

Translated from French

United Nations Dispute Tribunal

Case No.: UNDT/GVA/2009/10

Judgment No.: UNDT/2009/093

Date: 22 December 2009

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Victor Rodriguez

SYED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS
JUDGMENT

Counsel for Applicant:

Maurizio Giuliano

Counsel for Respondent

Ivan Koulov, HRMS/UNOG

Application

1. In an appeal filed on 26 July 2008 with the Geneva Joint Appeals Board and transferred to the United Nations Dispute Tribunal on 1 July 2009, the Applicant:

(a) Appealed the decision dated 29 May 2008 whereby the Human Resources Management Service (HRMS) of the United Nations Office at Geneva (UNOG) did

8. The Applicant separated from service with the United Nations on 30 June 2008.

9. On 26 July 2008, the Applicant filed an appeal before the Geneva Joint Appeals Board.

10. By e-mail dated 31 July 2008, the Secretary of the Board informed the Applicant that his appeal was premature.

11. By letter dated 27 August 2008, the Applicant's request for review was rejected by the Secretary-General.

12. By e-mail dated 13 October 2008, the Applicant again filed an appeal before the Geneva Joint Appeals Board.

13. Under the transitional measures set out in General Assembly resolution 63/253, the appeal was transferred to the United Nations Dispute Tribunal on 1 July 2009.

14. The Tribunal held a hearing on 18 December 2009. The Applicant took part in the hearing by telephone, while his counsel attended in person. Counsel for the Respondent was represented by a member of his service who appeared in person.

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Respondent's observations

19. The time limit for filing an appeal against the Secretary-General's decision to reject the Applicant's request for review expired on 27 September 2008. The application is not receivable, therefore, because the appeal was not filed until 13 October 2008.

20. The Applicant initially filed an appeal before the Joint Appeals Board on 26 July 2008. On 31 July 2008, the secretary of the Board informed him that his appeal was premature because the time allowed for the Secretary-General to reply to his request for a review had not yet ended. The Applicant received the Secretary-General's reply on 27 August 2008 but did not file his appeal until 13 October 2008, which was too late. Staff rule 111.2 (f) then in effect concerning exceptional circumstances does not apply, since it was possible for the Applicant to send his appeal by e-mail from Islamabad.

21. The application is also not receivable in that it contests the fact (i) that the Applicant did not obtain another post after five years of service, under staff rules 104.12 (b) (iii) and 104.13 then in effect; and (ii) that he did not receive a special post allowance during his assignment to the Sudan, because the Applicant did not write to the Secretary-General to request a review of these decisions.

22. Under the Staff Rules, the staff member has no right to the renewal of a fixed-term appointment. A memorandum of 8 August 2007 specified quite clearly to the Applicant that his appointment to the Geneva office of OCHA was temporary, with no possibility of renewal.

23. The decision not to renew the Applicant's contract was based on the lack of funding for the specific project on which he was working.

24. If the Applicant is contending that the non-renewal of his contract is connected to the fact that he informed his superiors of actions that could constitute misconduct, there is nothing to substantiate these allegations.

Judgment

25. Counsel for the Applicant raised an issue at the start of the hearing on which the Tribunal must make a preliminary judgment before it proceeds to examine the application.

26. He contends that the Applicant's rights were not respected in that, while counsel was appointed by the Office of Staff Legal Assistance to represent the Applicant at his request, by an e-mail of 19 November 2009, the assigned counsel confirmed to the Applicant that he de19dt -7.1(wae41 093 Tb5.6(f)1.7(0 -1.1976 de)-4)-6.2(e)-5.7(f74528 0 T

Applicant made the allegations of misconduct in 2007, he was nevertheless granted renewals of his contract until June 2008. Furthermore, the Respondent states, with no rebuttal by the Applicant, that the contract was not renewed because the projects for which he was employed could not continue for lack of funding. The Applicant has thus failed to establish that the grounds for the non-renewal of his contract are unlawful.

34. In view of the foregoing, the Applicant has failed to establish the unlawfulness of the impugned decision and therefore his application is rejected in its entirety.

35. For these reasons, the Tribunal DECIDES:

The application is dismissed.

Judge Jean-François Cousin
Dated this 22nd day of December 2009

Entered in the Register on this 22nd day of December 2009

Victor Rodriguez, Registrar, UNDT, Geneva
