
ADMINISTRATIVE TRIBUNAL

Judgement No. 463

Case No. 451: OKONJO

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Arnold Kean, President; Mr. Samar Sen;

Mr. Ahmed Osman;

Whereas, at the request of Chuchuka Okonjo, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 29 January 1988 the time-limit for the filing of an application to the Tribunal;

Whereas, on 27 November 1987, the Applicant filed an application, the pleas of which read as follows:

- "1. The Applicant contests the decisions of the Respondent
 - (a) not to renew the appointment of the Applicant as Director of the Regional Institute for Population Studies, due to expire on 31 December 1985 for a further term of two years commencing on 1 January 1986, as provided in the 1982 Statutes of the said Institute and as recommended by the Governing Council of the said Institute at its Eleventh Meeting in Accra on 26 and 27 June 1985, and
 - (b) to transfer an officer, Mr. P.O. Ohadike, from the Secretariat of the Economic Commission of Africa in Addis Ababa, Ethiopia, to take over the Applicant's duties at the Regional Institute for Population Studies in Accra, with the title of Officer-in-

Charge as from 1 January 1986.

2. The Applicant seeks the rescission of the said decisions on the grounds that they are void for illegality, being ultra vires of the Respondent, and consequently, the reinstatement of the Applicant, upon formal re-appointment by the Secretary-General as Director of the said Institute with effect from 1 January 1986.
3. The amount of compensation claimed by the Applicant in the event that the Secretary-General decides, in the interest of the United Nations to pay compensation for the injury sustained by the Applicant, should be not less than the full amount allowed under paragraph 1 of article 9 of the Statute, viz. not less than the equivalent of two years' net base salary of the Applicant, and the Applicant submits that this is a fit case for an even higher award within the discretion of the Tribunal.
4. The Applicant also claims his costs of these and all previous proceedings arising out of this dispute."

Whereas the Respondent filed his answer on 25 October 1988;

Whereas, on 10 August 1989, the Applicant requested the Tribunal to order "a postponement of the action, which ECA [Economic Commission for Africa] is taking to execute the instructions of the Secretary-General on the recruitment of a Director for the Regional Institute for Population Studies (RIPS), a post which is presumably vacant";

Whereas the Applicant filed written observations on 3 October 1989 which he subsequently amended on 16 October 1989;

Whereas, on 23 October 1989, the Tribunal put questions to the Respondent and, on 24 October 1989, he provided answers thereto;

Whereas the facts in the case are as follows:

The Applicant, a Nigerian national, entered the service of the United Nations Economic Commission for Africa (ECA) in Addis Ababa on 18 July 1963, as a Regional Economic Development Advisor at the P-3, step I level. He served on a three month short-term

appointment that was extended for an additional month, and then the Applicant separated from the service of the Organization.

On 18 August 1974, the Applicant was appointed Director, Demographic Training and Research Centre of the Regional Institute for Population Studies (RIPS) at Accra, Ghana. RIPS was first established in 1972, pursuant to an agreement between the Government of Ghana and the United Nations, for the purpose of promoting and strengthening research and training in demography and related fields in interested English speaking African countries. The Director of the Institute was appointed by "the United Nations, in consultation with the Government".

The Applicant was initially offered a one-year intermediate term appointment at the L-6 level under the 200 Series of the U.N. Staff Rules. His appointment was successively extended for further fixed-term periods, until 18 August 1979, when his contractual status was converted to long-term. His appointment was then extended first, for a further fixed-term period until 31 December 1979 and then, until 17 August 1980.

Effective 1 January 1980, following the decentralization of the U.N. Technical Co-operation for Development Project, ECA dealt with all aspects of RIPS, and became responsible for decisions with respect to personnel. The Applicant was transferred from the U.N. Headquarters payroll to the ECA payroll. According to the record of the case, a disagreement arose between ECA and the Applicant, regarding the administrative functioning of the Institute and in April 1980, ECA appointed an administrative officer, to discharge all administrative duties. In the letter communicating this appointment, the Applicant was asked to devote his time to the "substantive and operational activities" of the Institute.

In June 1980, the Officer-in-Charge, Population Division, recommended that the Applicant's contract, due to expire in August 1980, be extended for another year. In a memorandum dated 30 July

1980, the Chief, Population Division, informed the Chief, Personnel Section, that he confirmed the recommendation, action which would permit ECA "to review the contractual status of Mr. Okonjo, sometime next year in the light of ... and the performances and management of the Director."

When the question whether to extend the Applicant's appointment was raised in 1981, the Director, Population Division, recommended that the Applicant's appointment be extended for a further one-year period. However, in a memorandum dated 24 July 1981 to the Executive Secretary, ECA, the Chief, Population Division, expressed his concern about the Applicant's management of the RIPS project. He noted that the Applicant "considers himself as an ECA staff member only for salary" and "believes that instructions are given to him only by the Governing Council."

On 11 August 1981, the Executive Secretary, ECA, wrote to the Applicant regarding his contractual status and the administration of the Institute. While satisfied with the Applicant's performance with respect to the academic programmes, the Executive Secretary was disappointed with the Applicant's "day-to-day management of the affairs of the Institute particularly in dealing with [his] administrative staff and in the application of the rules of the United Nations as these affect personnel administration and financial management". As regards his contractual status, the Executive Secretary informed the Applicant that he had "directed that [his] current contract which expires on 27 August be extended for another 6 months", a "trial" period, during which he expected the Applicant to make his best efforts to improve considerably upon the administration of the Institute. He added: "Unless I see that efforts are being made to change things for the better, we will have no alternative but to dispense with your services at the end of that period."

In late January 1982, the Chief, Personnel Section,

recommended to the Executive Secretary that the Applicant's contract be extended for a further fixed-term period of six months, in order to permit a "team from the ECA" to visit the Institute and ascertain to what extent the Director had made efforts to improve upon his style of administration. The Applicant's appointment was then extended first, for a further six-month period, effective 18 February 1982; then, through 31 October 1982, then through 30 November 1982, and subsequently for two months, effective 1 December 1982, for eleven months, effective 1 February 1983, for three months, effective 1 January 1984, for two months, effective 1 April 1984 and for nineteen months, effective 1 June 1984.

On 21 December 1982, the General Assembly, in its resolution 37/444, approved new Statutes for RIPS and for its sister francophone organization, the "Institut de formation et de recherche démographiques" at Yaounde. According to the new Statutes, RIPS became a "subsidiary body" of ECA, with the Executive Secretary acting as "ex-officio Chairman of the Governing Council". As regards the Director, he would be appointed by the "Secretary General..." and "upon the recommendation of the Governing Council ... for a period of two years, subject to renewal for succeeding periods of two years each."

The Governing Council of the Institute held its eleventh meeting at Accra on 26 and 27 June 1985. Item 12 on its annotated provisional agenda was entitled "Appointment of Director" and the Governing Council was invited "to consider the position regarding the present Director". The Applicant's appointment was due to expire on 31 December 1985. In accordance with article VI, paragraph 1(a) of the RIPS Statute, the Council's recommendation was a condition precedent to an appointment by the Secretary-General.

During the debate on that agenda item, the Executive Secretary, ECA, informed the Governing Council that the post of Director of the Institute was not vacant, and the Council then

decided, as indicated in its report dated 8 July 1985, "that since the post of Director of the Institute was not vacant, there was no need to discuss the subject." According to the Applicant, no action by the Governing Council was an implicit affirmation that he would continue exercising the functions of Director for a further fixed-term period of two years, beyond the expiration date of his appointment.

In a memorandum dated 24 September 1985, the Chief, Population Division, informed the Executive Secretary, ECA, that further to their "exchange of views and the review made with [him] and the Deputy Executive Secretary on the management and the future trends of these two Institutes", he suggested that the Applicant's appointment should not be renewed beyond 31 December 1985. Accordingly, in a cable dated 23 October 1985, the Chief, Administration and Conference Services Division, informed the Applicant that his contract, due to expire on 31 December 1985, would not be extended. In a letter dated 23 October 1985, he explained in detail to the Applicant, that the decision not to renew his appointment was part of a wider ECA reorganization plan in institutions sponsored by ECA alone or in conjunction with the Organization of African Unity. On the following day, the Chief, Administration and Conference Services Division, announced to all ECA staff members on information circular No. 42, the restructuring of ECA. The circular read in part as follows:

"In continuation of the exercise initiated last year to restructure the ECA Secretariat for improved performance, the Executive Secretary has approved the following staff movements which should become effective on the dates indicated here below:

<u>Name</u>	<u>From</u>	<u>To</u>	<u>Dates</u>
1. Mr. P.O. Ohadike	COES	RIPS - Officer-in-Charge	1.1.86
...			

The Applicant was not mentioned in the Information Circular. Thereafter, Mr. Ohadike took up his assignment as Officer-in-Charge of the RIPS project, effective 1 January 1986.

On 26 November 1985, the Applicant, in accordance with staff rule 111.2(a), requested the Secretary-General to review the administrative decision not to renew his appointment. Having received no reply, on 8 April 1986, the Applicant requested the Secretary of the Joint Appeals Board (JAB), in accordance with staff rule 111.2(f), a suspension of the administrative decision not to renew his appointment. The JAB met on 8 December 1986 to summarily hear the parties on the Applicant's request. It found that it was unable to make a recommendation on the Applicant's request for suspension because the non-renewal of the appointment had already taken place as of 31 December 1985.

On 15 June 1987, the JAB adopted its report on the merits of the appeal. Its findings and recommendations read as follows:

"Findings ...

35. After a careful analysis of the documentation and bearing in mind all the circumstances of the case, the Panel finds that:

The developments which occurred during the appellant's last appointment which expired on 31 December 1985 created a legal expectancy of contract renewal in his favour. Six months prior to the expiration of his contract, an item was placed on the agenda relating to the appointment of a Director of RIPS. The item was not discussed since the Executive Secretary in his capacity as Chairman had informed the meeting that the post was not vacant. Since the appellant's contract was due to expire in December 1985 and the next Council meeting would only take place in March 1986, and since the Governing Council was the sole authority under the 1982 Statutes to deal with the appointment of the Director, (if it intended to replace the appellant), the Panel finds that the appellant rightly relied on the Executive Secretary's statement that the post of Director was not

vacant to mean that his contract would be extended.

Recommendations ...

36. The Panel accordingly recommends that:

(i) Since no new Director has yet been formally appointed by the Governing Council to replace the appellant and RIPS is still managed by an Officer-in-Charge, the position of Director should be widely advertised to permit all eligible candidates to apply for the position. A short list of candidates including the appellant should then be submitted to the Governing Council pursuant to Article VI.1 of the 1982 Statutes.

(ii) In view of its finding that the appellant had a legal expectancy of contract renewal and bearing in mind all the circumstances of the case, the appellant should be awarded three months net base salary as compensation.

(iii) That all the appellant's other claims be rejected."

In a letter dated 22 July 1987, the Assistant Secretary-General for Human Resources Management informed the Applicant that the Secretary-General had taken note of the Board's report and, while having reservations on the Board's conclusions, had decided:

"(a) That the position of Director of RIPS be advertised and that a short list of candidates, in which [he] will be included, be then submitted to the RIPS Governing Council for its recommendation,

(b) That [he] be paid compensation in an amount equivalent to three months' net base salary, and

(c) That [his] other claims be rejected."

On 27 November 1987, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision, taken by the ECA Executive Secretary on his sole authority and without reference to the Governing Council or

the Secretary-General, not to renew the Applicant's appointment beyond 31 December 1985 is ultra vires and in law, void and of no effect.

2. The decision, taken by the ECA Executive Secretary on his sole authority and without reference to the Governing Council or the Secretary-General, to place another staff member in charge of RIPS from 1 January 1986 as Director but with the non-existent title of Officer-in-Charge, is ultra vires and in law, void and of no effect.

3. The conduct by the ECA Secretariat is clear evidence of bad faith.

4. The conduct by the ECA Executive Secretary has produced a most unsatisfactory situation that disturbs good relations between the U.N. and the host country.

5. The Applicant has been injured by the actions of the Respondent.

Whereas the Respondent's principal contentions are:

1. The circumstances of the case show that the Applicant could not reasonably have had an expectancy of continued employment.

2. The fact that the decision not to renew the Applicant's appointment was taken on the Respondent's behalf by the ECA Executive Secretary did not make it ultra vires since there was no indication that the General Assembly intended to preclude that official from taking such decisions under a delegation of authority from the Respondent.

The Tribunal, having deliberated from 20 October to 14 November 1989, now pronounces the following judgement:

I. The Tribunal refused the Applicant's request that it should order a postponement of the action of ECA to execute the

instructions of the Secretary-General as to the recruitment of a Director for RIPS, the compensation awarded by the Tribunal being adequate in this regard.

II. Despite the somewhat complicated background, this case turns upon only two questions, the first being whether the Applicant had a legal expectancy of renewal of his two-year fixed-term contract. The Tribunal does not lightly find a legal expectancy, but in the present case it is satisfied that the Applicant was justified from all the circumstances in expecting that he would continue to serve as Director after his contract expired on 31 December 1985. This expectation was derived from the statement of the Executive Secretary of ECA, duly recorded in the Governing Council's report dated 8 July 1985, "that since the post of Director of the Institute was not vacant, there was no need to discuss the subject". This statement was made notwithstanding that the Applicant's present contract as Director was due to expire before the Governing Council was scheduled to meet again, thus providing an opportunity of recommending a new Director. In reaching this conclusion, the Tribunal has not overlooked the questioning of the Applicant's administrative efficiency which had occurred in previous years and which could be construed as a warning to him that his contract might not be renewed.

III. The second question to be considered is whether, in not renewing the Applicant's contract, and in effect replacing him by another person, the Executive Secretary of ECA, acting on behalf of the Respondent, observed due process. The Tribunal has concluded that he did not, in view of the failure of the Respondent to conform to the requirements of articles VI.1 (a) and VII.1 of the Statute of RIPS that he should appoint the Director of the Institute for a period of two years upon the recommendation of the Governing

Council. In lieu of compliance with these requirements, the duties of Director were assigned to another person under another title (Officer-in-Charge) with effect from 1 January 1986. The Respondent has indicated, in reply to a question put by the Tribunal, that, in his view, this action was justified by staff regulation 1.2, but the Tribunal does not accept that a general provision of such a kind could dispense with specific requirements of the RIPS Statute.

IV. In view of these breaches of the established procedure - acknowledged by the Respondent himself - the Tribunal does not consider it necessary in this instance, to examine whether these breaches arose from bad faith or from any other reason. The actions complained of constituted in any event a wrong from which the Applicant suffered and for which he is entitled to compensation.

V. For the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant six months' net base salary, calculated at the rate in effect at the date of this judgement, less any amount received by the Applicant in accordance with the Secretary-General's decision of 22 July 1987.

VI. All other pleas are rejected.

(Signatures)

Arnold KEAN
President

Samar SEN
Member

Ahmed OSMAN
Member

New York, 14 November 1989

R. Maria VICIEN-MILBURN
Executive Secretary