

Introduction

1. By application dated 6 October 2009, registered with the United Nations Dispute Tribunal (UNDT) under case number UNDT/GVA/2009/63, the applicant contested the decision by the Deputy Secretary-General to reject his appeal against the decision “not to comply with the established procedures pertaining to separation from service”, filed with the Geneva Joint Appeals Board (JAB) (JAB Case No. 617).
2. On 9 February 2009, the applicant filed an application with the UNDT contesting the decision to pay him 36 instead of 38 days of accrued annual leave upon his separation. The difference amounted to £241.55. The case was registered under Case No. UNDT/GVA/2010/069.
3. These two cases are related to the non-renewal of the applicant’s appointment which is the main issue of the Tribunal’s judgment UNDT/2010/108.

Facts

4. The applicant entered service at the United Nations in September 2006, as Finance Assistant at the UN High Commissioner for Refugees (UNHCR) Branch Office London (BO London) on the basis of a fixed-term appointment at the G-6 level, which was extended twice, namely in December 2006 and March 2007.
5. In April 2007, the applicant was appointed by the Appointments, Posting and Promotion Committee (APPC) for a six-month probationary period, covered by a fixed-term appointment, as Administrative and Finance Assistant at the BO London. By memorandum dated 5 October 2007, the Representative of the High Commissioner for Human Rights (Representative) – head of the BO London – informed the applicant that he had been granted another fixed-term appointment from 1 October to 30 November 2007, but she specified at the same time that his contract would not be further extended.
6. On 13 November 2007, the applicant wrote to the Representative challenging her purported reasons for not renewing his contract. He sought, on 14 November 2007, the assistance of the UNHCR Mediator, but the latter

the implementation by management of the separation procedures. In particular, he stated that, in accordance with Chapter 7 of the UNHCR Staff Manual, an advance of 80% of final emoluments should be paid to separating staff and that this should include commuted annual leave, which the BO London had refused to pay in his case. He also held that, whereas it is standard separation procedure to afford staff an opportunity to extract personal data from the professional e-mail and files, on 30 November 2007, the password for his professional e-mail account had been changed by BO London management, locking the applicant out of his e-mail and invading his privacy.

14. On the same day, the Senior External Affairs Officer of the BO London sent a letter by courier to the applicant, conveying his regret that he had not responded to the management request and offered him a second opportunity to attend to outstanding matters, including signing his attendance record and P.35 form. He was asked to report to the office for this purpose no later than 18 December 2007 and was advised that “failure to complete the separation procedures will affect payment of final emoluments by UNHCR”.

15. By registered letter dated 4 January 2008, the Deputy Representative invited the applicant anew to “finalize without further delay the separation procedures” by 9 January 2008. The Deputy Representative added that, should the applicant not respond to “this final invitation”, UNHCR would have no choice but to proceed with the following actions on 9 January 2008: 1) deleting the applicant’s e-mail account; 2) sending administrati

29. On these grounds, the Panel recommended that the appeal be rejected and that no further action be taken in the case. The Deputy Secretary-General endorsed the above recommendation, as notified to the applicant by letter dated 5 June 2009.

30. On 4 September 2009, the then counsel for applicant filed an “application

this placed the applicant at a disadvantage. The Panel's failure "to ensure basic fairness taints the whole process and the decision";

- b. The Panel, which the applicant finds biased in favour of the respondent, drew conclusions contrary to the evidence. He disagrees with all its findings and conclusions except possibly those related to the loss of accumulated pension funds; yet, this loss should be taken into account when assessing an appropriated level of compensation;
- c. The applicant was not authorized to initiate the separation procedures prior to receiving the separation memorandum; the contrary would have been a usurpation of the Representative's powers. In addition, several surrounding circumstances, including

statement of intent, which could be easily reversed. Only on 22 November 2007, after the Representative's refusal to cooperate with the Mediator, did the applicant have the impression that his position was at significant risk.

- c. Because he received the separation memorandum on the day close of business on the last day of his contract, he had no opportunity to retrieve personal e-mails and select

- v. The issue of a contract for one week so that he can be insured and paid for the time it would take to attend to these matters;
- vi. Compensation for the distress deliberately inflicted;
- vii. Finally, compensation for victimization and retaliation for exercising his rights in the internal justice system.

45. Concerning Case No. UNDT/GVA/2009/63, the respondent's contentions are:

- a. The applicant failed to substantiate that he was placed in disadvantage by the JAB in terms of access to files. It is recalled that the JAB concluded that there was no evidence of any improper use by the respondent of the applicant's e-mail and files. Moreover, given the JAB procedures, any material submitted by the respondent in the framework of JAB Case No. 617 would have been transmitted to the applicant;
- b. The claim that the applicant was not authorized to deal with the separation procedure before receiving the separation memorandum does not stand. The memorandum simply outlined the required formalities, drawing the staff member's attention to the fact that they should be completed prior to separation from service in order to receive any further emolument. The applicant was informed of his separation nearly two months in advance and he was well aware of the separation formalities. The non-renewal letter of 5 October 2007 actually invited the applicant to complete his PAR, which was one of the pending formalities;
- c. None of the surrounding circumstances which allegedly made the applicant think his separation would be reversed are relevant. Mediation was never promised to the applicant. He sought the assistance of the UNHCR Mediator on 14 November 2007 and the latter informed him, on 22 November 2007, that he could not assist

in his situation. The fact that no one in the office talked about his separation does not mean that senior management did not take it seriously;

- d. The application does not contain any ground to affirm that the JAB was biased. It fully considered and scrutinized each issue raised by the applicant and considered that “based on the information available before it, it could not adhere to the [applicant’s] pleas to
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should have been aware of the processing of his P.35 at the latest in October 2008. He waited until 27 July 2009 to request a copy of the P.35 form and until 29 September 2009 to challenge same;

- c. No exceptional circumstances for the purpose of staff rule 111.2 (f)
 - defined by former UNAT as “any circumstances beyond the

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expressly pointing out that failure to complete the separation procedures could result in a delay in the final payments due upon separation. Despite this fact, the Administration eventually proceeded to pay the amounts due, even though the applicant had not taken the measures incumbent on h

