



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2013/021

Judgment No.: UNDT/2013/126

Date: 11 October 2013

Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Har:

Introduction

1. The Applicant, a General Service staff member with the United Nations Office for Project Services (“UNOPS”) in Beijing, China, contests the decision to give her a limited extension of her contract to 30 June 2013 and to abolish her post on this date.

2. The Applicant submits that as a United Nations staff member since 2004, she should have been offered a permanent contract and UNOPS should therefore compensate her for her lost benefits and other losses. Furthermore, the Applicant submits that since she will be aged 55 on 30 June 2013, the decision violates the practice applied in the host country where she understood that the employer is not allowed to terminate the contract of any employee when he/she is at age 55.

3. The Respondent resists all of the Applicant’s claims asserting that there was no illegality in the decisions which were based on sound business and organizational requirements.

4. The Respondent submits that the Applicant did not request management evaluation of the contested decision and that therefore, her application is not receivable. Nevertheless, the Respondent indicated that it did not intend to rely on the Applicant’s failure to request management evaluation before filing the Application, because her action in contacting Office of Staff Legal Assistance (“OSLA”) on or before 24 January 2013 showed that the Applicant intended to contest in a timely manner the decisions to abolish her post and not extend her contract.

Relevant background

5. On 20 September 2004, the Applicant entered into a Special Services Agreement (“SSA”) with the United Nations Development Program (“UNDP”), China to commence work as a Portfolio Assistant with UNOPS, China for a period of 1 month and 11 days, from 20 September to 31 October 2004. The SSA states in

paragraph 1 that “the [Applicant] shall be considered as having the legal status of an independent contractor and as being an expert on Mission for the purpose of the Convention on the Privileges and Immunities of the United Nations, the [Applicant] shall not be considered in any respect as being a staff member of the United Nations or of UNDP”. The Applicant’s SSA was extended on two occasions, under the same terms as the original SSA, until 31 December 2004.

6. From 1 January 2005 to 13 January 2005, the Applicant was also paid \$2,396.43 for working 9 days.

7. On 14 January 2005, the Applicant entered into a one-year 100 series fixed-term contract as a GS-4 Portfolio Assistant with UNOPS, China

8. On 17 May 2010, the Director, Human Resources (“HR”), sent an email to UNOPS staff reminding them that they should make the necessary request by contacting UNOPS if they felt that they met the eligibility criteria under ST/SGB/2009/10 for consideration for conversion to a permanent appointment.

9. As of 30 June 2009, the Applicant would have been employed with UNOPS for 53 months under the 100 series contract with effect from 15 January 2005. Furthermore, even if the 20 September 2004 to 14 January 2005 period were to be included, the Applicant would have been employed with UNOPS for a period of 57 months which is still less than the 60 month (5 years) requirements for conversion to a permanent appointment. Accordingly the Applicant’s claim that she should have been offered a permanent appointment fails because she did not meet the eligibility criteria under ST/SGB/2009/10.

10. On 3 and 10 December 2012, the Applicant sent an email to a UNOPS HR staff member inquiring about the extension of her contract. In her 10 December 2012 email, she states “I have been [working] for the UNOPS China office since the Sept. 2004”.

11. On 11 December 2012, the Applicant was informed that “her contract will

Office, UNOPS, Bangkok sought clarification on some of the concerns the Applicant raised regarding the six month extension of her contract, the abolishment of her post as well as whether she was entitled to a permanent appointment.

12. On 19 December 2012, Ms. Auping-Kamps informed the Applicant that she was only able to provide her with a 6 month contract extension, after which her current position would be abolished and that she would be separated from UNOPS on 30 June 2013.

13. On 17 January 2013, an email was sent to the Applicant attaching a 9 January 2013 letter from Mr. Wang Yue, the Regional Director, UNOPS Asia Pacific Office, providing written notification to her that her position will be abolished on 30 June 2013.

14. Between 17 January and 24 January 2013, the Applicant contacted OSLA seeking legal assistance following which OSLA contacted the Respondent to discuss the matter. The Tribunal has no information about these discussions.

15. On 2 April 2013, the Applicant filed the present application. The New York Registry informed the Applicant that her application was incomplete as it was missing Annex 1 and her request for management evaluation of the contested decision.

16. The Applicant responded to the Registry on 3 April 2013 stating that she had already sent an email to the Executive Director UNOPS requesting a management evaluation of the decision.

17. The Registry promptly acknowledged her application and transmitted it to the Respondent.

18. The Applicant stated that she was informed of the contested decision on 11 December 2012, but received the formal notification on 17 January 2013. She stated that, as a self-represented staff member, she was not aware of how to request management evaluation and that she was unable to obtain assistance from OSLA. It is clear that until she received the Respondent's reply on 2 May 2013, she was not

which the Applicant was required to file a request for management evaluation was 18 March 2013. The Applicant has conceded that she did not file her request for management evaluation until after filing her application with the Tribunal, on 4 April 2013. It is plain that on those facts the request for management evaluation

Conclusion

28. The Application is not receivable and is hereby dismissed.

(Signed)

Judge Goolam Meeran

Dated this 11th day of October 2013

Entered in the Register on this 11th day of October 2013

(Signed)

Hafida Lahiouel, Registrar, New York