



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/063

Judgment No.: UNDT/2010/049

Date: 30 March 2010

Original: English

Before:

1. *The Applicant's employment history*

1.1 The Applicant joined the Organization on 15 July 1997 as a Messenger at the G-1B level pursuant to the terms of a 100 series fixed-term contract. Thereafter, effective February 2000, the Applicant was promoted to the G-2 level as a result of a reclassification exercise that upgraded his post and changed his functional title to Reproduction Clerk. The Applicant's most recent fixed-term appointment began on 30 November 2007 and was to expire on its stated expiry date of 30 January 2008.

2. *Summary of relevant facts*

2.1 By letter dated 23 January 2008, the ICTR Head, Staff Administration Unit, notified the Applicant that his fixed-term appointment had been approved for "final extension through 29 February 2008" and requested the Applicant to contact the Human Resources Section at least one week in advance of that date to complete the formalities associated with separation.

2.2 By memorandum dated 18 February 2008, the President of the ICTR Staff Association sought to appeal to the ICTR Registrar the decision not to renew the Applicant's fixed-term appointment beyond 29 February 2008. In the memorandum, the Staff Association alleged that the Applicant's supervisor showed lack of leadership and judgment by having failed to consider and accept the Applicant's justifications for his absences and by failing to put in place a remedial plan for the Applicant.

2.3 By memorandum dated 25 February 2008, the Applicant's supervisor responded to the Staff Association memorandum dated 18 February 2008. Among other things, the Applicant's supervisor noted:

We have been giving oral and written warning to the staff member. He has been making promises to improve on his attendance record for years, but he has never kept his promises. There is no evidence that a further promise would not be broken....Our decision to recommend the non-renewal of the staff member's contract was not taken on the basis of only one rating of "does not meet performance expectation". The Staff

Association is deliberately misrepresenting the facts and obviously contradicting itself, since it recalled that the staff member had been getting the “Partially meets performance expectations” rating for at least three reporting cycles.

2.4 By memorandum dated 11 March 2008, the Chief, Division of Administrative

2008 from the Chief, Division of Administrative Support Services. On 11 August 2008, the Applicant filed an appeal with the New York JAB. The Respondent's Reply was filed on 13 October 2008 and on 12 January 2009 the Applicant filed his Observations on the Respondent's Reply.

2.8 This Application was transferred to the Nairobi UNDT in accordance with ST/SGB/2009/11 - *Transitional Measures Related to the Introduction of the New System of Administration of Justice* by Order dated 1 October 2009. The Tribunal held a Hearing on 9 February 2010 and the Parties filed their closing statements on 12 February 2010.

3. *The Applicant's contentions/pleas*

3.1 The Applicant's principal contentions are:

- (i) That his due process rights were violated and his career compromised by virtue of violations in the process surrounding his evaluation, including the fact that he was separated for performance related issues without completion of his final e-PAS.
- (ii) That on the basis of the improper procedures, the refusal to renew his contract was arbitrary, flawed and premature.
- (iii) That the circumstances in which he was compelled to vacate his post prior to finalization of the e-PAS were improper.
- (iv) That the general treatment of the Applicant by ICTR management fell below the minimum required in standards of conduct.
- (v) That ICTR management further abused its authority by failing to respond to the 18 February 2008 communication from the President of the UNICTR Staff Association, thus ignoring the existing mechanism that allows for informal resolution when a staff member believes his/her

5. *Legal Issues*

5.1 The Tribunal considers the following to be the legal issues arising out of this application:

(i) Whether the administrative decision of the ICTR Head, Staff Administration Unit, dated 23 January 2008, not to renew the Applicant's fixed term contract beyond 29 February 2008 due to the Applicant's chronic absenteeism was informed by improper motive.

(ii) Whether the ICTR Head, Staff Administration Unit abused his discretionary authority in his decision not to renew the Applicant's fixed term contract.

(iii) Whether or not the Applicant had any expectancy of renewal of his contract under the terms of his appointment.

(iv) Whether the proper legal procedures for dealing with the Applicant's absenteeism and for appraising his performance were complied with.

6. *Applicable Law*

6.1 Former Staff Rule 101.3 (a) provided that:

temporarily seconded by national Governments or institutions for service with the United Nations;

(ii) The fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment;

(iii) Notwithstanding subparagraph (ii) above, upon completion of five years of continuous service on fixed-term appointments, a staff member who has fully met the criteria of staff regulation 4.2 and who is under th(met n8)-5.3(age)(aff regu5.6(e1fty- st).

Rule 105.1 (b) (ii), the Tribunal does not therefore deem the award of compensation

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(Signed)

Judge Nkemdilim Izuako

Dated this 30th day of March 2010

Entered in the Register on this 30th day of March 2010

(Signed)