

Introduction

1. The Applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), contests and requests the rescission of the decision not to extend his fixed-term appointment beyond 30 September 2011.

Facts

2. The Applicant joined UNHCR on 1 November 2006 on a three-month fixed-term appointment at level P-4 in the Division of Information Systems and Telecommunications (“DIST” or “the Division”). This initial appointment, which was not awarded through a competitive selection process and thus not endorsed by the Appointments, Postings and Promotions Committee, was followed by several extensions of less than a year until 30 September 2011, when the Applicant was separated.

3. At the end of his fixed-term appointment, the Applicant requested the extension of his appointment until 30 September 2012. The Applicant stated that he had been working for UNHCR since 1998 and that he had been employed by UNHCR for more than 12 years. He stated that he had been employed by UNHCR for more than 12 years and that he had been employed by UNHCR for more than 12 years. He stated that he had been employed by UNHCR for more than 12 years and that he had been employed by UNHCR for more than 12 years.

6. The Applicant replied on 13 July 2010 that he was agreeable to such a contract extension. On the same day, the Director o

him, or (ii) “an agreed separation effective 30 June with associated indemnities equal to what [he] would have otherwise received for the period 1 July to 30 September”.

13. By email dated 1 June 2011, the Applicant requested that his contract be extended until 30 September 2011. He also asked for “equality and alignment with the rest of the DIST [holders of fixed-term appointments] who have had their contracts already extended to end September 2011”.

14. On 6 June 2011, the Director of DHRM informed the Applicant that his contract would be extended until 30 September 2011 and added:

The extension to end September is made with no expectation of subsequent renewal or conversion. At the time of writing, there is no position to charge your salary against in DIST or elsewhere, so for administrative purposes you will be considered on Special Leave with Full Pay as of 1 July. In the meanwhile, a career management officer from CMSS will work with you to try to identify an assignment for the period up to end September. Your contract will only be extended beyond 30 September if there is a position against which to charge your salary.

15. On 21 June 2011, at the Applicant’s request, DHRM sent him calculations in relation to an “enhanced separation package” for a separation effective 30 June 2011.

16. On 27 June 2011, the Applicant signed a letter of appointment for the period from 1 July to 30 September 2011 and effective 1 July 2011, he was placed on special leave with full pay.

17. By memorandum dated 22 September 2011, entitled “Expiration of your Fixed-Term Appointment” and transmitted to the Applicant on 23 September, the Director of DHRM informed him that, as no assignment had been identified for him and he had not been selected for a new position, he would be separated at the expiration of his fixed-term appointment on 30 September 2011. He also informed the Applicant that in recognition of his length of service, he had agreed exceptionally to provide him with a separation payment to be calculated on the basis of the indemnities payable in the event of a termination.

25. On 16 November 2011, the Applicant filed the present application, in which he contested the decision of 22 September 2011 not to extend his fixed-term appointment and the “decision to retract the offer of an enhanced separation package ... made ... on 29 September 2011”.

26. On 17 November 2011, the Tribunal transmitted the application to the Respondent and requested the Applicant to clarify whether he had requested a management evaluation of the decision related to the separation package and if so, to provide a copy of such request.

27. On 21 November 2011, the Applicant informed the Tribunal that he withdrew his pleas insofar as they related to “the decision dated 29 September 2011 concerning the separation package”, as he had not requested a management evaluation of that decision.

28. The Respondent filed his reply to the application on 19 December 2011.

29. On 17 April 2012, the Tribunal held a substantive hearing which the Applicant and Counsel for the Respondent attended in person and Counsel for the Applicant by videoconference.

Parties' submissions

30. The Applicant's principal contentions are:

- a. He was never on a temporary appointment but on fixed-term appointments;
- b. The decision not to extend his contract while four of his colleagues were extended until 30 November 2011 breached his right to equal treatment;
- c. Since there was no valid basis for the decision not to extend his contract while his colleagues' contracts were extended, the contested decision can only be described as arbitrary.

31. The Respondent's principal contentions are:

a.

fixed-term appointments of less than a year granted without a competitive selection process and not endorsed by an Appointments, Postings and Promotions body—is unlawful and that the decision not to extend the Applicant’s fixed-term appointment of short duration beyond 30 September 2011 breached his right to equal treatment since four of his colleagues, who held fixed-term appointments of long duration, were extended until 30 November 2011.

37. In Tabari 2011-UNAT-177, the Appeals Tribunal held that “[s]ince Aristotle, the principle of equality means equal treatment of equals; it also means unequal treatment of unequals”.

38. The former UN Administrative Tribunal also frequently stated that “the principle of equality means that those in like case should be treated alike, and that those who are not in like case should not be treated alike” (see Judgment No. 268, Mendez (1981); Judgment No. 1221, Sharma (2004); Judgment No. 1375 (2008); and Judgment No. 1450 (2009)).

39. It is an undisputed

recommendations to the Secretary-General in respect of ... proposed appointments of a probable duration of one year or more”.

42. In UNHCR, the role of the central review bodies under current staff rule 4.15 and of the previous Appointment and Promotion Board under former staff rule 104.14 has been assigned to the Appointments, Postings and Promotions bodies, and more specifically for staff in the Professional category, to the Appointments, Postings and Promotions Committee.

43. The distinction made by UNHCR between fixed-term appointments of long duration and fixed-term appointments of short duration has its legal foundation in the above-quoted staff regulation and staff rules.

44. There is thus a factual and legal difference between the contractual situation of the Applicant and that of his four colleagues whose appointments,

evidence before the Tribunal that the transitional measure resulted in any prejudice to the Applicant. On the contrary, for over two years, he continued to enjoy the rights and entitlements attached to a fixed-term appointment; had his appointment been converted to a less beneficial temporary appointment, he would not only have lost out on a number of benefits and entitlements, but he might also have been separated from service at an earlier date given the strict duration limitations attached to temporary appointments.

48. The Applicant's Counsel did claim at the hearing that, had the Applicant been put on notice that he was in a different situation from his colleagues, he could have applied to other jobs. The Tribunal notes however that the Applicant had been put on notice as early as July 2010 at least, through IOM/FOM No. 039/2010, that in view of the restructuring of the

50. It results from the above that the Applicant and the other staff members he refers to were not in an equal position. Accordingly, his claim of a breach of the principle of equal treatment is unfounded.

Conclusion

51. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 1st day of May 2012

Entered in the Register on this 1st day of May 2012

(Signed)

René M. Vargas M., Registrar, Geneva