
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/178

Judgment No.: UNDT/2017/033

Date: 9 May 2017

Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MALOOF

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
George Irving

Counsel for the Respondent:
Kong Leong Toh, UNOPS

Introduction

1. The Applicant is a former Head of Office in Sudan, at the P-5 level, with the United Nations Office for Project Services (UNOPS). On 4 December 2015, he filed an a

harassment and other misconduct against him from various colleagues in the Sudan office and that, having reviewed these allegations, he considered that the Applicant's continued presence on UNOPS's premises posed a risk to the Organization's best interest. Consequently, the Applicant was placed on administrative leave with full pay with immediate effect.

6. By letter dated 13 March 2015, the Deputy Executive Director, UNOPS, informed the Applicant that since the investigation into the allegations against him was still ongoing, he had decided to extend the Applicant's administrative leave until 4 June 2015.

7. During a telephone conference on 16 March 2015, the Applicant was informed that the job description for the long-term position of UNOPS Head of Office in Sudan had recently been finalized and that, consequently, his temporary assignment as the interim Head of Office in Sudan would end on 30 June 2015.

8. By letter dated 20 March 2015, the Deputy Director, People and Change Practice Group, UNOPS, informed the Applicant of the dec

Counsel and in light of [the Applicant's] separation from UNOPS,
IAIG decided not to refer the matter for further consideration.¹

11. By email dated 24 June 2015 to the UNOPS Human Resources Officer

statements by 13 January 2017. They were also ordered to submit a paginated bundle of documents and other trial exhibits by 20 January 2017.

21. On 13 January 2017, the parties separately submitted their list of potential witness and their sworn written statements. The Respondent submitted the written testimonies of Mr. Bruce McKerrow, Officer-in-Charge of the UNOPS Regional Office for Africa fro

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- (a) The conduct in question and/or the continued presence of the personnel on UN premises poses or may pose a security risk, or a threat to other UN personnel or to the Organization's best interest;
- (b) The personnel is unable to continue performing his or her functions effectively, in view of the ongoing investigation or proceedings, and the nature of his or her functions; and/or
- (c) There is a risk of evidence being tampered with or concealed, or of interference with the proceedings.

39. The evidence shows that the Applicant was placed on administrative leave on 4 December 2014 after UNOPS had received allegations of intimidation, harassment and other misconduct against him from various colleagues in the Sudan office. The Applicant did not contest the decision to place him on administrative leave but only the decision dated 25 June 2015 whereby UNOPS informed him that his administrative leave had not been extended and that no disciplinary action was being taken against him regarding the allegations.

40. In accordance with staff rule 10.4 and UNOPS Organizational Directive No. 36 mentioned above, the placement of a staff member on administrative leave is a discretionary measure of a preventive nature. As a consequence, the decision to discontinue the administrative leave of a staff member is also discretionary. Indeed, the decision not to extend the Applicant's administrative leave does not adversely affect his conditions of employment and as such, he has no standing to contest it.

41. The Applicant submits that his administrative leave was canceled prior to the completion of the ongoing investigation. Staff rule 10.4 provides that administrative leave "may continue throughout an investigation and until the completion of the disciplinary process." Indeed, the duration of the administrative leave is discretionary and depends on the circumstances of each particular case. The Applicant was placed on administrative leave on 4 December 2014². His administrative leave was further extended until 4 June 2015. The UNOPS IAIG completion of the investigation form shows that the investigation was, in fact, completed on 13 May 2015. On 25 June

² By letter dated 4 December 2014, whereby the Applicant was placed on administrative leave, he was also informed about the allegations of intimidation, harassment and other misconduct made against him suPagination36(i)tbA7member is-1Maat 5n

2015, the Applicant was informed of the non-extension of his administrative leave and of the decision not to take any disciplinary action against him regarding the allegations. The Tribunal does not find any procedural error on the part of the Administration. Certainly, in accordance with staff rule 10.4, the Applicant's administrative leave could not have gone beyond the completion of the disciplinary process which, in the present case, concluded on 25 June 2015. The evidence³ also shows that the Applicant did not return to work on 25 June 2015 but that he was allowed to focus on his search for alternative employment for the remainder of his contract.

42. Based on the foregoing, the Tribunal finds that the Applicant's challenge in relation to the decision to cancel his administrative leave is without merit.

2) *Tjg"fggekukqp"vq"õtghwu]g_"vq"cdkfg"d{"vjg"vgtou"qh"}jku_"vgorqtct{"tgcukipogpvö"*
in Sudan

43. The Applicant submits that at the time that he accepted the position in the Sudan, it was on the understanding that this was a temporary assignment and that in due course he would have the option of returning to the Congo. The Respondent concedes that the Applicant would have returned to his former duty station in the Congo if the UNOPS Sudan office was closed down within three to four months of his four s o149[(3.2(in Suda4T/F1 8.04 Tf1 0 0 1 482850(ng19(to)0 13C).38619S)-199c 1 99.39()]463JE

short period, decisions would be made as to how to proceed with the Sudan office. The Applicant and I agreed that: a. If the decision was taken to close the office, then the Applicant would return to DR Congo. The Applicant and I never had any discussion about the Applicant returning to DR Congo under other circumstances. b. But if the opportunities could be realized in Sudan and the Sudan office was to continue, then the Applicant would be the logical candidate to head the Sudan office permanently.” The Respondent clarifies that had the Applicant returned to the Congo, he would have been separated from service because his former post in the Congo was

3) The decision not to renew the Applicant's appointment

46. At the outset, the Tribunal notes that while the Applicant refers in his pleadings to his separation from service, the contested decision is in fact the non-renewal of his appointment. His separation on 30 June 2015 is, basically, the consequence of the non-renewal decision. Accordingly, the issue before the Tribunal is the non-renewal of the Applicant's appointment.

47. The Respondent submits that the application against the decision dated 20 March 2015 not to renew the Applicant's appointment is not receivable because the Applicant failed to request management evaluation within the mandatory 60-day deadline.

48. Staff rule 11.2 provides, in relevant part, that:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for management evaluation of the administrative decision.

In relation to time-limits:

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50. The United Nations Appeals Tribunal (Appeals Tribunal) has held in several judgments, notably in *Costa* 2010-

Decision

54. In light of the Tribunal's conclusions, the application is dismissed.

(Signed)

Judge Alexander W. Hunter Jr.

Dated this 9th day of