



**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

ADRIAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON AN APPEAL AGAINST A  
FAILURE BY THE ORGANIZATION TO  
HONOUR REMUNERATION OFFERED  
TO THE APPLICANT IN A  
REASSIGNMENT MEMORANDUM**

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**Counsel for Applicant:**

Self Represented

**Counsel for Respondent:**

Joerg Weich, HRMS/UNON

## ***I. CASE BACKGROUND***

1.1 The Applicant, a staff member of the United Nations Human Settlements Programme (UN-Habitat), is appealing against a decision not to honour the remuneration offered to him through a reassignment memorandum dated 10 June 2008. The facts of this application are set out in UNDT Judgment No. 053 (2010) with certain clarifications which are explained below. In the said Judgment, the Tribunal referred this application to mediation with the Mediation Division of the Office of the United Nations Ombudsman pursuant to Article 15.4 of the UNDT Rules of Procedure. The parties failed to reach an agreement and the case has therefore been referred back to the Tribunal for the continuance of the proceedings as the parties have not requested otherwise pursuant to Article 10.3 of the UNDT Statute.

1.2 On 23 February 2010, the Applicant advised the Tribunal that paragraph 1.2 of UNDT Judgment No. 053 (2010) should be amended to reflect that he did not sign the Letter of Agreement (LOA) dated 9 July 2008 as it did not correspond to the figures that were stated in the reassignment memorandum dated 10 June 2008. The Respondent did not object to this proposed amendment.

1.3 On 10 March 2010, the Respondent requested the Tribunal that the record should reflect the fact that the Human Resources Management Service of the United Nations Office at Nairobi (“HRMS/UNON”) was in touch with the Applicant concerning his complaints on 26 August 2008 and 4 September 2008 and requested for his patience while the incoming Human Resource Officer dealt with a backlog and obtained information on the administrative background before reverting to the Applicant on 31 October 2008 with a comprehensive reply.

1.4 On 3 March 2010, the Tribunal requested the parties to file a joint statement of agreed facts with the Registry by 12 March 2010. On 11 March 2010, the Applicant’s request for an extension of the deadline to submit the said joint statement of facts was extended to 19 March 2010. As the Applicant had failed to

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him were posted at D1 and L6 level and that the official offer which he accepted and on the strength of which he took up his position specified a new-term, that is, an increase in salary.

2.1.6 Contrary to HRMS/UNON's argument that the reassignment was a lateral move, this notion of a lateral move was never communicated to him in any correspondence prior to the email dated 21 October 2008 and that, in addition, his 2006 memorandum of reassignment which resulted in a promotion used exactly the same language as the one dated 10 June 2008.

2.1.7 In regard to HRMS/UNON's contention that a communication to his bank on 24 July 2008 provided the relevant entitlement and the correct gross salary amount which would demonstrate that the Applicant should have been aware of the error, the Applicant submits that this information does not constitute any proof of an understanding or agreement to the unilaterally modified salary conditions and that it was at best a confirmation of the discrepancy between the conditions originally promised and the subsequent LOA he received only a few days before communicating this information to the bank. The Applicant further submits that it should also be noted that in terms of timescale, he had already relocated to Washington a month earlier in order to take up his new position on the basis of the original contract.

2.1.8 Since 2006, HRMS/UNON has made several mistakes relating to mobility, non-removal, step increment, travel claim, which through a six month period of follow-up, have now all been settled in his favour and that this is yet another reason why the discrepancy between the LOA and the reassignment memorandum was considered by him to be another administrative error which would be corrected to his benefit.

2.1.9 The Applicant argues that the clause contained in his reassignment memorandum, stating that, "the above rates and figures are for information and are subject to change as per the UN Staff Rules and Regulations and cost of living

fluctuations,” are not applicable in his case to support the contention that the Administration should be able to change the information subject to changes as per the rules and cost of living. The Applicant submits that a reliance on this clause is inappropriate in his case because the clause is generally used to reflect the system wide salary variations and adaptation of post adjustment to changing local circumstances and that this clause is unfairly being used by the Respondent as a “cover all” clause to justify an administrative error which the Respondent failed to rectify in a timely manner.

2.1.10 In response to HRMS/UNON’s statement that he made such a major decision as buying a house instead of renting without taking into account the relevant entitlement deductions which were more clearly and correctly reflected in his pay slip as of July 2008, the Applicant submits that a review of the chronology of events shows that he signed the contract for the house on 15 July 2008 before he had received the LOA on 18 July or his pay slip on 24 July 2008.

2.1.11 The Applicant submits that in keeping with the general principles of contract law, the ILO Administrative Tribunal observed that,

“There is a binding contract if there is manifest on both sides an intention to contract and if all the essential terms have been settled and if all that remains to be done is a formality which requires no further agreement.”<sup>1</sup>

The Applicant argues that in his case, the initial reassignment memorandum shows contractual intent, contains all essential terms worked out and agreed upon, was formally accepted by him and that there was no further agreement required following his acceptance.

2.1.12 The Applicant submits that Staff Rule 104.2 provides that the appointment of every staff member internationally recruited shall take effect from the date of which he enters into official travel status to assume his duties and that this rule recognizes the legal significance of the authorization to begin official travel for an

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<sup>1</sup> ILOAT Judgment No. 307, *re Labarthe*.



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“employment with the United Nations is regulated by a series of regulations and rules

(iii) Whether the Applicant was justified in incurring any financial liability in reliance on the terms of the reassignment memorandum dated 10 June 2008 and if so, whether the Applicant is entitled to any compensation.

#### **4. *Applicable Law***

4.1 Articles 2(1) and 2(1) (a) of the Statute of the UNDT provide that:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

4.2 Former Staff Regulation 1.2(c) provided that:

Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them;

4.3 Former Staff Regulation 4.1 provided that:

As stated in Article 101 of the Charter, the power of appointment of staff members rests with the Secretary-General. Upon appointment, each staff member, including a staff member on secondment from government service, shall receive a letter of appointment in accordance with the provisions of annex II to the present Regulations and signed by the Secretary-General or by an official in the name of the Secretary-General.

4.4 Former Staff Regulation 4.2 provided that:

The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

4.5

## 5 *Considerations*

5.1 Under the general principles of contract law, the fundamental requirement of a contract is that the parties should have reached agreement. It is trite law that an agreement is made when one party accepts an offer made by the other. Other requirements are that the agreement must be certain and final, that is, without qualification. The above-cited Articles 2(1) and 2(1) (a) of the Statute of the UNDT define a contract of employment to include “all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance.” What then are the terms of appointment that the Applicant is alleging have not been complied with?

5.2 In the present case, the Applicant was agreeable to the terms of the reassignment memorandum dated 10 June 2008 but did not sign the Letter of Agreement dated 9 July 2008 as it did not correspond to the remuneration that was stated in the said reassignment memorandum. There is nothing before the Tribunal

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**6. Conclusion**

6.1 It is the judgment of the Tribunal that the Applicant's case fails in its entirety and is therefore dismissed.

*(Signed)*

Judge Vinod Boolell

Dated this 29<sup>th</sup> day of April 2010

Entered in the Register on this 29<sup>th</sup> day of April 2010

*(Signed)*

Jean-Pelé Fomété, Registrar, UNDT, Nairobi