

Introduction

1. By letter of 15 January 2009, the applicant filed an appeal with the New York Joint Appeals Board (JAB) against the decision not to renew her fixed-term contract. She seeks compensation for the damage to her career and the moral and physical injury she suffered during her employment in the Civil Affairs Branch (CAB), United Nations Peacekeeping Force in Cyprus (UNFICYP).

Facts

2. The applicant began working for CAB, UNFICYP, on 30 August 2007 under a four-month fixed-term contract as a GL-4 Records Clerk. Her contract was subsequently renewed several times.

3. On 25 February 2008, the applicant had a meeting with her supervisors and the Chief, Conduct and Discipline Unit, concerning problems encountered in her work. On 27 February 2008, she had a further meeting with the Chief, Conduct and Discipline Unit, on the same topic.

4. On 29 February 2008, she lodged a complaint of harassment with the UNFICYP Personnel Section against one of her colleagues. A meeting between the applicant, her supervisors and the Personnel Section was held the same day. The applicant was informed that her first reporting officer had changed in mid-January. In addition, it was decided that the Staff Counsellor would attempt to resolve the tension between the applicant and the colleague against whom she had filed the complaint.

5. On 3 April 2008, a meeting was held between the applicant and her first and second reporting officers to discuss her Performance Appraisal System report (hereinafter “e-PAS”). On the same day, the first and second reporting officers signed the e-PAS, giving her a rating of “does not meet performance expectations”. On 9 April 2008, the applicant submitted her comments on her e-PAS.

6. On 11 and 14 April 2008 respectively, the first and second reporting officers filed complaints against the applicant, stating that she had made

false oral and written by allegations against them. A fact-finding panel was

13. On 19 May 2008, the Chief, Mission Support, sent the applicant a memorandum forwarding the rebuttal panel's report to her and informing her that the panel recommended that her rating of "does not meet performance expectations" be upgraded to "partially meets performance expectations" and that a work improvement plan, the purpose of which would be to assess the improvement in her performance, would be implemented.

20. In a memorandum dated 12 August 2008 addressed to the Chief, Mission Support, the Chief, Conduct and Discipline Unit, noting that the applicant had not met the required goals during the appraisal period, recommended that her contract should not be extended. He also summarized the situation and the applicant's working relations with her colleagues.

21. On 2 September 2008, JAB recommended suspension of the contested decision and renewal of the applicant's contract to enable her to execute the work improvement plan for at least three months.

22.

therefore covered by the request of 17 June 2008 for administrative review;

- b. She suffered discrimination and harassment from her supervisors. She was relegated to an uninhabitable office with no furniture other than shelves, no window nor ventilation;
- c. Her supervisors found her performance satisfactory until mid-February 2008, when she complained of having been harassed for seven months by a colleague;
- d. Prior to the meeting of 3 April 2008 she had received no warning, whether verbal or written, that her performance was unsatisfactory. In particular, in December 2007, at the mid-point review for her e-PAS, her work from August to December 2007 was rated as satisfactory and her contract was renewed;
- e. After an attempt at mediation, her supervisors did nothing to resolve the problems she had with a colleague. Her complaints were never formally examined. The fact-finding panel, whose mandate related not to her complaint but to the complaints against her, never submitted its report;
- f. Following her complaint of harassment, her superiors conspired against her, as is clear from her e-PAS, which was improperly prepared in a manner inconsistent with administrative instruction ST/AI/2002/3 and contains factual errors and false allegations;
- g. Having been given, as a result of the rebuttal process, the rating “partially meets performance expectations”, she was eligible, by virtue of sections 10.4, 16.4 and 16.5 of administrative instruction ST/AI/2002/3, for a one-year extension of her contract and the

- h. According to the booklet “Using PAS: A Guide for Staff and Supervisors”, she should have received a one-year contract with a detailed work plan and not a two-month extension of her contract;
 - i. She was not invited to any meeting after December 2007 in preparation for her performance appraisal and her supervisors abused their authority during the final appraisal in order to punish her. The decision not to renew her contract was taken to retaliate and discriminate against her;
 - j. It is abnormal, since they were prejudiced against her, that the supervisors she had complained about were responsible for preparing her work improvement plan and for evaluating her progress during its execution;
 - k. She was forced to sign the work improvement plan because she was told that, if she did not, her contract would not be extended. She protested against the plan, not only orally when signing it, but also in writing, as is shown by her a letter of 7 June 2008 addressed to the Chief, Mission Support;
 - l. It is obvious from her file that there was a conspiracy against her with the sole aim of destroying her career.
33. The respondent’s contentions are:
- a. The application is irreceivable because the decision of 10 October 2008 is a new decision and the Secretary-General was not asked to review it;
 - b. As to the merits of the application, the contested decision was not taken for improper motives and it has consistently been held in case law that the Administration has discretionary power to renew or not to renew fixed-term contracts. It is for the applicant to prove that the Administration’s decision was taken for improper motives and she provides no evidence to that effect;
 - c.

including weekly meetings with the applicant to discuss her work progress;

- d. It is clear from the content of the applicant's memorandum of 6 October 2008 that her contract was not renewed beyond 17 November 2008 because she refused to participate in good faith in the execution of the work improvement plan;
- e. Contrary to the applicant's contention, the CAB and the Chief Civilian Personnel Officer prepared the work improvement plan and verified that all the assigned tasks were achievable and measurable. The applicant was involved in the plan's preparation and was aware that the renewal of her contract was linked to its successful completion;
- f.

2008. He then gave the parties one week to submit their comments on the matter.

36. It appears from the facts of the case as set out above that the applicant's only request to the Secretary-General for administrative review was that of 17 June 2008 and that it was made to contest a decision of 19 May 2008. However, the purpose of the letter of 19 May 2008 addressed to the applicant by the Chief, Mission Support, was, firstly, to transmit to her a copy of the rebuttal panel's report, second, to inform her that the panel had recommended that her performance rating of "does not meet performance expectations" should be altered to "partially meets performance expectations", third, to inform her that a work improvement plan, the purpose of which would be to assess the improvement in her performance, would be implemented until 31 August 2008, and lastly, to inform her that, if no improvement was evidenced by the end of that period, her contract might not be renewed.

37. While that letter of 19 May 2008 does not contain any formal decision not to renew the applicant's contract beyond 31 August 2008, JAB, by declaring the request for suspension of the decision not to renew the contract receivable, and the Secretary-General, by accepting JAB's

must be considered a mere reminder of the Secretary-General's decision to suspend execution of the decision not to extend the contract only until 17 November 2008 and hence to confirm that the contract would be terminated from that date. The decision of 10 October 2008 is therefore a confirmation of the earlier decision and the applicant cannot be held at fault for not having requested administrative review of it.

39. The Tribunal therefore finds that the application must be considered receivable.

Merits

corresponding performance year, a performance improvement plan was put into place, in accordance with section 8.3, but that the staff member's performance failed to rise to a level that would justify a rating of "fully successful performance".

16.5 Two consecutive annual ratings of "partially meets performance expectations" shall normally lead to the withholding of a salary increment".

44. Section 8.3 of that administrative instruction provided: "As soon as a performance shortcoming is identified, the first reporting officer should discuss the situation with the staff member and take steps to rectify the situation, such as the development of a performance improvement plan, in consultation with the staff member".

45. It follows from the combination of the above texts that when a staff member holding a fixed-term contract obtains the lowest rating of "does not meet performance expectations", the Administration is entitled not to renew the staff member's contract on the ground of underperformance alone.

46. When a staff member obtains the rating "partially meets performance expectations", meaning that shortcomings have been found in his or her work, the Administration cannot decide not to renew the staff member's contract on the ground of underperformance without having first taken steps, in consultation with

the Secretary-General as Chief Administrative Officer of the Organization, who may review the matter as needed on the basis of the record. Any change in the final rating, and the date of the decision, shall be marked by the executive or administrative office on the final appraisal section of the PAS form, with annotation that the rating was changed as a result of a PAS rebuttal.

48. The file shows that on 2 May 2008 a rebuttal panel of the above-mentioned kind submitted a report recommending that the applicant's rating should be changed from "does not meet performance e

Case No. UNDT/GVA/2009/43

Judgment No. UNDT/2010/104

Entered in the Register on this 7th day of June 2010

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