



**Administrative Tribunal**

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1024

Case No. 1111: AUDERSET

Against: The Secretary-General  
of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Julio Barboza, Vice-President, presiding; Mr. Omer Yousif Bireedo;  
Mr. Spyridon Flogaitis;

Whereas at the request of Adrienne Auderset, a former staff member of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR), the President of the Tribunal, with the agreement of the Respondent, granted an extension of the time-limit for filing an application with the Tribunal until 31 August and thereafter until 30 November 1999;

Whereas, on 30 November 1999, the Applicant filed an Application containing pleas which read as follows:

**" II. Pleas**

*A. Request for Discovery and Witnesses*

...

10. The Applicant requests that this review be considered solely in camera, based both upon written documentation and an oral hearing(s).

11. The Applicant respectfully requests that the United Nations Administrative Tribunal summon ... witnesses ...

12. The Applicant also requests that either a stenographic or audiotape record of all proceedings before the United Nations Administrative Tribunal ... be undertaken and made available to the parties hereto.

*B. Redress Sought*

...

- The quashing of the [Secretary-General]'s impugned decision ...
- The quashing of the decision of the Respondent to involuntarily terminate the Applicant's appointment by failing to renew her contract ...
- The quashing of the [Performance Evaluation Report] impugned herein, and an order removing same from the Applicant's permanent UNHCR record;
- The quashing of the report of the [Joint Appeals Board] in Case No. 310 (...);
- The setting aside of the notice of dismissal sent to [the] Applicant by the Respondent, on 17 August 1995, as well as [the] Applicant's non-renewal of appointment, with complete restoration of all benefits, back pay, salary, step or other regular increases, pensionable remuneration, emoluments, and all other allowances and entitlements (commensurate with Applicant's former status, grade, and position which she would have received had her contract been renewed) ... and the immediate reinstatement of [the] Applicant to her former position within the UNHCR, with full retroactive effect from the date of Applicant's wrongful termination, 15 September 1995;
- The award to the Applicant of a one year fixed term contract with effect from the date of her reinstatement pursuant to the decision of the Tribunal;
- A written apology to the Applicant from the High Commissioner, widely published throughout the UN system ... and, issuance of a written Certificate of Employment ...
- Referral of the allegations raised by the Applicant above to an independent and *ad hoc* investigative and disciplinary committee ...
- In the event the Secretary-General fails to initiate such a disciplinary investigation, an order lifting the functional privileges and immunities of [the Administrative Officer, Regional Bureau for the Americas and the Caribbean (RBAC), UNHCR, and the Head, North America Unit, RBAC, UNHCR] ...
- An award [*ex aequo et bono*] in the amount of USD 250,000 to compensate the Applicant for the inexplicable and unnecessary delay on the part of the United Nations ... in prosecuting her case ... and for the failure of OIOS [Office of Internal Oversight Services] to pursue her request for relief ...

- The award to the Applicant of fifteen thousand US dollars in respect of costs and expenses;
- The award to the Applicant of moral damages in an amount equal to at least two years of the Applicant's salary at the rate she would have received at the time of the United Nations Administrative Tribunal's decision;
- Interest on any monetary damages awarded hereunder, calculated at the market rate from 15 September 1995 through the date any such decision of the United Nations Administrative Tribunal hereunder is satisfied in full; and
- Such other relief as the United Nations Administrative Tribunal deems necessary, just, and equitable."

Whereas, on 27 March 2001, the Applicant submitted requests for discovery of documents;

Whereas, at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent answer until 31 March 2000 and periodically thereafter until 30 June 2001;

Whereas the Respondent filed his Answer on 29 June 2001;

Whereas the Applicant filed Written Observations on 28 September 2001;

Whereas the Tribunal decided on 6 November 2001 that there would be no oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant joined UNHCR, on 9 February 1994, as a Secretary on a fixed-term appointment at the G-4 level. She separated from service on 31 October 1994. On 16 March 1995, the Applicant again joined UNHCR, on a six-month fixed-term appointment as a Secretary at the G-4 level. On 15 September 1995, the Applicant was separated from service at the expiration of her appointment.

On 11 August 1995, the Applicant met with the Administrative Officer, Regional Bureau for the Americas and the Caribbean (RBAC), UNHCR, ("the Administrative Officer") to discuss her performance. On 15 August 1995, the Administrative Officer informed the Personnel Officer, Staff Administration Support Services (SASS), UNHCR, of the serious reservations that RBAC had regarding the extension of the Applicant's contract, since her work

performance did not meet the standards expected. On 17 August 1995, the Applicant was informed by the Senior Personnel Officer, SASS, that her appointment would not be renewed.

On 4 September 1995, the Applicant's performance evaluation report (PER) was completed by her reporting officers, and subsequently signed by the Applicant on 14 September 1995.

Also on 14 September, the Applicant requested administrative review of the decision not to renew her appointment.

By memorandum dated 19 September 1995, the Director, Division of Human Resources Management (DHRM), UNHCR, issued guidelines regarding DHRM's interpretation as to the applicability, and procedure to be followed in the implementation of Regulation 62 of the Appointments, Promotions and Postings Committee (APPC) Regulations.

The Applicant submitted a rebuttal of her PER on 11 October 1995.

On 27 November 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB).

On 1 July 1996, the Applicant was informed by the Head, Performance Management Unit, DHRM, UNHCR, that the investigative panel which considered her rebuttal had concluded that "[the Applicant]'s Statement of Rebuttal [was] not justified ... [as] the contents of the Performance Evaluation Report ... reflect the performance of [the Applicant] correctly".

The JAB adopted its report on 31 August 1998. Its considerations, conclusions and recommendations read as follows:

### **"Considerations**

...

24. ... the Panel first examined whether the Appellant had a legitimate expectancy of renewal of her contract. In this regard, and guided by the jurisprudence of the United Nations Administrative Tribunal (...), the Panel concurred with the Respondent's argument that no element in the file could be interpreted as creating an expectancy for continued employment.

25. With respect to the existence of procedural irregularities, the Panel noted that the relevant part of paragraph 62 of the APPC Regulations reads as follows:

*'When a short-term staff member or external candidate has been selected for a post he/she will normally be recruited at a grade one level below the grade of the post occupied. After 6 months, or 10 months if an extension of the trial period is requested by the supervisor, the supervisor may recommend to the Committee:*

...

*(b) that the recruited staff member should be separated from UNHCR and a new procedure to fill the post be undertaken.'* (emphasis added)

26. Two differing interpretations on the application of paragraph 62 of the APPC Regulations had been put forward to the Panel. The Respondent argued that it applied only to short-term staff members or external candidates *recruited at a grade one level below the grade of the post occupied*. The guidelines issued by the Director, DHRM, UNHCR, indicated that it applied to *all recruited short-term staff members or external candidates*.

27. The Panel observed that recruiting at a grade one level below the grade of the post occupied was not a mandatory condition and, therefore, the restrictive interpretation submitted by the Respondent could not be sustained. Thus, the Panel considered that omitting to submit the Appellant's case to the APPC for recommendation constituted a deviation from established procedure in UNHCR.

28. However, in this regard, the Panel noted the recommendation of RBAC not to renew the Appellant's contract, the content of the respective notes for the file concerning the Appellant's performance, the unsatisfactory assessment of the Appellant's performance in her PER, and the conclusion reached by the appropriate PER Rebuttal Panel. The Panel was of the opinion that under these circumstances, one could not assume that the APPC would have recommended the renewal of the Appellant's contract nor that the High Commissioner for Refugees would have endorsed such a recommendation.

...

### **Conclusions and Recommendations**

31. ... the Panel concludes that the Appellant had no legitimate expectancy for renewal of her appointment, and that omitting to submit the Appellant's case to the APPC constituted a minor procedural irregularity that does not lead to the awarding of compensation.

32. As a result, the Panel recommends to the Secretary-General that the present appeal be rejected."

On 9 February 1999, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant. He informed her that the Secretary-General was in agreement with the Board's findings and conclusion and had therefore decided to accept the Board's unanimous recommendation that her appeal be rejected and to take no further action on her case.

On 30 November 1999, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The decision to terminate the Applicant's appointment prior to submitting her case to the APPC was a procedural irregularity which vitiated the impugned termination.
2. The Applicant's PER and the rebuttal panel's decision were tainted by irregularities, mistakes and omissions of fact and erroneous conclusions.
3. The Administration failed in its duty to inform the Applicant of the reasons for the decision not to renew her contract.
4. The Administration failed to give the Applicant 30 days notice, as required under staff rule 109.3, thus her contract was renewed by implication.
5. The decision not to renew the Applicant's contract was the sole result of the prejudicial attitude of her supervisor.

Whereas the Respondent's principal contentions are:

1. The Applicant had no legal expectancy of continued employment with the Organization.
2. Non-renewal of appointment does not constitute termination, and accordingly, does not require that 30 days notice be given.
3. Failure to fully comply with the provisions of APPC Regulation 62, as interpreted by the JAB, does not constitute a substantive procedural violation, but rather a procedural deviation which did not impact upon the contested decision.
4. The decision not to renew the Applicant's fixed-term appointment was not prompted by improper motivations or other extraneous factors.

5. The Applicant has no right to the documents requested, to responses to the written interrogatories submitted, or to a hearing.

6. There is no basis for the Applicant's claim for an award in respect of costs.

The Tribunal, having deliberated from 6 to 21 November 2001, now pronounces the following Judgement:

I. The Applicant requests the Tribunal to find that she had a legal expectancy of continued employment with the Organization, and that the non-renewal of her fixed-term appointment was motivated by extraneous factors or some other improper motivation.

II. The Applicant was employed by the United Nations on two fixed-term appointments at the G-4 level: the first from 9 February to 31 October 1994; the second from 16 March to 15 September 1995.

III. The Applicant contests the decision of UNHCR to terminate her appointment without submitting her case for consideration by the APPC, as required by APPC Regulation 62. She contends that this constituted a procedural irregularity which must result in the quashing of the impugned decision not to renew her contract. Further, the Applicant alleges that her PER, and the decision of the rebuttal panel following her rebuttal thereof, were "tainted by mistakes of facts, erroneous conclusions and omission of pertinent facts". She also contends that the Administration failed to advise her of the reasons for refusing to renew her fixed-term contract.

IV. With respect to the Applicant's claim of legal expectancy of renewal of her contract, the JAB rightly pointed out that there were no elements in the file which could give support to such an expectancy. The Tribunal has consistently maintained that, in general, an employee serving under a fixed-term contract has no right to renewal of the contract. The contract comes to an end automatically and without prior notice according to staff rules 104.12 (b) and 109.7. (See Judgements No. 440, *Shankar* (1989) and No. 205, *El-Naggar* (1975).) Furthermore, the

Respondent expressly included a provision of non-expectancy of renewal in the Applicant's letter of appointment.

V. With regard to the alleged procedural irregularity of terminating the Applicant's contract before her case was submitted to the APPC, the Tribunal notes that the Respondent has adopted a restrictive interpretation of APPC Regulation 62. The Regulation stipulates as follows:

"When a short-term staff member or external candidate has been selected for a post, he/she will normally be recruited at a grade one level below the grade of the post occupied. After 6 months, or 10 months if an extension of the trial period is requested by the supervisor, the supervisor may recommend to the Committee:

- (a) that the recruited staff member should be confirmed on the post and promoted to the level of the post from the first day of the seventh month on the post, or the first day of the eleventh month on the post if the trial period has been extended, or
- (b) that the recruited staff member should be separated from UNHCR and a new procedure to fill the post be undertaken."

The Respondent maintains that the provisions of this Regulation apply only to short-term staff members or external candidates recruited at a grade one level below the grade of the post. The JAB adopted a more flexible interpretation of the Regulation, however, based on the guidelines issued by the Director, OHRM, UNHCR, in an internal memorandum dated 19 September 1995, which provided that Regulation 62 applies to all recruited short-term staff members or external candidates.

VI. The Tribunal agrees with the JAB that recruitment at a grade one level below the grade of the post occupied is not a mandatory condition for the invocation of Regulation 62 and, therefore, the restrictive interpretation of the Respondent cannot be sustained. Consequently, the failure of the Administration to submit the Applicant's case to the APPC for recommendation constituted procedural irregularity. The Tribunal considers that this procedural irregularity is minor and is unlikely to have changed the outcome of the Applicant's case, however. As the JAB correctly noted, in light of "the content of respective notes for the file concerning the



[Applicant's] performance, the unsatisfactory assessment of the [Applicant's] performance in her PER, and the conclusion reached by the appropriate PER Rebuttal Panel", the APPC would probably not have recommended the renewal of her contract.

Nonetheless, the Tribunal is concerned by the Administration's lack of compliance with the Regulations and Rules of the Organization. Whilst it may have been obvious that the APPC might not have recommended the renewal of the Applicant's contract for the above-mentioned reasons, she should have been given the opportunity of having her case considered by the APPC. Consequently, the Tribunal resolves that the Applicant is entitled to reasonable compensation of \$3,000 because the Respondent failed to submit her case to the APPC.

VII. In view of the foregoing, the Tribunal:

- (a) Orders the Respondent to pay the Applicant \$3,000 as compensation; and
- (b) Rejects all other pleas.

(Signatures)

Julio BARBOZA  
Vice-President, presiding

Omer Yousif BIREEDO  
Member

Spyridon FLOGAITIS  
Member

New York, 21 November 2001

Maritza STRUYVENBERG  
Executive Secretary