
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/007

Judgment No.: UNDT/2020/088

Date: 16 June 2020

Original:

Consideration

Scope of the case

11. In accordance with Judgment No. UNDT/2020/072, the sole substantive issues at stake in the present Judgment are:

- a. Was it appropriate not to renew the Applicant's fixed-term appointment in the given circumstances?
- b. If not, what remedies are the Applicant

14. The Respondent submits that, with reference to *Nouinou* 2019-UNAT-902, the

it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case”. A promise to renew a fixed-term appointment must therefore “at least be in writing” and contain “the essential elements of a proper and concrete offer of renewal, such as the duration of the extension”. See *Kellie* 2018-UNAT-875, paras. 41, 44 and 45.

27. The Tribunal notes that the Applicant has adduced insufficient evidence in support of his claim according to *Kellie* which, therefore, necessarily fails.

Was the notification of the non-renewal decision timely?

28. The Applicant submits that the Respondent “has not proved that the Applicant was appropriately informed about the non-renewal of his fixed-term appointment at the 25 October 2018 meeting”, because “the Administration failed to meet [its] obligations from the contract [to provide] written notification from the UNOPS Director with a minimum of 30 days. This was also in violation with an “agreement” between the Applicant and Ms. YS by which the Applicant was “to receive a notification letter with two months in advance [to allow him] to secure a position in or outside the United Nations system”.

29. The Respondent, again, fails to make any submissions in response.

30. The Tribunal notes that, as also established in Judgment No. UNDT/2020/072, the Applicant was not informed about the non-renewal of his fixed-term appointment at the 25 October 2018 meeting. This notification was only provided to him on 15 November 2018.

42. The Tribunal notes that according to the consistent jurisprudence of the Appeals Tribunal, it is for a party who alleges that ulterior motives tainted a decision to substantiate this claim by way of evidence (see, for instance, *Parker* 2010-UNAT-012 and *Ross* 2019-UNAT-944). When doing so, “[t]he mental state of the decision-maker usually will be placed in issue and will have to be proved on the basis of circumstantial evidence and inference drawn from that evidence” (see *He* 2016-UNAT-686, para. 39).

43. The Tribunal notes that the Applicant has, however, presented no evidence in support of his claim of bias, not even any circumstantial evidence. His claim therefore necessarily fails.

Did UNOPS improperly fail to assign the Applicant to another post?

44. The Applicant submits that the Administration failed to “assign the Applicant to a suitable position, as was done for other UNOPS [colleagues]”. This “violated the Applicant’s basic right to a legal and fair recruitment or promotion procedure or equal access to employment” which “is arguably [to] be regarded as rights recognized under human rights basic rights”.

45. The Applicant contends that the Administration “failed to make good faith efforts to find the Applicant a suitable alternative post in its obligations vis-à-vis staff members on fixed-term appointments who face abolition of positions” and “[i]nstead of taking any active steps to assist the Applicant in locating a suitable post, the Administration placed the entire burden of finding another suitable post on him”.

46. The Applicant submits that he “applied for all available and suitable positions and tried to find communication channels with relevant stakeholders”. If “no suitable post at the Applicant’s grade was available, then at least the Administration could have offered his duties at a lower grade and/or widen the search parameters within the wide organization”. As a result

Conclusion

51. The application is rejected.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 16