



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

**Dzintars
(Appellant)**

v.

Secretary-General of the United Nations

performance and gave Mr. Dzintars an overall rating of “[p]artially meets performance expectations” for the 2005-2006 cycle. Mr. Dzintars did not raise any objection 1a

13. In a report dated 14 August 2008, the JAB/Geneva found that the Administration did not violate administrative instruction ST/AI/2002/3 by not extending Mr. Dzintars' FTA since his performance had been twice assessed as "[p]artially meets performance expectations". But the JAB/Geneva recommended that Mr. Dzintars be awarded USD 3,000 as compensation, because he had not signed off on his 2006-2007 PAS or had had an opportunity to respond to his performance evaluation, before the decision not to extend his service was made. The JAB/Geneva found that this amounted to a "due process violation" warranting compensation. But the Secretary-General did not accept the JAB/Geneva's finding of due process violation or its recommendation for the payment of USD 3,000 as monetary compensation.

14. Mr. Dzintars then appealed to the former Administrative Tribunal, which did not have an opportunity to review the case before its abolition at the end of 2009. Mr. Dzintars' case was subsequently transferred to the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva.

15. In Judgment No. UNDT/2010/150 dated 20 August 2010, Judge Cousin rejected Mr. Dzintars' application. Judge Cousin considered that the Administration had made the reason not to renew Mr. Dzintars' contract very clear.

While it follows from the provisions of administrative instruction ST/AI/2002/3 that the Administration cannot refuse to renew a staff member's appointment when he/she first receives the rating "Partially meets performance expectations", the Tribunal considers that the Administration is entitled to refuse renewal when, after it has taken steps to try to improve his/her work, the staff member receives that rating for the second consecutive year.

16. Judge Cousin observed that when the recommendation not to renew Mr. Dzintars'

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assertions, Mr. Rodriguez is not Spanish, but Mexican, and that he was not substantively involved in Mr. Dzintars' case before the JAB/Geneva. The Secretary-General rejects Mr. Dzintars' accusations against the UNDT Judge as either "lacking in foundation", "not borne out by the facts", or "irrelevant to the issue at hand".

23. On the merits, the Secretary-General submits that the UNDT correctly concluded that Mr. Dzintars had no legitimate expectancy of renewal of his FTA, that his unsatisfactory PAS ratings constituted a proper basis for the non-renewal decision, and that the ECE Administration was entitled to decide not to renew Mr. Dzintars' contract after he had received a rating of "[p]artially meets performance expectations" for two consecutive years. The Secretary-General also submits that Mr. Dzintars has failed to substantiate his accusations about the UNDT ignoring prima facie evidence of discrimination and improper motives, or about the UNDT engaging in a "cover-up" on behalf of the Administration. In the view of the Secretary-General, the UNDT Judge did not err either in fact or in law.

Considerations

24. Our main concern is to see if Mr. Dzintars was fairly treated. And if not so, then what should be done about it.

25. Mr. Dzintars was on a fixed-term contract for two years from 13 May 2005 onwards. While considering Mr. Dzintars' performance appraisals for the two years 2005-2006 and 2006-2007, we noted that in the first year during the mid-point review, his FRO graded Mr. Dzintars' performance as "does not meet expectations". A nine-point improvement plan was put in place. The plan seemed to work because Mr. Dzintars' final grading for the first year was changed to "[p]artially meets performance expectations".

26. But we also noted that for the second year Mr. Dzintars' performance again slipped to "does not meet expectations" during the mid-point review in November 2006. He was again placed on an improvement plan in five areas of his responsibilities.

27. While this process was ongoing, a memorandum dated 5 April 2007 was sent to the ECE Executive Secretary by the Director of ECE's Transport Division, stating that Mr. Dzintars had not been able to satisfactorily perform the tasks inherent to his position and that he would not recommend the extension of Mr. Dzintars' contract.

28. Mr. Dzintars signed off on his 2006-2007 PAS, expressed his disagreement with the overall rating of “does not meet expectations”, and initiated the rebuttal proceedings. His contract was subsequently extended. The Rebuttal Panel issued its report on 1 June 2007 and upgraded Mr. Dzintars to “[p]artially meets performance expectations”. As a result, Mr. Dzintars’ PAS was amended in accordance with the decision of the Rebuttal Panel.

29. From the above it becomes apparent that Mr. Dzintars’ contract was not renewed on the basis of an un-rebutted rating that he “[did] not meet expectations”. But by the time his contract ended Mr. Dzintars’ PAS had been upgraded to “[p]artially meets performance expectations”.

30. We are of the opinion that an improvement of the performance rating should have automatically led to the withdrawal of the non-renewal order and a reconsideration of the decision based on the improved rating. The UNDT misread ST/AI/2002/3, which is applicable to the case. There is no provision for an automatic non-renewal even if a staff member receives two consecutive ratings of “[p]artially meets performance expectations”. ST/AI/2002/3 is quite clear in that respect.

31. However, this will make no difference to the outcome of this appeal because a staff member who has received two consecutive ratings of “[p]artially meets performance expectations” has no legitimate expectation of renewal of contract at the end of the contract period. If at all, his only grievance can be the denial of due process. The non-renewal in his case was based on the 20

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