

Decision of the Panel of Adjudicators

Proceedings

1. The Chairperson of the Panel of Adjudicators of the OSCE received on 28 April 2016 a letter dated 26 April from the Chairperson of the Permanent Council of the OSCE transmitting an external appeal by [REDACTED] (Applicant), who had worked as [REDACTED] at [REDACTED] OSCE [REDACTED] between 1998 and 2014.
2. The Chairperson of the Panel, through the Executive Secretary of the Panel, informed the Secretary General of the OSCE (Respondent) and the Applicant on 28 April 2016 of the constitution of the Panel and asked them to forward any further communication to the Panel as per Article 5 of the Rules of Procedure of the Panel (RoP) to reach the Panel no later than 28 May 2016. The Respondent forwarded his reply on 27 May 2016 which was transmitted to the Applicant, advising [REDACTED] that [REDACTED] has a right to file a rebuttal by 18 June 2016. The Applicant filed such rebuttal on 17 June 2016 which was transmitted to the Respondent for information. On 5 July, the Respondent was informed that the written pleadings were completed. Without leave from the Panel, the Respondent submitted a surrebuttal on 7 July 2016.
3. In accordance with Article VI of the Terms of Reference of the Panel, the Chairperson of the Panel convened the Panel on 20 – 21 October 2016 at the Hofburg premises in Vienna to deliberate and adjudicate the appeal. The Panel was composed of Mr. Thomas Laker, Chairperson of the Panel, Mr. Gennady Kuzmin and Ms. Jenny Schokkenbroek, members of the Panel.
4. After examining all the documents submitted to it, the Panel noted that the Applicant's major claims include the following:
 - a) compensation for the loss of income, amounting to EUR 98.224 from [REDACTED] alleged dismissal,
 - b) compensation for the cancellation of work options, amounting to EUR 5.736,
 - c) compensation for psychological suffering to an amount of EUR 10.000,
 - d) compensation for moral damage to a symbolic amount of EUR 0,01,
 - e) compensation for the breach of an alleged contract by which the Applicant would have received letters of appointment for half of the OSCE meetings from 2007 onwards,
 - f) reimbursement of unspecified legal fees,
 - g) reimbursement of costs for paperwork etc., to an amount of EUR 178,52.

5. The Panel also took note of additional requests of the Applicant, in particular to hear witnesses and to submit [REDACTED] claims, if dismissed, to the Administrative Tribunal of the International Labour Organization.

Facts

6. Between 1998 and 2014, the Applicant worked at [REDACTED] OSCE [REDACTED] with different levels of intensity. For each of the limited engagements, the Applicant received an individual [REDACTED], specifying the working days, the daily salary and other conditions. These letters also provided for the application of the [REDACTED]
[REDACTED]
[REDACTED] Agreement).
7. On 14 February 2014, the Applicant received options to work, i.e., from 30 June to 4 July 2014 and from 14 to 24 July 2014.
8. By email dated 17 June 2014, the Applicant was informed that [REDACTED] options for 1 to 4 July had been cancelled. On 19 June a further email stated that the Applicant's options from 15 to 18 July and from 22-25 July had also been cancelled.

Contentions

9. The Applicant's major contentions, repeated several times on hundreds of pages, are
 - that there was an agreement oral and in writing between [REDACTED] and OSCE that made [REDACTED] work relationship different than that of [REDACTED],
 - that according to this agreement, the Applicant was entitled to work at half of OSCE's meetings,
 - that this agreement was cancelled as a result of communication between the Applicant and the former [REDACTED] OSCE Permanent Representative regarding circumstances [REDACTED]
[REDACTED]
 - that [REDACTED] was dismissed due to personal animosity on the side of the former [REDACTED]
[REDACTED]
 - that there have been irregularities and delays in the appeals process.

10. The Respondent's major contentions are

- that the Applicant was employed as [REDACTED] with no legitimate expectation to a long-term or permanent employment,
- that the options offered to the Applicant in February 2014 were not legally binding obligations and could be cancelled without compensation,
- that there was no retaliation against the Applicant,
- that the appeals process was conducted in compliance with the applicable law.

Considerations

Procedural issues

11. At the outset, the Panel takes note of the contractual relationship between the parties, as described in, e.g., the letter of appointment dated 20 May 2014, which declares the provisions of the [REDACTED] Agreement applicable. Pursuant to chapter VIII para. 41 of this agreement, disputes between a short-term [REDACTED] and an Organization shall be settled through the relevant procedures and under the same conditions applicable to the regular staff of the Organization concerned. In addition, the letter of appointment declares Art X (appeals) of the Staff Regulations and Staff Rules applicable. Although the Applicant's claims are not based on [REDACTED] letters of appointment, the Panel finds it appropriate to review the Applicant's status within the Organization based on these letters of appointment.
12. Further, the Panel notes that it has no jurisdiction to submit any of its cases to the jurisdiction of the Administrative Tribunal of the International Labour Organization.
13. Finally, the Panel does not take into consideration the surrebuttal submitted by the Respondent on 7 July 2016 as part of the proceedings. The Respondent is not entitled to any such further communication unless expressly granted by the Panel. The Panel holds the view that Art. 5 RoP must be read in a way that excludes a potentially endless exchange of written communications. Indeed, the "further communications" mentioned in Art. 5 para. 4 RoP are to be construed as a final reaction to the reply as established in para. 3 of this provision.

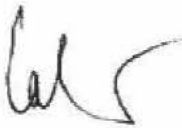
Merits

14. With regards to the merits of this application, the Panel again refers to the documents upon which the contractual relationship between the parties is based. The letter of appointment dated 20 May 2014 qualifies the type of appointment as a 'short-term appointment' and refers to the Applicant as 'short-term staff member'. It fixes the period of appointment on a daily basis, i.e. for two working days. As described above, it further declares the provisions of the [REDACTED] Agreement applicable, and, finally, clarifies that rights and obligations are limited to the terms and conditions set forth in the letter of appointment.
15. The Panel notes that the OSCE Staff Regulations and Staff Rules are not applicable in their relevant parts, since Regulation 1.03 (b) excludes their applicability for staff members who are, as the Applicant was, employed on a daily basis.
16. The Panel finds that, by signing the letter of appointment, the Applicant accepted the terms and conditions set forth therein in total. Therefore, [REDACTED] arguments that [REDACTED] should be considered as a somewhat "permanent" OSCE staff member must fail. The Panel concludes that the clear and unambiguous wording of the letter of appointment contradicts the Applicant's claim that [REDACTED] was entitled to any kind of a certain level of assignment of work.
17. Further, the Panel emphasizes that the exchange of emails between the Applicant and other OSCE officials could not and did not change the contractual basis between the parties as provided for in the letter of appointment. The Applicant's status as a freelance, or "short-term [REDACTED]" (see para 1 and Footnote 1 of the [REDACTED] Agreement) had been established from the very beginning of [REDACTED] commitment to OSCE and had never changed in between. As a result, the Panel rejects the Applicant's perception of a permanent or longer lasting contractual relation.
18. Pursuant to established principles of international administrative law, fixed term appointments do not carry any expectancy of renewal or conversion to any other type of appointment. Exceptions from this principle can only be accepted where the Administration gives an express promise that the appointment will be renewed. In this respect, the Panels takes note that even if such promises might be concluded from emails in 2012, it became clear from messages in 2013 that the Applicant could no longer expect further renewal of [REDACTED] short-term appointments. On the contrary, the email dated 12 November 2013 unambiguously explained to the Applicant that "the fact that you were getting roughly 25% of all offers [REDACTED] [REDACTED] for meetings in Vienna for a number of years does not entitle you to any specific amount of offers in future".
19. It follows from the above that the Applicant's claims regarding compensation of income based on alleged dismissal and/ or a breach of an alleged contract (see above 4 a) and f)) are unfounded.

20. Regarding the Applicant's allegation that [REDACTED] exclusion from further assignments of work was based on improper motives, no supportive evidence was provided. The Panel takes note that initial communication with the former [REDACTED] OSCE Permanent Representative took place as early as July 2013 whereas OSCE's decision to cancel options for work was taken only in June 2014, i.e. nearly one year later. In addition, the Applicant did receive further offers of work after [REDACTED] communication with the former [REDACTED] OSCE Permanent Representative, e.g. on 17 February 2014, and [REDACTED] eventually worked for OSCE in spring of 2014. Therefore, the Panel does not find any causal nexus between these events and rejects the Applicant's claim of being victim of retaliation.
21. Also, the Panel cannot find sufficient evidence that the Applicant has been retaliated by the former [REDACTED], based on the seemingly long and difficult relationship between them. The same applies to the Applicant's allegations of "fraud, corruption and nepotism" in OSCE [REDACTED].
22. As a result, the Panel sees no reason to grant compensation for psychological suffering compensation for moral damage (see above 4 c) and d)).
23. With respect to the cancellation of work options by emails of 17 June 2014 and 19 June 2014 respectively, the Panels notes that the [REDACTED] Agreement includes provisions on compensation in case of cancellation of an appointment. For any such compensation, it is crucial whether the work offer is to be considered as a pure "option" or whether it amounts to a "firm offer". Pursuant to Chapter II para. 8 (5) of the agreement, only a firm offer shall give rise to the payment of indemnities.
24. Chapter II para. 8 (1) of the agreement defines a "firm offer" as binding on both parties and an "option" as a non-binding proposal of work. The suggestions made on 14 February 2014 clearly belong to the latter group, as they were named "options". However, the Panel takes note that, in the respective email, the Applicant was asked whether [REDACTED] would accept the options. Also, [REDACTED] was asked to give a reply which [REDACTED] did on 17 February 2014, accepting the options. From that date on, pursuant to Chapter II para. 8 (3) (ii), the Applicant was obliged to accord priority to the Organization for the period concerned. The Panel concludes from the legal framework described above that the relations between the Applicant and OSCE entail a certain degree of mutual duty of care regarding the options offered in February 2014.
25. The Panel takes note that, on one hand, OSCE had confirmed in writing options for 8 May 2014 and later dates as early as on 2 April 2014, i.e. more than one month in advance. On the other hand, regarding the options under review, i.e. from 30 June to 4 July 2014 and from 14 to 24 July 2014 the Applicant had not received any confirmation by early June 2014.

26. In the Panel's view, it was for the Applicant to ask for confirmation of the options above. Pursuant to para. 8 (4) (II) [REDACTED] Agreement [REDACTED] could have requested confirmation of the offers as a firm option. In not doing so, the Applicant accepted the risk of the pending options to be cancelled, as it eventually happened on 17 June and 19 June 2014, i.e. about 2 weeks before the appointment of 30 June should start. Under these circumstances, neither the rules of the [REDACTED] Agreement nor other applicable legal principles provide for any kind of compensation.
27. It follows from the above that the claims related to the cancellation of work offers (see above 4 b)) are not founded.
28. Since the Applicant's claims are to be rejected in their totality, the Panel does not see reasons to reimburse the Applicant for legal fees and or costs for paperwork etc. (see above 4 f) and g)).
29. Finally, the Panel is of the view that alleged shortcomings of the appeals procedure do neither call nor allow for monetary compensation exceeding those 2000 EUR OSCE has already paid on an *ex-gratia* basis.

Done in Vienna, on 21 October 2016



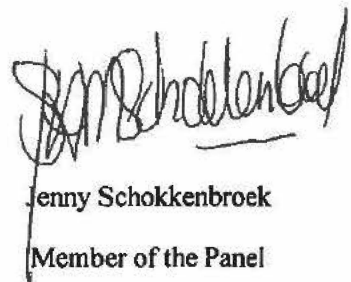
Thomas Laker

Chairperson of the Panel



Gennady Kuzmin

Member of the Panel



Jenny Schokkenbroek

Member of the Panel