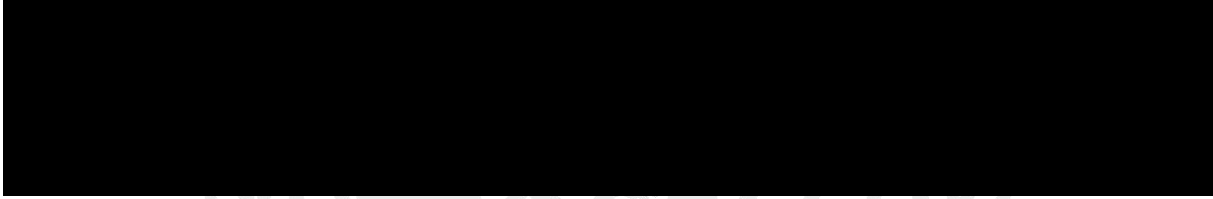


Case No. 2010-110



JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. The Appellant, Nazrul Islam (Islam), joined the United Nations Assistance Mission for Iraq (UNAMI) in September 2004 as a P-3 level IT Officer with Communications and Information Technology Services (CITS). On 29 October 2007, the Chief Civilian Personnel Officer (CCPO) informed Islam in writing that as a result of the reorganization of CITS, UNAMI “no longer require[d] the post of Information Technology Officer” that Islam was encumbering, and his contract would not be further extended beyond 30 November 2007.
2. Islam’s application against the non-extension decision was dismissed by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal).
3. Islam submits that there was evidence that the true reason for the non-renewal of his contract was perceived performance deficiencies by his supervisors, whilst a different and therefore false reason was communicated to him.
4. Islam also submits that the UNDT erred in fact or exceeded its jurisdiction in finding that both the available evidence and the parties’ submissions support the finding that the true and sole reason for the impugned decision was the stated reorganization of CITS.
5. The Secretary-General submits that a fixed-term appointment carries no expectancy of renewal. He submits further that Islam’s arguments merely suggest an alternative basis for the non-renewal of his appointment, and that Islam thus fails to demonstrate that the UNDT erred on a question of fact resulting in a manifestly unreasonable decision.
6. The reason given for the non-renewal of Islam’s contract was the stated reorganization of CITS. Islam conceded that the restructuring was properly done. We therefore agree with the UNDT that the opinion expressed by the Chief of CITS that Islam’s performance deficiencies and shortcomings could justify the non-renewal of his contract was ent7

8. We find no merit in this appeal. The appeal is dismissed. The UNDT Judgment is affirmed.

Facts and Procedure

9. Islam joined UNAMI in September 2004 as a P-3 level IT Officer on a 100-series fixed-term appointment. On 28 September 2004, he was appointed to the post of Chief IT Officer.

10. On 9 March 2005, Islam received a “Request for extension of Appointment/Assignment/Secondment of International Staff Members”, signed by the CCPO and Islam’s supervisor, Chief of CITS. The document indicated that Islam was rated as partly meeting performance expectations. It informed Islam that his appointment would be extended for one month only until 30 April 2005, due to reorganization, which resulted in his post being realigned to cover the functions of budget, planning and logistics support. The new post was called Budget, Planning and Logistics Officer (BPLO).

11. On 3 April 2005, Islam filed a rebuttal of the performance rating given to him by his supervisor. Jo.T.2(0.0-1.Fact)5.9(s 5.2(c)7708 2.97m)Lunt

15. On 11 May 2010, the UNDT issued Judgment No. UNDT/2010/091, in which it dismissed Islam's application.

Submissions

Islam's Appeal

16. Islam submits that the UNDT erred in fact or exceeded its jurisdiction in finding that both the available evidence and the parties' submissions support the finding that the true and sole reason for the impugned decision was the stated reorganization of CITS. He also submits that there was evidence that the true reason for the non-renewal of his contract was perceived performance deficiencies by his supervisors, whilst a different and therefore false reason was communicated to him.

Secretary-General's Answer

17. The Secretary-General submits that Islam's arguments merely suggest an alternative basis for the non-renewal of his appointment, and he thus fails to demonstrate that the UNDT erred on a question of fact resulting in a manifestly unreasonable decision.

18. The Secretary-General submits further that a fixed-term appointment carries no expectancy of renewal and the Organization has no obligation to provide reasons for the non-renewal of a fixed-term appointment.

Considerations

On preliminary matters

19. On 28 June 2010, Islam appealed against the Judgment. An answer was due on 16 August 2010. But on 31 August 2010, the Secretary-General wrote to the Registry, apologizing for his oversight in failing to ti

20. Islam demands that the Appeals Tribunal “clarify the legal basis for having considered the Request” for extension of time “*ex parte* excluding him from the proceedings”.

21. The Statute and Rules of Procedure of the Appeals Tribunal do not specify whether requests for extension of time should be heard *ex parte* or on notice. For a fair and expeditious disposal of appeals this Tribunal adopted the practice for such applications to be dealt with *ex-parte* except when the President of the Tribunal or Duty Judge determined that the application ought to be on notice.

22. We therefore find that the President of this Tribunal acted rightly in exercising his discretion to consider the Secretary-General’s request for extension of time limit *ex parte*.

23. Islam also wants to know why the information on the cases to be considered for the fall session 2010 was communicated to the Secretary- General.

24. We find this complaint petty as it is normal for parties/counsel to enquire about the state of their cases from the registry of a court or tribunal without the need to inform or notify the party or counsel on the other side.

On merits

25. The Appeals Tribunal in paragraph 29 of Judgment No. 2010-UNAT-051 (*Ilic*)

27. Islam contends that those were the true reasons for his separation, but UNAMI wrongfully failed to disclose them in its official communications. The resulting decision not to extend Islam's contract was vitiated by such failure and was thus unlawful.

28. Judge Adams wrote that "if a decision-maker has several valid reasons not to renew a staff member's contract, each being sufficient to justify the decision and complying with all necessary requirements ..., the decision-maker can choose to rely on any of those reasons in making the decision".

29.

Judgment

34. The appeal is dismissed. The Judgment of the UNDT is affirmed.

Original and Authoritative Version: English

Dated this 11th day of March 2011 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Painter

Entered in the Register on this 19th