Before: Judge Adams

Registry: New York

Registrar: Hafida Lahiouel

ROSCA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Duke Danquah, OSLA

Counsel for respondent:
Susan Maddox, ALS/OHRM, UN Secretariat

Background

6. The Extraordinary Chambers in the Courts of Cambodia (ECCC) is a domestic criminal tribunal of special jurisdiction established under the law of Cambodia for the prosecution of crimes committed by the Khmer Rouge regime. The UN provides support to the court through UNAKRT, of which an integral part is the Court's Office of Administration which provides, together with the national component of that Office, legal, judicial, technical, administrative and security support services including, in particular, the provision of AV services. The court commenced operations in 2006 with the arrival of the initial UNAKRT administration officials and the appointment of the Court's judges.

7. For a considerable time following the commencement of its operations, the ECCC experienced a significant difficulty in setting up sufficient services, procedures and systems for its work. It was the task of the Court Management Section to coordinate, amongst other things, the provision of legal services, the conduct of trials, judicial investigations, records keeping, witness support and protection and AV services. A number of consultations took place throughout 2007 and their reports pointed to significant structural and organizational shortcomings. One of the consultants who reported on the set up for the impending trials was later recruited as Senior Court Management Officer (SCMO), thereby becoming the applicant's first reporting officer. Overcoming the parlous state of judicial support services had become more urgent since the Court was already seized of its first two cases.

8. A review undertaken by the UNAKRT Coordinator and the SCMO included the following issues facing the AV Unit –

(a) the courtroom was not ready to conduct trials and hearings were held in a small courtroom that scarcely accommodated 15 visitors;

(b) procurement of AV equipment, for which local procurement authority had been granted almost a year earlier, was still incomplete;

(c) the AV Unit was operating with an incomplete AV system and semi-portable equipment which was not of industrial standard;

(d) with the exception of two forms, the AV Unit had produced no written procedures or guidelines regulating its functions and services;

(e) AV services were provided *ad hoc*, primarily based on instructions and preferences of individual judicial officers;

(f) the lack of centralized written procedures and developed systems caused preparations for hearings to lack coordination with consequential failures to respond effectively to technical problems arising during hearings; and

(g) there was a lack of planning and coordination with other offices, projecting longer term AV needs of th

SCMO also met with the applicant to discuss the restructuring. Shortly after the decision was communicated to the applicant on 3 July 2008, he spoke to the Chief of Personnel about his situation. As mentioned above, the applicant did not, in the result apply for the new position, which was filled in due course.

11. On 10 July 2008 the SCMO recommended extension of the applicant's contract "up to completion of recruitment for new AV Head of Unit post (current post being discontinued)". On 6 August 2008 the Coordinator endorsed the relevant interoffice memorandum with the recommendation of "a further extension of three months, through 30 November 2008 … [by which date] the recruitment process should be finalized …"

Issues

12. The applicant refers to a number of incidents involving himself and the SCMO, which he claims demonstrate that the SCMO formed unfair and unreasonable

outset. The first of these is the suggestion by the applicant that the SCMO lacked the technical knowledge necessary to enable a fair evaluation of his work and the tasks of the Supervisor, AV Unit. It is obvious from the 2007 reports on the work of UNAKRT, to which the SCMO was a major contributor, that he was fully qualified to make the assessments that he did as well as the recommendations about the need to change the competencies required for the new position. It is not necessary for me to consider, let alone determine, the particular criticisms made by the applicant of certain technical proposals in the reports. The SCMO's perspective was that of a manager, not a technician, and he candidly disclaimed any such expertise. Nevertheless, though not a technician, the SCMO certainly had sufficient information, knowledge and experience to undertake the tasks here in question, with considerable and more than adequate knowledge about the technical requirements of the undertaking. The second issue concerns the allegation that the SCMO misused his position by attempting to remove the applicant in order to replace him with a friend or partner of a friend. I do not intend to set out the details either of the allegation or of the SCMO's response. It is sufficient to state that not only was there no evidence whatever that might justify this fanciful allegation, I am quite satisfied that the allegation is completely untrue and unjustified.

15. I now turn to the particular complaints made by the applicant.

16. There were significant delays in installation of the AV equipment which the SCMO attributed at least in part to the applicant. These delays were mainly due to matters out of the applicant's control concerning the late supply of equipment and lack of technical expertise of the national staff, who the applicant was training. The applicant said that the SCMO did not sufficiently understand the work of the AV Unit and the problems being experienced with substandard equipment and local employees who worked according to their own timetable 157 TherSCMO mad sade bsver l requisti ofhe Srain6A

complaint of the SCMO was not that the problem had occurred but that the applicant, in effect, had ignored his request to fix it and only when he had asked him to deal with it immediately did the applicant contact the AV technician in the courtroom and see to the problem. The applicant explained to the SCMO that the problem was caused by the interpreter speaking too low and not a failure of equipment. However, after some significant delay it was found that this was not the case, the problem was identified and fixed shortly after. As th

However, this is very much a management question in an area in which the Tribunal has no particular expertise. Evidence was given on this point by the Coordinator and the SCMO. There was nothing about their testimony that provided a basis to doubt their credibility. Nor did they have any ax

but this does not mean that his exclusion was in any way a reflection on him. Nor was it any evidence of ill-will towards him.

29. Another issue raised by the applicant concerns criticism of him by the SCMO when he was absent from work. The details do not matter. The SCMO has acknowledged that his criticism was unwarranted and has apologised. Nothing significant arises from this. I am satisfied that, although from the applicant's point of view, the incident was embarrassing and perhaps hurtful, the SCMO was simply mistaken and not acting maliciously.

30. It remains to deal with the complaints of the applicant concerning his evaluation in the electronic performance appraisal system (e-PAS). It was submitted on his behalf that, although the SCMO had supervised the applicant for only four months, he nevertheless evaluated him as having failed in the goal to "design and maintain specific databases in connection with case tracking, court schedules". The applicant says that that this criticism was evidence of the SCMO's bad faith since "he actually participated in meetings and advised the AV Unit on how to implement the database". The short period of supervision gave the SCMO, it is also contended, insufficient interaction with the applicant to enable him to decide that the applicant only partially met the performance expected of him.

31. I have carefully read the SCMO's entries in the applicant's e-PAS appraisal. Detailed analysis is unnecessary and, at all events, was not attempted on the part of counsel for the applicant. The contention of the applicant that they prove the SCMO's bad faith is without merit. The explanation proffered by the applicant in respect of the criticism over the databases is self-evidently inadequate. To my mind the appraisal entries of the SCMO demonstrate a careful, moderate and balanced assessment, very far from what could and would have been said had the applicant's contentions the slightest basis in truth.

32. In his submissions on the applicant's behalf, counsel for the applicant indulged in a persistent and extravagant attack on the integrity of the Coordinator and, in particular, the SCMO, which not only did not, but could not, reflect any fair or reasonable, let alone accurate view of the evidence. I have moderated some of this

language for the purposes of this judgment. I do not doubt that the applicant sincerely feels that he has been wrongly done by, but counsel is not the mouthpiece of the client and cannot hide behind the notion