

8. On 3 February 2014, the Tribunal issued Order No. 022 (NBI/2014) granting the extension of time sought by the Parties.
9. On 6 February 2014, Counsel for the Respondent filed a Request to File a Separate and Independent Submission.
10. Counsel stated that as the Applicant's draft (as provided to the Respondent) "did not contain agreed statements of facts of legal issues," the Parties "agreed that [they should inform the Tribunal] should they not agree on the structure and content of the joint submission".
11. Counsel moved the Tribunal to allow the Parties to file separate and independent submissions given the "differences encountered in agreeing on the content of the Joint submission".
12. On 17 February 2014, the Tribunal issued Order No. 029 (NBI/2014) directing the Parties to attend a case management hearing to address the difficulties they were facing in complying with the requirements of Order No. 007 (NBI/2014).
13. At the hearing, the Parties informed the Tribunal that they were in a position to comply with the requirements of Order No. 007 (NBI/2014).
14. In response to the Presiding Judge's query, the Parties also submitted that they were willing to engage in further discussions to have this dispute resolved informally.
15. The Tribunal then issued Order No. 034 (NBI/2014) suspending the proceedings to allow the Parties the time to resolve the dispute *inter partes*. The Parties were directed to advise the Tribunal as to the status of their consultations by 8 April 2014.
16. On 7 April 2014, the Parties filed a joint submission informing the Tribunal that their attempts to resolve the dispute informally had failed. In the same submission, the Parties moved for the matter to be set down for hearing and for them to be given up to 2 May 2014 to comply with the requirements of Order No. 007 (NBI/2014).

17. On 7 April 2014, the Tribunal issued Order No. 070 (NBI/2014) re-listing this matter for hearing, and directed the Parties to file their respective list of witnesses with a summary of anticipated testimony.

18. On 5 May 2014, the Parties filed their joint submissions in compliance with paragraph 6 of Order No. 007 (NBI/2014).

19. On 13 May 2014, the Respondent filed a Motion to introduce additional evidence along with annexes (numbered as Annexes 10-15) containing the evidence he was seeking leave to adduce.

20. Counsel for the Applicant strongly objected to the introduction of Annex 15 which contained communication between counsel. Counsel for the Respondent, for her part, responded saying that she was “in the process of contacting the Tribunal in relation to this fact and with their advise (*sic*) will act accordingly.”

21. On 15 May 2014 the Tribunal issued Order No. 104 (NBI/2014) granting the Respondent’s motion for the submission of additional evidence contained in Annexes 10-14 and ordered that Annex 15 be expunged from the record as being in violation of art.15.7 of the Rules of Procedure of the Tribunal.

22. The Tribunal held a hearing in the case on 20 and 21 May 2014.

Facts

23. The Applicant joined the United Nations Environmental Programme (UNEP) on 5 July 1999 at the P-5 level as Senior Programme Officer. She held a fixed-term appointment. The Applicant’s performance has always been satisfactory.

24. On 13 March 2012, the Regional Director informed the Applicant that her fixed-term appointment expiring on 4 July 2012 would not be renewed because of budgetary constraints.

25. On 3 April 2012, the Applicant received a letter confirming that her appointment would not be renewed.

26. On 5 April 2012, the Applicant's Second Reporting Officer, the Divisional Director, revealed that the non-renewal of her appointment was due to a change in priorities.

27. On 12 April 2012, the Applicant complained to the Executive Director, having received information leading her to believe that her post was being abolished for extraneous reasons.

28. On 3 May 2012, the Applicant attended a first mediation meeting with the Ombudsman and UNEP's Management. The mediation sessions resulted in a Settlement Agreement signed on 26 June 2012.

29. The settlement and release agreement provided for the extension of the Applicant's appointment through to 31 December 2012, during which time the Parties "agree[d] to make good faith efforts...to find her a suitable post, either with UNEP or outside UNEP, for [the Applicant] to transition either on or before her contract expires on 31 December 2012." The settlement agreement further provided that UNEP:

- (a). [W]ill make the best efforts to inform [the Applicant] of vacancies at her level within UNEP as or before they are advertised, and to meet with [the Applicant] on a monthly basis to discuss the progress of her job search;
- (b). [W]ill make the best efforts to consider [the Applicant] for a lateral move whenever a suitable position becomes vacant;
- (c). [O]n an exceptional basis, [thc0.0155i];

38. The witnesses testified that following the abolishment of the Applicant's post, and the signature of the Agreement between her and UNEP, good faith efforts were made to help her secure a position within or outside UNEP. In order to facilitate a solution to the dispute, the Applicant's contract was extended until March 2013 following its expiry in December 2012. Mr. Candotti had frequent meetings with Mr. Bouvier to monitor progress.

39. The option of a lateral transfer for the Applicant was part of the Agreement. Mr. Candotti had frequent meetings with Mr. Steiner, the Executive Director of UNEP, to explore that possibility. Hiring managers

thank you note. According to Mr. Bouvier, UNEP deployed significant effort to help the Applicant.

42. With regard to the position of Senior Programme Manager in the Division for Early Warning (DEWA) for which the Applicant applied the witness stated that the position required a candidate who would supervise the section on climatic assessment of the ecosystem, water system, climate, land biodiversity. As the Applicant had no scientific background, though she possessed partnership and organizational skills, she was not shortlisted. The Applicant was not shortlisted for the position of Head of Climate and Clean Air in September 2012. According to Mr. Goumandakoye that particular position required a scientific background which the Applicant did not possess. Her expertise in environment and coordination was not enough. In the same month he informed the Applicant of positions at the P5 and D1 grade in UNEP. In October 2012, he again informed her of job openings. In November 2012, the Applicant did not get the position of Programme Officer Early Warning as she did not attend the written test and interview. The responsibility of Mr. Bouvier was to support the Applicant and she had the responsibility to apply for any position. Mr. Bouvier added that as part of the agreement it was not his responsibility to write to the Applicant formally to inform her of job openings.

Deliberations

43. The issues in this case are: (a) what exact interpretation should be ascribed to the Agreement in its paragraph 7; and (b) whether the Respondent complied with the terms of the Agreement as stipulated in paragraph 7.

Paragraph 7 of the Agreement

44. Paragraph 7 of the Agreement reads:

The parties agree to make good faith efforts, during [the Applicant's] contract extension, to help find a suitable post, either within UNEP or outside of UNEP, for [the Applicant] to transition to either on or before her contract expires on 31

December 2012. In this regard [the Applicant] will actively apply for suitable positions both within UNEP and outside of UNEP. UNEP will make best efforts to inform [the Applicant] of vacancies at her level within UNEP as or before they are advertised, and to meet with [the Applicant] on a monthly basis to discuss the progress of her job search. UNEP will make best efforts to consider [the Applicant] for a lateral move whenever a suitable position becomes vacant. Further, on an exceptional basis, UNEP Office will provide, within 45 days from the date of this Agreement goes into effect, [the Applicant] with a letter of reference, briefly detailing her functions, ca

49. Nothing in the Agreement or any evidence before the Tribunal suggests that the Respondent was in a position to simply “give” the Applicant another position within UNEP. Positions in the Organizations are not filled or presumed to be filled according to the will of managers but are subject to the Staff Rules and Regulations. The Applicant was not justified in harbouring a legitimate expectation that the Respondent would bypass existing rules and regulations to offer her a post.

50. Whether the Applicant was well advised to sign the Agreement or not is a matter that is not within the province of the Tribunal to determine. However the Tribunal cannot help noting that Clause 7 of the Agreement might have created the, albeit wrong, impression, that the Applicant would be offered a job by the Respondent.

Conclusion

51. The Application is therefore dismissed in its entirety.

(signed)

Judge Vinod Boolell

Dated this 18th day of December 2014

Entered in the Register on this 18th day of December 2014

(signed)

Abena Kwakye-Berko, Registrar, Nairobi