
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2015/138

Judgment No.: UNDT/2016/212

Date: 6 December 2016

Original: English

B o Judge Teresa Bravo

§ Geneva

§ Rene M. Vargas M.

FAUST

v.

SECRETARY GENERAL
OF THE UNITED NATIONS

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C o n o **A p p** n
Self represented

C o n o **§** on n
Alan Gutman, ALS OHRM, UN Secretariat

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By application filed on 2 June 2015, the Applicant, a former staff member at the United Nations Framework Convention on Climate Change (UNFCCC)

. By mail of ⁴ August², the Applicant informed the UNFCCC of the following ;

2 . The Applicant confirmed the above understanding on 2 August 2015 by signing a clause in the 22 August 2015 Memorandum that read as follows :

I hereby confirm my decision to release the lien on my post as Programme Administrative Assistant, G-5, with the Information Technology Services programme with immediate effect, as well as my agreement with the conditions mentioned above. Annex 5 to application .

2 . On January 2014, the ISGCF became independent and its headquarters were moved to Incheon, Republic of Korea. The Applicant was offered a three month consultancy contract, which she did not accept. Thus, her assignment with the ISGCF came to an end.

2 . The Applicant was on annual leave from 2014 to 2014 . On January 2014, she was offered a three month temporary assignment with the Sustainable Development Mechanism (SDM), UNFCCC, as an Administrative Assistant (G-5), effective January 2014 . This appointment was successively extended on three occasions, until December 2014 .

2 . In July 2014, SDM advertised four posts in its Finance Team . The Applicant applied to the post of Associate Programme Officer (P-2), and was informed on 2 November 2014 that she was not selected for it. The Applicant filed an application against the decision not to select her, which was adjudicated by Judgment No. UNDT/2015/2 .

2 . During a meeting with the Applicant on 2 November 2014, the Chief, AS, HRU, UNFCCC, confirmed to the Applicant that she was not selected for the post of Associate Programme Officer (P-2) because she was not a member of the Finance Team .

4. The Applicant requested management evaluation of the decision to terminate her appointment on January 25, and received a response to her request on March 5, upholding the contested decision.

5. The Applicant separated from service on February 5 and was paid a termination indemnity.

6. The Applicant's principal contentions are:

a. The agreement of 22 August was limited to the period of her

e. UNFCCC did not make any effort to find a suitable post for her ; rather, she was told that she had to find one ; it was her who secured the temporary assignment with SDM Finance, in January^{2 4} ; as such, her appointment was not terminated upon her return from ISGCF ;

f. She did not decline a three-month appointment in Korea as alleged by the Respondent. What she was offered and she declined was a consultancy contract with unclear entitlements (the Board of the ISGCF had not yet approved the Administrative Rules and Regulations of the Fund ; she declined it only after she had made arrangements with UNFCCC on how to continue ;

g. Her assignment with ISGCF came to an end when it became an independent entity that started operating from its new Headquarters in Korea as of January^{2 4} ;

h. Funding was available within SDM and within UNFCCC to cover the cost of her temporary assignment until November^{2 5} ;

i. Between March and October^{2 4} , four staff members left the SDM Finance team . As at November^{2 4} , only one of two advertised G₅ posts at SDM Finance had been filled and five out of eight posts in the SDM Finance team were vacant. Hence, there was a continued need for staff and one vacant G₅ post and this is supported by the evidence ; at the time of her separation from service, the SDM Finance team was still understaffed ; she was not informed about the limitations of her temporary assignment with SDM ;

j. She made the request to work under a different supervisor after the termination notice had been served to her ; thus, any argument that she made a reassignment conditional cannot stand ;

k. She was active in her job search and applied to a P² post at SDM ; that recruitment process is subject to a distinct application (cf. Case No. UNDT GVA^{2 5}) ; she did not apply to one G⁴ and two G₅ posts,

since she had an FTA until November² 5 with the understanding that she would be placed against suitable vacant posts; however, from January to December² 4, she applied to a total of thirty six vacancy announcements, three of which within UNFCCC, and the remaining with other international organizations, including the United Nations; she only applied to posts for which she was qualified;

l. She was not informed that her temporary assignment with SDM Finance would end on December² 4 or that her FTA would be terminated although suitable vacant posts and funds were available; she was neither informed that her FTA would be terminated if she was not successful in being selected to the P² post at SDM Finance, and if she did not apply to the G⁴ and G⁵ positions;

m. The Executive Secretary, UNFCCC, has the prerogative to extend temporary assignments beyond twelve months if it is in the best interest of the Organization;

n. While it was stated that the Applicant was no longer needed at SDM, it requested additional support from another programme (Administrative Services Programme) and the Applicant had to cover the work of a P² staff member of that programme for two months, while the latter was supporting SDM Finance; her placement in the Administrative Services Programme for two months prior to her termination on February² 5, despite the need of support in SDM, shows bias against her by the unit manager;

o. In light of the experience she had acquired at SDM Finance, she could reasonably assume that she would continue working for it as long as there were vacant posts available in that unit;

p. AG² 4 did not apply to her case, since it entered into force only on October² 4; rather, AG² 4 applies to her case;

q. She was not given the time and opportunity to look for another solution before being served the notice of termination;

- r. There are no Rules and Regulations, or guidelines, stipulating the

d. The Applicant was unsuccessful in obtaining a new post, once she returned to UNFCCC, the latter offered the Applicant an assignment that was extended three times, for a total duration of twelve months, with the aim "to facilitate her to find another job" at the expiration of that assignment, the Applicant was reassigned to temporary functions for another three months, until February 5 ;

e. Her assignments could not be extended indefinitely pursuant to UNFCCC Administrative guidelines AG² 4 "Temporary assignment against vacant or temporarily vacant posts and Special Post allowance, whereby temporary assignments should be used for the shortest possible period, during which the normal procedures for recruitment or placement and promotion shall be followed" further, according to AG² 4 "UNFCCC Contract Modalities for Temporary Placement, reassignments of staff are subject to open competition and a maximum duration of one year ;

f. During the period of her temporary assignments, the Applicant was not successful in obtaining a position with UNFCCC while she applied to a P² position within SDM, she was not selected for it she did not apply to three other positions in the Finance Team, SDM, advertised in July² 4 ;

g. The contract of the Applicant was properly terminated, in accordance with the agreement of²² August², to which she had freely consented ;

h. The Applicant's claims of harassment and abuse of authority by a Programme Officer P⁴, SDM, are not receivable *ratione personae*.

v. If facts anterior to the appointment of the staff member and relevant to his or her suitability come to light that, if they had been known at the time of his or her appointment, should, under the standards established in the Charter of the United Nations, have precluded his or her appointment ;

vi. In the interest of the good administration of the Organization and in accordance with the standards of the Charter, provided that the action is not contested by the staff member concerned.

14. In no case shall the following order of preference be observed :

e. Except as otherwise expressly provided in paragraph f below and staff rule 10.1, if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, staff members shall be retained in the following order of preference :

i. Staff members holding continuing appointments ;

ii. Staff members recruited through competitive examinations for a career appointment serving on a two year fixed term appointment ;

iii. Staff member holding fixed term appointments.

f. The provisions of paragraph e above insofar as they relate to staff members in the General Service and related categories shall be deemed to have been satisfied if such staff members have received consideration for suitable posts available within their parent organization at their duty stations.

22. In the present case, the Applicant's fixed term appointment was terminated after she had signed an agreement releasing the lien on the G₅ post she had endeavored at UNFCCC. In that agreement, she had further agreed that her appointment would be terminated should she not find any post at the end of her temporary assignment with the IGCS. At the end of that assignment, the Applicant went on a temporary assignment with SDM, UNFCCC, until 2² February² 2015, when her appointment was terminated.

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Does the Applicant's case fall under any of the reasons for termination provided for under the staff rules?

2 . The staff rules provide for an exhaustive list of reasons for which the Secretary General can unilaterally terminate a fixed term appointment. The Tribunal has to examine whether any of the reasons provided for by the Staff Rules and Regulations apply to the Applicant.

24 . As the Appeals Tribunal noted in *n² 4 UNAT⁴* (see its para.² 55 :

It is clear that the decision being contested was the decision informing Ms. Guzman of her separation from service prior to the expiry of her fixed term appointment. Staff Rule 2.6(a) defines termination as a "separation initiated by the Secretary General" and pursuant to Staff Rule 2.6(i), one basis for termination may be the "abolition of posts or reduction of staff".

25 . The Applicant held a letter of appointment providing for a fixed term appointment as Administrative Assistant, ITS, from December 22² to November 2² 5 . That letter of appointment was still in force after she surrendered the lien on her post, effective 22 August² . However, under the agreement she signed on 2 August² , the post for which the letter of appointment was issued and that she had endeavored was no longer available; it had been filled with another staff member. In the Tribunal's view, this is comparable to a situation where the post endeavored by the contract holder has been abolished, under staff regulation 2.6(a) and staff rule 2.6(i) . However, unlike post abolition, on which the staff member has no influence, the decision to surrender the lien on the post for which she had been recruited was voluntarily taken by the Applicant. Indeed, prior to signing the agreement on 2 August² , the Applicant informed the UNFCC Administration, through an email that she wrote at her own initiative on 4 August² , that she wished to release the lien on her G₅ post. Further, the Applicant confirmed in a subsequent email that she was "still not interested" to return to that post.

. The Tribunal notes that the Administration offered the Applicant, although under the terms of the agreement it was not obliged to do so, a temporary assignment with SDM, UNFCCC, as Administrative Assistant, effective January^{2 4}, namely when the ISGCF became independent and the Applicant's assignment there came to an end. That temporary assignment was extended three times, until December^{2 4}. Even thereafter, the Administration made an effort to place the Applicant, and offered her another temporary assignment until² February^{2 5}. The Administration thus made considerable efforts to place the

