

JUDGE MARTHA HALFELD , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/011, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 29 January 2018, in the case of *Gnassou v. Secretary-General of the United Nations*. Ms. Laure Gnassou filed the appeal on 30 April 2018 and the Secretary-General filed his answer on 2 July 2018.

Facts and Procedure

2. The following facts are uncontested:¹

... On 1 July 2004, the Applicant commenced employment with [the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO)] on a fixed-term appointment as an Economic Affairs Officer at the P-4 level in the Political Affairs Division (“PAD”). She worked in PAD until her separation from service on 31 August 2015.

... By a memorandum dated 7 September 2014 the Special Representative of the Secretary-General (“SRSG”) for MONUSCO selected the Applicant for a transfer from PAD to his office to serve as his economic advisor. On 11 September, the Applicant sought a correction of the entry on duty (“EOD”) date stated in the SRSG’s memorandum and requested that it be resent to PAD after the correction had been made.

... The SRSG re-issued the selection memorandum on 12 September 2014 with the corrected EOD date. On 21 September, the Applicant emailed the SRSG to raise her concerns about the transfer to his office. Her concerns included: (i) the assignment of a consultant to be her supervisor; (ii) the SRSG’s assessment of her performance based on comments provided by the Officer-in-Charge (“OiC”) of PAD; (iii) the recruitment of a consultant when she had the requisite expertise; and (iv) her lack of promotion and career development in ten years.

... On 22 October 2014, the OiC PAD emailed the Applicant regarding her move to the Office of the SRSG. She responded to him the same day notifying him that she was not interested in a lateral move after more than 10 years in the same post. In response to the Applicant’s email, the SRSG indicated in an email dated 22 October 2014 that she could stay with PAD.

... On 7 May 2015, the MONUSCO Human Resources (HR) section emailed

... Since Mr. Torres did not respond to this request[,] HR sent a reminder to him on 27 May 2015 reminding him that the Applicant's fixed-term appointment was due to expire on 30 June 2015.

... On 1 July 2015, the Applicant's first reporting officer ("FRO") assessed her overall performance for the 2014-2015 performance evaluation cycle as "does not meet performance expectations".

... By an email dated 1 July 2015, Mr. Torres confirmed his approval of the extension of the Applicant's appointment but did not indicate for how long. On 2 July 2015, the Applicant returned the unsigned extension request form to the Director's office.

... On 3 July 2015, the Director of PAD emailed HR confirming his approval of the extension of the Applicant's appointment for a period of three months to enable her to comply with a [Performance Improvement Plan (PIP)].

... The Applicant submitted a formal rebuttal of her 2014-2015 e-PAS on 15 July 2015.

... On 16 July 2015, the Applicant's FRO sent her a draft PIP with a request that she submit her comments, if any, within a week. The Applicant has not submitted any documentary evidence or submission indicating that she submitted comments on the PIP or responded to her FRO's email. She did, however, send an email to the Chief of HR

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on 30 June 2015, and that the contract extensions without Ms. Gnassou's acceptance of the offers were contrary to Section 4.4 of ST/AI/2013/1 and in consistent with administrative regularity.

5. The UNDT, however, concluded that MONUSCO continued to extend Ms. Gnassou's appointment in the hope of persuading her to cooperate with the PIP, that Ms. Gnassou's "steadfast refusal, despite several attempts

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12. Ms. Gnassou requests that the Appeals Tribunal vacate the UNDT Judgment, rescind

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Staff Regulation 4.5

...

(c) A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service[.]

Staff Rule 4.13 - Fixed-term appointment

(a) A fixed-term appointment may be granted for a period of one year or more, up to five years at a time, to persons recruited for service of a prescribed duration, including persons temporarily seconded by national Governments or institutions for service with the United Nations, having an expiration date specified in the letter of appointment.

(b) A fixed-term appointment may be renewed for any period up to five years at a time.

(c) A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service, except as provided under staff rule 4.14 (b).

Staff Rule 9.4 - Expiration of appointments

A temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment.

10.3 If the performance shortcoming was not rectified following the remedial actions indicated in section 10.1, a number of administrative actions may ensue, including the withholding of a within-grade salary increment pursuant to section 16.4, the non-renewal of an appointment or the termination of an appointment for unsatisfactory service in accordance with staff regulation 9.3.

10.4 Where at the end of the performance cycle performance is appraised overall as “does not meet performance expectations”, the appointment may be terminated as long as the remedial actions indicated in section 10.1 above included a performance improvement plan, which was initiated not less than three months before the end of the performance cycle.

10.5 Should unsatisfactory performance be the basis for a decision for a non-renewal of a fixed-term appointment and should the appointment expire before the end of the period covering a performance improvement plan, the appointment should be renewed for the duration necessary for the completion of the performance improvement plan.

...

Section 15

Rebuttal process

...

15.6 Should unsatisfactory performance be the basis for a decision of non-renewal of an appointment and should the appointment expire before the end of the rebuttal process, the appointment should be renewed for the duration necessary to the completion of the rebuttal process.

ST/AI/2013/1 (Administration of fixed-term appointments) (emphasis in original and footnotes omitted)

Section 4

Renewal and extension of fixed-term appointments

4.1 Subject to the needs of the Organization, a fixed-term appointment may be renewed for any period up to five years under the conditions described in paragraphs 4.2 and 4.3 below. (as per ST/AI/2013/1/Corr.1 issued on 13 June 2013)

4.2 Subsequent to the initial fixed-term appointment, an appointment may be renewed for any period of up to a maximum period of two years at a time. There is no limitation to the number of times an appointment may be renewed consecutively, subject to the needs of the Organization.

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Section 7

Expiration of appointment and termination

7.1 A fixed-term appointment expires on the expiration date specified in the letter of appointment. (as per ST/AI/2013/1/Corr.1 issued on 13 June 2013)

23. Ms. Gnassou argues that the UNDT was correct in not applying Section 10.5 of ST/AI/2010/5, since there was no PIP in place as of 30 June 2015, when her appointment expired. However, she complains that the UNDT erred in law in failing to apply Section 15.6 of ST/AI/2010/5 and Section 4.12 of ST/AI/2013/1 which provide that where unsatisfactory performance is the basis for a decision of non-renewal of an appointment, the appointment should be renewed for the duration necessary for the completion of the rebuttal process.

24. We find no merit in Ms. Gnassou's contention. According to ST/AI/2010/5 on the Organization's Performance Management and Development System, when a performance shortcoming is identified, remedial actions may be put in place, such as counselling, transfer to more suitable functions or additional training. If the performance shortcoming is not rectified following these remedial actions, a PIP shall be prepared. The fact that Section 10.1 and the provisions that follow (which govern the PIP) precede Section 15 (which governs the rebuttal process) implies that the former is applied before the latter.

25. Importantly, in the absence of any explicit provision establishing otherwise, the rebuttal process does not have the effect of suspending the implementation of the PIP, although the PIP may be modified as a result of the conclusions and/or recommendations of the report of the rebuttal panel. That means that, regardless of the fact that a rebuttal process was pending and that an undue delay had been caused by the Administration,⁴ Ms. Gnassou had to sign the offer of renewal, as a precondition for her appointment to continue. She also was subject to the implementation of the PIP proposed to her, as long as it was not modified or withdrawn. Since Ms. Gnassou refused to sign the letters of appointment containing the extension of her fixed-term appointment, there was no longer a contract in effect.

26. The UNDT correctly found that the activating cause of the non-renewal of Ms. Gnassou's contract was "[her] steadfast refusal, despite several attempts at persuasion by MONUSCO HR, to sign the acceptance of the new extension of appointment".⁵ In other

⁴ On this issue, see *Gnassou v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-865.

⁵ Impugned Judgment, para. 20.

words, since Ms. Gnassou chose, by act of her own volition, not to sign the extension of her contract, she is now estopped from contesting any possible consequence deriving from such non-extension.

27. Ms. Gnassou has failed to show any reversible error in the UNDT's finding that her separation was justifiable, in application of Section 4.4 of ST/AI/2013/1. We find no error in the UNDT's decision which is supported by both the facts and the law.

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