
Case No.: UNDT/GVA/2010/076

Judgment No.: UNDT/2010/100

Date: 1 June 2010

Introduction

1.

5. The “Inter-Organization agreement covering the reimbursable loan of [the applicant] from [WFP] to UNAMID” was signed by the applicant on 23 May 2008 and by representatives of WFP and UNAMID on 22 and 25 May 2008 respectively. The agreement states inter alia that the applicant “continue[s] to be employed by WFP”, that he “continue[s] to be paid on WFP’s payroll” and that he retains “specific return rights to WFP”. It further provides that “UNAMID will reimburse [WFP] for all the expenses incurred in connection with [the] loan agreement, including the [applicant’s] salary, benefits and allowances at his current P-5 step XI grade level”. It also stipulates that the applicant “shall return to [WFP] upon completion or termination of his assi

January 2010. However, WFP added that “[the applicant] [was] due for mandatory retirement on 27 January 2010” and that “as [WFP was] not in a position to grant return rights to the Programme, UNAMID would be liable for any termination indemnity payment as a result of early termination of appointment prior to the agreed RLA end date”. WFP requested UNAMID concurrence with this proposal.

10. On 23 December 2008, the Chief Civilian Personnel Officer, UNAMID, recommended to the Chief, FPD/DFS, with copy to the Director, Human Resources Division, WFP, a further extension of the applicant’s RLA until 2 February 2009.

11. By e-mail dated 14 January 2009, WFP informed UNAMID that it had “taken action to extend [the applicant’s] [f]ixed-[t]erm contract and secondment to UNAMID until 26.10.2010 [sic, instead of 26.01.2010] with no returns rights to WFP... ”. On the same day, WFP corrected that “this regards an extension of [RLA] (not Secondment)”.

12. By e-mail dated 15 January 2009, WFP informed the applicant of the

Parties' contentions

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request for a management evaluation of that decision would be out of time.

Considerations

28. At the outset, the Tribunal notes that according to the wording of his application, the applicant contests the decision “not to ~~Yz~~ ~~Ap~~ ~~FF~~ ~~lth~~ [bz(,H,-l hc,(z-Y-T] TXCFFbz5c,(z-Y

jurisdiction of the International Labour Organizati

33. The record of the case shows that the applicant was working from 3 June 2008 to 26 January 2010 on an RLA from WFP, the releasing organization, to UNAMID, the receiving organization. Although there may have been some misunderstandings and disputes among the three parties to this agreement, there is no doubt that, during the whole period, the applicant remained a staff member of WFP.

34. As a WFP staff member, pursuant to paragraph 10 of the Inter-Organization Agreement cited above, the applicant did not have any contractual relationship with UNAMID, although he was under its administrative supervision. In fact, he continued to be subject to the staff regulations and rules of WFP and retained his contractual rights with it.

35. It also follows from the application of the provision cited above that UNAMID, as the receiving organization, did not have authority to take administrative decisions affecting the applicant's contractual status (except for suspension from duty which does not apply in the applicant's case) even if it wanted to do so. Administrative decisions affecting the applicant's contractual status could only be taken by WFP.

36. The Inter-Organization Agreement Concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances also provides, in its paragraph 11, 5zYHMHblMhc-pz5F((llh-HzFMpplD

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capacity to be part to judicial proceedings and in