



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2011/023

Judgment No.: UNDT/2013/066

Date: 12 April 2013

Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

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6. On 16 November 2010, the Applicant submitted her electronic performance assessment documents in support of a recommendation to consider her for conversion to permanent appointment. On 7 December 2010, she was informed that the Office of Human Resources Management (“OHRM”) had determined that she was not eligible for consideration to permanent appointment. On 20 December 2010, she was further advised that OHRM had made the determination that she was not eligible for consideration for conversion to a permanent appointment as a result of her earlier separation from service.

7. On 21 January 2011, the Applicant submitted her request for management evaluation of the contested decision. The Management Evaluation Unit (“MEU”) upheld the contested decision on 22 February 2011. The Applicant filed the present application on 4 April 2011 and the Respondent filed his reply on 4 May 2011.

8. By Order No. 20 (NY/2012), dated 6 February 2012, the Tribunal (Judge Ebrahim-Carstens) ordered the parties to file a joint statement, regarding the pertinent issues and facts on which they either agreed or disagreed in the present case. The parties were also asked to inform the Tribunal as to whether a mediated solution was achievable and whether the case required an oral hearing.

9. On 19 March 2012, the parties informed the Tribunal that they did not believe that a mediated solution was possible, that they disagreed over the main legal issues of the case and that they agreed that an oral hearing was not required. They further provided the Tribunal with a chronology of agreed facts.

10. On 26 June 2012, the case was reassigned to the undersigned Judge.

11. On 29 October 2012, the Applicant, whose temporary appointment with DPKO had been extended on four occasions since her initial 1 November 2010 appointment, was required to take a break in service of at least three months as a result of having reached the 729-day limit that a staff member can be employed on a temporary appointment.

12. In response to Order No. 239 (NY/2012), dated 28 November 2012, enquiring as to her current employment status, the Applicant informed the Tribunal that she had accepted a three-month temporary appointment as an Associate Security Sector Reform Officer, United Nations Operations in Côte d'Ivoire at the P-2 level and that she would be reporting for duty on 24 February 2013.

13. The Tribunal agrees with the parties' position expressed as part of their 19 March 2012 joint submission that an oral hearing is not required in this case and will decide the case on papers before it.

Consideration

Receivability

14. The Applicant requested management evaluation of the contested decision on 10 December 2010. The MEU rendered its decision on 21 January 2011 and she filed her application with the Tribunal on 4 April 2011. The receivability conditions set out by art. 8 of the Tribunal's Statute have therefore been met and this case will be considered by the Tribunal.

Applicable law

15. ST/SGB/2009/10 (Consideration for conversion to permanent appointment of staff members of the Secretariat eligible to be considered by 30 June 2009) of 23 June 2009 states:

Section 1

Eligibility

To be eligible for consideration for conversion to a permanent appointment under the present bulletin, a staff member must by 30 June 2009:

- (a) Have completed, or complete, five years of continuous service on fixed-term appointments under the 100 series of the Staff Rules; and

(b) Be under the age of 53 years on the date such staff member has completed or completes the five years of qualifying service.

Section 2

Criteria for granting permanent appointments

In accordance with staff rules 104.12(b)(iii) and 104.13, a permanent appointment may be granted, taking into account all the interests of the Organization, to eligible staff members who, by their qualifications, performance and conduct, have fully demonstrated their suitability as international civil servants and have shown that they meet the highest standards of efficiency, competence and integrity established in the Charter.

Section 3

Procedure for making recommendations on permanent appointments

...

3.4 In the absence of joint support for conversion to permanent appointment, including cases where the department or office concerned and the Office of Human

shall be made exclusively through competitive examination? Does this mean that a staff member in the General Service category may only be appointed to the Professional Category either by: (1) Successfully completing the competitive examination; or (2) Separating from the Organization and being reemployed in the professional category without any regard to their previous service in the General Service category?

20. The Tribunal finds that the above submissions, rather than identifying the relevant scope of the case, actually outline the legal arguments presented by the parties in this case. Based on the agreed identification of the administrative decision that the Applicant contests, the Tribunal therefore defines the issue to be considered as whether the administrative decision to consider the Applicant ineligible for a permanent appointment was lawful. However, when determining this matter, the Tribunal will take the above legal arguments into consideration.

Eligibility for permanent appointment

21. Section 1 of ST/SGB/2009/10 defines the eligibility requirements that have to be met by a staff member wishing to be considered for conversion to a permanent appointment. Namely, a staff member must, as of 30 June 2009, have completed or complete five years of continuous service on fixed term-appointments under 100 series of the Staff Rules and be under the age of 53 years.

22. Sections 2 and 3 of ST/SGB/2009/10 establish the procedure that has to be followed for granting a permanent appointment to a staff member who has been deemed eligible for consideration to conversion to a permanent appointment. Furthermore, sec. 3.4 states that “[t]he advisory body may recommend conversion to permanent appointment or continuation on a fixed-term appointment. Similarly, sec. 3.7 also states what is to occur if a staff member is not granted a permanent appointment following consideration, namely that they “will continue to serve on a fixed-term appointment, and shall not be eligible to be considered for a permanent appointment in the future”.

initiated on 1 February 2002 and lasted until her separation from service to join UNDP on 11 November 2009. The parties further agree that after her separation from OCHA, the Applicant was on a fixed-term appointment with UNDP until her separation from service on 31 October 2010 for the purpose of joining DPKO on a temporary appointment on 1 November 2010, an appointment on which she remained until 29 October 2012.

27. Consequently, on 16 November 2010, the date on which the Applicant requested that she be considered eligible for consideration to conversion to permanent appointment, as well of the date of this Judgment, she was no longer appointed on a fixed-term contract. Rather, she was, and still is, an active staff member on a temporary appointment with the United Nations Secretariat.

28. In conclusion, the Respondent correctly determined that the Applicant was not eligible for conversion to a permanent appointment as she no longer met one of the requirements set out in the ST/SGB/2009/10, that she be on a fixed-term appointment with the United Nations Secretariat.

Conclusion

29. In the view of the foregoing , the Tribunal DECIDES:

30. The application is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 12th day of April 2013

Entered in the Register on this 12th day of April 2013

(Signed)

Hafida Lahiouel, Registrar, New York