



Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

FRADIN DE BELLABRE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGEMENT

Case No.: UNDT/GVA/2009/108
Judgement No.: UNDT/2011/080

decided to grant him two months' net base salary as compensation, on the basis that the Applicant's rights had been violated since the decision not to renew his appointment had been taken before the objection procedure was completed.

13. On 29 September 2009, the review panel ruled on the objection procedure initiated by the Applicant on 21 June 2009. It concluded that the "room for improvement" rating for the fundamental value "integrity" and the core competencies "sense of responsibility", "client focus" and "willingness to improve", as well as the "poor" rating for the core competency "team spirit", were justified, and confirmed the overall rating "partially meets performance expectations".

14. In an e-mail dated 2 December 2009, the Applicant submitted to the New York registry of this Tribunal an application, in French, with 105 attachments.

15. As the Applicant had expressed the desire that his case be handled by a French-speaking judge, on 11 December 2009 the Tribunal informed the parties of its intention to transfer the case to the Geneva registry. As the parties made no objection, the case was transferred from New York to

(g) The case law *Azzouni* on loss of mutual trust cannot be applied in this case because the Applicant was not informed of the grievances against him and the evaluation process was marred by numerous irregularities that infringed on the staff member's rights.

19. The Respondent's contentions are:

(a) In accordance with rules 301.1, 304.4 (a) and 309.5 (a) of the Staff Regulations in force, a fixed-term appointment does not carry any expectancy of renewal or of conversion to any other type of appointment, and ends automatically without prior notice on the expiry of the period specified in the staff member's letter of appointment. The Administration is not required to justify the decision not to renew such an appointment;

(b) It is up to the Applicant to prove that the reason for the non-renewal decision is illegal, and this he has not done. In this case, the Applicant contends that the decision is "the logical consequence of a settling of accounts", as his relationship with his supervisor had greatly deteriorated over the period in question. However, it appears from the facts of the case that beginning in June 2008, the Applicant's performance deteriorated, he behaved rudely and aggressively to his supervisor, whose instructions he ignored, and that he verbally abused colleagues. The Applicant himself says in his complaint that he felt that his superior was "incompetent, timid", that he "was so hypocritical that he [the Applicant] no longer trusted him either on a professional or a personal level" and therefore "decided to bypass him". Hence, a conflict situation and a loss of mutual trust existed, justifying the termination of the Applicant's employment under the case law *Azzouni*;

(c) The Applicant's rights were not violated by the fact that the non-renewal decision was taken before the procedure for objections to his e-PAS was successfully completed. A fixed-term appointment does not carry any expectancy of renewal, regardless of whether an objection procedure has been initiated. In any event, the Applicant was duly compensated for any procedural error by the Secretary-General's decision to grant him two months' net base salary upon the conclusion of the management evaluation, even though the Applicant had suffered no untoward effect;

(d) The procedure of objection to the Applicant's rating ended on 29 September 2009. While the review panel considered that the rating procedure was not complied with inasmuch as the Applicant's workplan was not discussed and no interview took place at the time of the progress report between the Applicant and his supervisor, the panel nevertheless found the rating "results partially meet performance expectations" to be justified;

(e) Following the supervisor's report of 1 April 2009 complaining of the Applicant's behaviour, the latter received another assignment for the remaining two months of his contract; that can in no way be considered a disciplinary sanction. While it is true that he did not have access to the complaint of 1 April 2009, through the evaluation procedure the Applicant had ample opportunity to respond to the criticisms, particularly in his statement of objection of 21 June 2009;

(f) There is no reason to grant the Applicant's request to be informed of the comments submitted by the Administration on 10 August 2009 to the Management Evaluation Unit.

Judgement

20. The Applicant challenges the decision not to extend his appointment beyond its expiration date of 31 July 2009.

21. Rule 304.4 of the Staff Regulations in force at the material time states that appointments in the 300 series "do not carry any expectancy of renewal or of conversion to any other type of appointment". Further, under the provisions of Rule 309.5, such appointments "shall expire automatically without prior notice on the expiry of the period specified in the Letter of Appointment".

22. It is clear from the above provisions that decisions concerning the extension of such appointments fall within the discretion of the Secretary-General. However, such a decision, even though it cannot be regarded as a disciplinary ~~one~~ must not be arbitrary or inspired by improper motives and must not ~~vide~~ guarantees of due process.

23. In this case, the Administration has clearly ~~stated~~ stated that the unsatisfactory nature of the Applicant's performance ~~was~~ was the basis for the decision not to renew his appointment. Since the Applicant contends that the procedure followed ~~in~~ appraising and rating his performance was improper, the Tribunal has a responsibility to verify that.

24. At the material time, the system for staff performance appraisal and rating was governed by Administrative Instruction ST/AI/2002/3 of 20 March 2002, which states, in Section 1, that application of that system is not mandatory ~~for~~ staff employed under the 300 series of the staff rules. However, once the Administration has ~~decide~~ decided to use a procedure governed by an enactment, it is bound by its provisions in their entirety.

25. Section 8.3 of Administrative Instruction ST/AI/2002/3 provides that as soon as a performance shortcoming is identified, the ~~first~~ reporting officer should discuss the situation with the staff member and take steps to rectify the situation, such as the development of a performance improvement plan.

26. It is clear from the facts as they were related above that the Applicant, after being recruited on 28 January 2008 on a six-month fixed-term appointment, had that appointment renewed on 28 July 2008 until 31 July 2009.

27. On 12 November 2008, the Applicant and his supervisor drew up his workplan for the period from 1 April 2008 to 31 March 2009 and, a few days later, on 24 November 2008, a progress report was established in his e-PAS that contained no criticism of the Applicant's work. Only on 7 May 2009, at the end-of-cycle appraisal, did the Applicant's immediate supervisor harshly criticize his work and performance, those criticisms being confirmed by the next higher supervisor on 12 May 2009. Subsequently, in a letter of 22 May 2009, the Chief Civilian Personnel Officer at MINUSTAH declined to renew his co T* .017(c)1(u)-6.two 5(onas a di)

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