

Case No.: UNDT/GVA/2018/048
Judgment No.: UNDT/2020/043
Date: 19 March 2020

Introduction

1. On 7 May 2018, the Applicant, a former Coordinator at the P-5 level in the Global Mechanism of the United Nations Convention to Combat Desertification (“UNCCD”), filed an application in which he contests

6. By memorandum dated 6 November 2017 from the Chief of Administrative Services to the Applicant, the latter was informed that his P-5 level appointment would not be renewed because, referring to the Global Mechanism allegedly having its role in policy and investment analysis reduced, the Executive Director had decided to significantly change the functions of his position. Instead, the Applicant's P-5 level post would be reclassified to the P-3 level.

7. After a further extension of his fixed-term appointment, on 30 June 2018, the Applicant was separated from service with the Global Mechanism.

8. On 7 May 2018, the Applicant filed the application in the case at hand. The case was initially assigned to Judge Rowan Downing. On 12 June 2018, the Respondent filed his reply in which he submitted that the application is without merit.

9. Following each party filing an additional pleading, by Order No. 136 (GVA/2018) dated 7 September 2018, the Tribunal rejected a motion from the Applicant to file additional submissions in response to the latest pleading of the Respondent.

10. On

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18. Based thereon, the Tribunal finds that the crux of the Applicant's case is whether the non-renewal of his fixed-term appointment at the P-5 level was lawful. The issues of the present case can be defined as follows:

- a. Was the non-renewal of the Applicant's fixed-term appointment at the P-5 level proper?
- b. In case the non-renewal was unlawful, what remedies is the Applicant entitled to under art. 10.5 of the Dispute Tribunal's Statute, including in terms of pecuniary and non-pecuniary

25. The Tribunal notes that as evidence, the Respondent refers to the memorandum from the Chief of Administrative Services to the Applicant dated 6 November 2017, in which was stated in relevant part (emphasis added):

Further to the meeting on 3 November 2017 with the Deputy Executive Secretary and the Chief of Administrative Services, this is to confirm that *the job functions of your current post (post number 305233A1) have been changed significantly by decision of the Executive Secretary in consideration of the outcomes of the decisions taken at COP 13 in September 2017 and noting the reduced role of the Global Mechanism in policy and investment analysis.* As a result, the functions of your post have been classified at the P-3 level, which would take effect on 1 January 2018. A copy of the job description is submitted for your reference.

26. In the Respondent's closing statement, there is no further reference to any documentation that would corroborate his submission that the COP had decided to limit, or otherwise change, the functions of the Global Mechanism and the Applicant's post. The question is therefore whether as a matter of fact, the COP took any decision(s) during its 13th session by which the functions of the Global Mechanism were reduced, and which justified the non-renewal of the Applicant's P-5 level appointment.

27. The Tribunal notes that to the application, the Applicant appended a document titled "Decision 10/COP.13 Programme and Budget for biennium 2018-19". In its table 2, "Staffing requirements", is explicitly indicated with reference to the Global Mechanism that in 2017, there was "actual[ly]" a P-5 level position and that in 2018 and 2019, a P-5 level position would be "required". Nowhere in the document is reference made to any changes to the function of this P-5 level position, which must be assumed is the one that the Applicant encumbered.

28. The Applicant also annexed the above-mentioned "Note by the Secretariat" regarding a "Comprehensive multi-year workplan for the Convention (2018–2021) and two-year costed work programme for the Convention (2018–2019)" with document number ICCD/COP(13)/8-ICCD/CRIC(16)/2 ("the Note").

29. The Secretariat sets out

32. Concerning the Land Degradation Neutrality Fund to which

spurious. The Respondent did not demonstrate specifically what the difference is between the two positions at the P-5 level: the one encumbered by the Applicant and the later one advertised by the Organization.

36. The Tribunal, when comparing the roles and functions of the Applicant in his former P-5 level position in the Global Mechanism with those reflected in the job opening for the new P-5 level post in the Global Mechanism, notes that no substantive and/or remarkable difference between the two positions can be detected; the incumbent in both positions is to report to the Managing Director and to work on “partnerships” (see the job opening for the new P-5 level post), such as assumedly the Land Degradation Neutrality Fund.

37. Such a finding definitively demonstrates that the functions that the Applicant performed within the UNCCD are still required today and in the foreseeable future.

38. The facts do not support that any restructuring was ever required and, instead, show that (a) continuing budgeting for the Applicant’s former P-5 level position existed and (b) the subsequently advertised P-5 level post was substantially the same. All these factors, considered alone and together, confirm the failure of a factual basis for the reclassification of the position formerly held by the Applicant and, consequently, for the non-renewal of his fixed-term appointment.

39. In conclusion, in accordance with the caselaw of the Appeals Tribunal as outlined above, the Tribunal finds that the provided reason for not renewing the Applicant’s P-5 level appointment was not properly based on facts for which reason the impugned decision was unlawful.

40. The Applicant also submits that the impugned decision was tainted by ulterior motives; in particular, he alleges that his Executive Secretary made the decision not to renew the applicant's appointment at his personal grade/level and salary (at the P-5 level) as punishment and retaliation for him reporting misconduct against her.

