

Introduction

1.

Parties' contentions

7. The Applicant's primary contentions may be summarized as follows:

Prima facie unlawfulness

a. It was decided not to extend the Applicant's appointment based on his latest performance appraisals. However, the procedure followed to appraise the Applicant's performance in April and May 2011 was flawed. On 9 June 2011, he was asked to sign appraisals which indicated that his performance had been unsatisfactory in spite of the fact that another supervisor, Sergeant C., had previously rated his performance as "satisfactory". Additionally, although performance appraisal reports of temporary UNOG security staff are first completed by sergeants, this was not applied in his case. Lastly, the appraisals are generally not in compliance with section 6 of administrative instruction ST/AI/2010/4 (Administration of temporary appointments), which deals with performance evaluation of temporary staff;

b. The negative performance appraisals were influenced by

is three years away from the mandatory retirement age and has no realistic career prospects.

8. The Respondent's primary contentions may be summarized as follows:

Prima facie unlawfulness

a. The decision not to extend the Applicant's appointment beyond its expiration date is lawful. His performance for the months of April and May 2011 was appraised in accordance with the provisions of administrative instruction ST/AI/2010/4. The Applicant was well aware of his terms of reference. A few incidents occurred during the months of April and May 2011 and, in spite of several reminders of his professional obligations, he did not improve his performance;

b. Since temporary security officers often change functions and locations, they work under the supervision of different sergeants at the G-5 level who, in turn, report to lieutenants at the G-6 level. Thus, lieutenants evaluate the performance of security officers in coordination with the sergeants who directly supervised the officers concerned. In line with this procedure, the Applicant's direct supervisors, Sergeants A., J. and O., rated the Applicant's performance for the month of April 2011, then

Irreparable damage

d. There is no cogent evidence that the Applicant will suffer irreparable harm. The Applicant has been serving the United Nations only since 2009 and always under short-term appointments. He is not a career staff but a retiree who has been working for short periods of time;

e. There is not indication that the implementation of the contested decision would negatively affect his health;

f. The Applicant is already in receipt of a pension from a former employment.

Consideration

9. In accordance with article 2.2 of its Statute, the Tribunal may suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision where the decision appears to be prima facie unlawful, the matter is of particular urgency and the Applicant would suffer irreparable damage if the decision in question is not suspended.

Prima facie

decides not to extend an appointment on the grounds of poor performance, the Tribunal has to verify if the Administration complied with the relevant procedures (see Eldam UNDT/2010/133, Jennings UNDT/2010/213).

12. In addition, the Tribunal recalls the principle that the Administration is bound by its own rules (Lorand Order No. 93 (GVA/2010)).

13. Section 6 of administrative instruction ST/AI/2010/4 (Administration of temporary appointments) is the applicable law for the purpose of appraising the performance of staff holding temporary appointments. This section states:

6.1 At the end of the temporary appointment, regardless of duration, the programme manager shall issue a performance evaluation on a standard performance evaluation form for staff members holding temporary appointments. The form should state what was expected of the staff member and whether the staff member and the supervisor discussed those expectations. Signed hard copies of the standard performance evaluation form shall be included in the official status file of the staff member concerned.

6.2 A staff member who disagrees with the performance rating given at the end of his/her temporary appointment may, within seven days of signing the completed performance appraisal form, submit a written explanatory statement to the respe

his successive missions” and which were given to the Applicant on 9 June 2011 are both signed by Lieutenant L. and Lieutenant D. and dated 9 June 2011.

16. On the other hand, it is clear from the documents submitted by the Respondent that all but two evaluation forms completed by sergeants postdate the evaluations prepared by the lieutenants. Only the form completed by Sergeant C., who rated the Applicant’s performance as “fully satisfactory”, is dated 30 May 2011. Another form, completed by Sergeant L., bears the date of “22/05/2011”, but this date seems to be erroneous in view of the period covered by the evaluation, that is, from 23 to 27 May 2011. The other forms completed by sergeants (Sergeants A., J., O. and D. S.) are dated either 21 or 28 June 2011.

17. Having reviewed these documents, the Tribunal has doubts as to whether the Applicant’s direct supervisors were indeed consulted before the lieutenants finalized and gave to the Applicant the performance evaluation forms on 9 June 2011. Absent an explanation from the Respondent on this particular point, the Tribunal considers that these doubts have a direct impact on the lawfulness of the contested decision. If indeed the Administration did not follow its accepted and reasonable practice, the decision not to extend the Applicant’s appointment due to his poor performance might be tainted by procedural flaws, which cast serious doubts on its lawfulness.

18. In view of the foregoing, other allegations concerning the unlawfulness of the contested decision need not be addressed by the Tribunal. Therefore, it will not consider whether the Applicant’s performance appraisals were unjustified, nor whether the contested decision was based on improper motives.

Urgency

19. The prerequisite of urgency is satisfied since the Applicant’s contract will expire on 31 July 2011, in just three days from the delivery of this Judgment. In addition, the Tribunal notes that the Applicant was notified of the decision on 12 July 2011. He filed his request for management evaluation a week later on 20 July and submitted his application to the Tribunal on 25 July 2011, almost two weeks after having received notification of the contested decision. Thus, even though he could have shown greater diligence in submitting his application for suspension of

action (see Lorand Order No. 93 (GVA/2010), Jaen Order No. 29 (NY/2011)), the latter was still timely filed since the Respondent

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(Signed)