



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/003/R1
UNDT/NBI/2014/004/R1
UNDT/NBI/2014/005/R1
UNDT/NBI/2014/006/R1
Judgment No.: UNDT/2016/003
Date: 8 January 2016
Original: English

Before: Judge Coral Shaw
Registry: Nairobi
Registrar: Abena Kwakye-Berko

REID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Stephen Margetts, ALS/OHRM
Sarahi Lim Baró, ALS/OHRM

Introduction

1. Following appeals by the Applicant against four judgments of the Dispute Tribunal (“UNDT”)¹ the United Nations Appeals Tribunal (“Appeals Tribunal”) remanded the cases back to the UNDT for consideration of two issues.²

Procedural History

2. The Applicant, a former staff member of the United Nations Support Mission in Libya (UNSMIL) had been employed on a series of temporary contracts for over one and a half years.

3. In January 2014, he filed four separate applications challenging the Administration’s decisions that he was not entitled to accrual of annual leave at the rate of two and a half days per month and the same relocation and assignment grants as staff members on fixed-term appointments.

4. The Respondent’s Replies asserted that the Applications were not receivable.

5. The Tribunal dealt with the cases on the papers having received the Applicant’s submissions on the issue of receivability and a copy of a relevant settlement agreement entered into between the Administration and the Applicant.

6. On 14 July 2014, the UNDT found that none of the Applications were receivable in Judgment Nos. UNDT/2014/095, UNDT/2014/096, UNDT/2014/097 and UNDT/2014/098.

7. On 12 September 2014, the Applicant filed appeals against the four UNDT Judgments.

8. In a single judgment, *Reid* 2015-UNAT-563, the Appeals Tribunal dealt

¹ *Reid* UNDT/2014/095, UNDT/2014/096, UNDT/2014/097 and UNDT/2014/098.

² *Reid* 2015-UNAT-563.

The discrete complaint as to the alleged failure to convert [the Applicant's] temporary appointment to a fixed-term appointment is remanded to the UNDT for it to make the necessary factual findings, that will allow it then to determine if it has competence to review the complaint and if so, whether there is merit in the complaint.

Issues

12. The two issues remanded for consideration by UNDT are:³

(a) Whether the Applicant's temporary appointment was unlawful because ST/AI/2010/4/Rev.1 was not properly applied; and

(b) 0 1 165.36 497.76 Tm [()] TJ ET Q q BT /F1 11.28 Tf 052Tm 0 rg 0.9981 09Tm [()]

post assignment and health coverage. He received a response to his questions on 5 June 2013 advising that temporary appointments are administered in accordance with ST/AI/2010/4/Rev. 1 (Administration of temporary appointments).

22. On the same date, the Applicant emailed the CHRO asking for advice about the appropriate person to pursue his claims with.

23. On 15 July 2013, the Applicant filed a request for management evaluation of the decisions to cancel the selection process for the post of Principal Security Sector Officer and the failure to apply to him the same conditions of service as those offered to staff members on fixed-term appointments.

24. On 20 December 2013, the Applicant signed a settlement agreement with respect to the decision to cancel the job opening for the post of Principal Security Sector Reform Officer (D-1) and not to select him for the post.

Request for management evaluation

25. On 15 July 2013, the Applicant filed a request for management evaluation using the standard form provided by the Management Evaluation Unit (MEU). Under the heading “Administrative decisions to be evaluated” he stated:

There are a number of interrelated issues, principally:

- 1) Decision to cancel the competition for the post I currently occupy.
- 2) Decision not to apply the same conditions to me on a series of temporary appointments as to someone on a fixed term appointment [aside from the length of the appointment].

26. Under the heading “When was the decision taken/when did you become aware of it” he stated:

Regarding the decision to cancel recruitment for my position, it was sent at 8.20pm on 15 May 2013 and I became aware of it the next day [16 May 2013].

Regarding the decision not to grant him the same treatment as colleagues doing the same work as me, this was communicated to him 5 June 2013.

27. Under the heading “What remedy do you seek through management evaluation?” He stated:

Except for / (u)-32.88IF1 11.28 Tf /F1 14gh 0 1 1 694.xc”val9.11.28 rg 0.9981 0 3()- 0 124 0 3()”

deadlines].... A settlement has been agreed with the MEU on the part of the omnibus complaint regarding irregularities in the selection process but I have yet to receive a response on the other parts regarding “equal pay for equal work”. I have been told informally by my counsel for these negotiations that the MEU had informally told him that these entitlements relating to “equal pay for equal the Applicant work” need to be submitted separately.

32. In the “Summary of facts” included in the Application, the Applicant stated at paragraph 2:

09/04/12: I was asked if I wanted to extend one year on a FTA. I accepted the conditions and said yes. After waiting a few weeks for a written contract the [then] SRSR said he wanted to go through a formal recruitment process as he had with other positions- though I would likely be selected through that process. Since I was in a delicate situation I reluctantly accepted this process.

33. Under the heading “Grounds for contesting the administrative decision”, the Applicant listed: un-kept promise of conversion to fixed-term appointment, equal pay for equal work; Noblemaire principle, violations of policies governing use of temporary contracts, staff welfare and “nature of Temporary contracts”.

34. The Tribunal made two case management orders in each of the Applicant’s cases.

35. In Order Nos. 042 (NBI/2014), 043 (NBI/2014), 044 (NBI/2014) and 045 (NBI/2014), the parties were informed that the Tribunal had decided, in accordance with art. 16.1 of the Tribunal’s Rules of Procedure, that an oral hearing was not required in determining the matter and that it would rely on the parties’ pleadings and written submissions. The Applicant was also directed to file his submissions in response to the issue of receivability by Wednesday, 19 March 2014.

paragraph of Section V of the “MEU Complaint and in para 2 of Section VII”. He referred to a string of emails annexed to his request for management evaluation. He stated “as the evidence makes clear, this agreement was broken and assurances were given for a competition for the D1 DDR, subsequently broken; and then for the D1 SSR post, also broken amidst many irregularities”.

37. He stated that the settlement agreement he had entered into with the Administration had to do with the irregularities in the selection process for the Principal Security Sector Reform Officer (D-1) post and nothing else.

38. On 27 March 2014, the Tribunal ordered the Respondent to file a copy of the settlement agreement entered into with the Applicant concerning his claim that he should have been granted a fixed-term appointment following the conduct of a selection exercise for a D-1 position. The Respondent filed a copy of the said agreement on 28 March 2014.

The Settlement Agreement

39. Following the intervention of MEU on 20 December 2013, the Applicant signed a release which acknowledged that the terms of the settlement were highly confidential and expressly agreed to maintain the confidentiality of the terms, amount and fact of the settlement.

40. Notwithstanding this confidentiality clause, both the Respondent and the Applicant referred to the settlement agreement in their submissions to the Dispute and Appeals Tribunals, effectively waiving confidentiality. The settlement agreement

Decision

52. The Applications are dismissed in their entirety

(Signed)

Judge Coral Shaw

Dated this 3rd day of January 2016

Entered in the Register on this 3rd day of January 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi