



UNITED NATIONS APPEALS TRIBUNAL

AT-451

Counsel for Mr. Sannoh: Duke Danquah

Counsel for Secretary-General: Zarqaa Chohan/John Stompor

JUDGE SOPHIA ADINYIRA , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2013/095, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 2 July 2013 in the case of Sannoh v. Secretary-General of the United Nations. The Secretary-General appealed on 3 September 2013, and Mr. Benedict Sannoh answered on 4 November 2013.

Facts and Procedure

2. The following findings of fact, which are taken from Judgment No. UNDT/2013/095, are not contested:¹

... The Applicant joined the United Nations on 17 September 2003 under an appointment of limited duration. He served in different peacekeeping operations before he took up a fixed-term appointment on 1 February 2008 as Senior Human Rights Officer at the P5 level. He was thereafter reassigned for one year on 16 September 2009 as Chief Human Rights Officer at the D-1 level in the Human Rights Section in [the United Nations Mission in Sudan (UMMIS)].

... A Concept of Operations for the Human Rights presence in South Sudan (CONOPS) was formulated in February by a team [led] by the Applicant. According to

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... On 8 September 2011, the vacancy announcement (Number 11-HRI-DFS-425421-RJUBA) for Director of Human Rights for UNMISS at the D-2 level went out with a deadline for applications on 8 October 2011. The Applicant saw the advertisement on 15 September 2011 while he was on sick leave and applied for the post by the deadline. The selection process was led by OHCHR under the Memorandum of Understanding between OHCHR and the Administration.

... His contract at the D-1 level was scheduled to expire on 15 September 2011 but on 3 October 2011 his contract was renewed until 15 January 2012, "pending the recruitment process of the new D-2 Dire

indemnity. The Secretary-General notes that in the present case Mr. Sannoh was provisionally reassigned to UNMISS and his fixed-term appointment was effectively extended up to 30 June 2012 and his appointment was not shortened or terminated in any manner prior to the date of its expiration. The Secretary-General thus submits that Mr. Sannoh was not eligible for payment of termination indemnity.

Mr. Sannoh's Answer

5. Mr. Sannoh submits that the Dispute Tribunal correctly interpreted UNMIS Information Circular No. 334/2011 in ordering the extension of his appointment and the payment of a termination indemnity. The payment of termination indemnity and the extension of contract are not mutually exclusive. The UNDT made such an order within its discretion to ensure that justice was done.

6. In respect of the termination indemnity, Mr. Sannoh submits that he was entitled to it as a matter of law. When his contract expired on 16 September 2011, he was entitled to a renewal for one year up to 15 September 2012, as per UNMIS Information Circular No. 334/2011. It should be noted that the Administration "prematurely curtailed" his contract on 30 June 2012, some two months prior to the date it was due to expire had it been properly extended. His situation thus fell squarely within the scope of UNMIS Information Circular No. 334/2011, entitling him to a termination indemnity. Mr. Sannoh submits that the UNDT's order to extend his contract and pay him a termination indemnity is consistent with the UNDT's earlier decision in *Tolstopiatov*, and should therefore be upheld.²

Considerations

7. The issue raised in this appeal is whether the UNDT erred in ordering both an extension of Mr. Sannoh's appointment and payment of a termination indemnity.

Regulatory framework

Staff with fixed-term appointments that are due to expire shortly will have their appointments extended for one year. Should a staff member's function no longer be required by the mission prior to the expiration of his/her fixed-term appointment, a termination indemnity may be payable in accordance with Staff Regulation 9.3 and Annex III of the Staff Rules.

Staff Regulation 9.3(c) provides:

If the Secretary-General terminates an appointment, the staff member shall be given such notice and such indemnity payment as may be applicable under the Staff Regulations and Staff Rules. Payments of termination indemnity shall be made by the Secretary-General in accordance with the rates and conditions specified in annex III to the present Regulations;

9. The Secretary-General submits that the regulatory framework allows for either an extension of appointment or payment of a termination indemnity, but not both.

10. Mr. Sannoh's D-1 post was transitioned to UNMISS after post-matching and comparative review exercises. Therefore, the UNDT correctly held that:

[H]e was reassigned, albeit provisionally, to the new mission in accordance with the provisions of Information Circular 218/2011 which stated:

In cases where the number of posts in the new mission is equal to or higher than the number of posts, under the same occupational group and level, staff members currently encumbering those posts in UNMIS will automatically be reassigned to the new mission.³

11. On whether Mr. Sannoh's contract should have been extended for one year during the transition, the UNDT held:

Information Circular No. 334/2011 regarding the "Update to UNMIS Staff regarding the UNMIS Draw-down Process" was issued to UNMIS staff on 30 June 2011. The circular stated:

This message addresses the extension of appointments of international and national staff transiting to the new missions, follow on assignments and the applicable procedures for the reduction of staff following the expiration of the UNMIS mandate on 9 July 2011.⁴

³ Judgment No. UNDT/2013/095, para. 93.

⁴ Ibid., para. 94.

16. We note that UNMIS Information Circular No. 334/2011 provides:

Where the staffing table for the new missions reflects new posts or where the functions of a post change by more than 30%, the post will be filled through the regular competitive selection process and not through the comparative review process.

...

For those staff members who are not selected or provisionally reassigned to a position, their appointment may be terminated for reasons of reduction in staff or abolishment of post in accordance with Staff Regulation 9.3 and would be eligible for payment of the applicable termination indemnity under Annex III of the Staff Rules.

17. In view of the above, the UNDT held that: "On the facts in this case the Applicant was provisionally reassigned to a D-1 Post in UNMISS which eventually was abolished. He was therefore entitled to a termination indemnity."

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