the present, a contract may be concluded, which, although it does not constitute a valid employment contract, may create obligations for the Organization and rights for the other party, if acting in good faith.

25. The question is whether the contract that was concluded between the Organization following the issuance and acceptance of the offer of employment is void ab initio,¹ that is, null from the beginning, since it was in clear contradiction with the applicable law.

26. Indeed, sec. 3.15 of ST/AI/2013/4 provides:

Restrictions on reemployment as a staff member

3.15 In accordance with section III.B, paragraph 26, of General Assembly resolution 51/226, the offices responsible for the processing of the individual contracts are required to inform the consultants and individual contractors that they are not eligible to apply for or be appointed to any position in the Professional and higher categories and for positions at the FS-6 and FS-7 levels in the Field Service category within six months of the end of their current or most recent service. For such positions, at least six months need to have elapsed between the end of an individual

memorandum” of 10 May 2017 constitutes the voiding of the contract by the Administration. The reason for the Administration to withdraw the offer was that

35.

Conclusion

38. In view of the foregoing, the application for suspension of action is rejected.

(Signed)