



**UNITED
NATIONS**

Judgment

UNAT-583



Before

Case No.

Date:

Registered

Counsel

for:

Counsel

Secretary-General

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2014/121, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 30 September 2014 in the case of *Lee v. Secretary-General of the United Nations*. On 9 January 2015, Ms. Michelle Lee filed her appeal, and on 12 March 2015, the Secretary-General filed his answer.

Facts and Procedure

2. The following facts are uncontested:¹

... The Applicant joined the Organization on 21 July 2004 as an Administrative Assistant at the G-3 level, and was granted a fixed-term contract as of 21 January 2005. Effective 17 February 2009, she was promoted from the G-4 to the G-5 level, with a functional title of Management Analysis Assistant, in the [Management Support Service (MSS)], Office of the Under-Secretary-General for the Department of Management (OUSG/DM)]. This position was being financed through post No. 6003 in the regular budget of MSS, OUSG/DM. Along with other staff members in DM, the Applicant was assigned to work on the Enterprise Resource Planning project (“ERP” or “Umoja”). [...]

... By a “note” dated 17 September 2009, the Director, Umoja, requested approval from the USG/DM to integrate MSS and the Change Management Team (“CMT”, within the Umoja project) “into a single entity by assigning MSS to Umoja for the duration of the project”. The USG/DM approved the request by a “note” of 25 September 2009, and the integration of several MSS posts—1 D-1, 1 P-5, 1 P-2 and 1 GS [Other Level (OL)] from the regular budget and 2 P-4s from the support account—into Umoja became effective on 1 October 2009. The GS (OL) post was post No. 6003, i.e. the G-5 position of Management Analysis Assistant referred to above and encumbered by the Applicant. In her note, the USG/DM also stated that “[s]ince the integration of the MSS is temporary for the duration of the ERP Project, it will not be reflected in the current or future budget fascicles. Upon liquidation of the ERP Project, the post and non-post resources of MSS will return to the front office of OUSG/DM”.

... On 6 December 2010, the Secretary-General’s Bulletin on the Organization of the Department of Management (ST/SGB/2010/9) entered into force, abolishing previous ST/SGB/2005/8 on the same subject. Under its sec. 8, it described the functions of MSS, and stated, in footnote No. 3, that:

¹ Impugned Judgment, paras. 2-33 (emphasis in original).

... By email of 28 August 2013 entitled “abolishment of your post”, the Administrative Officer, Executive Office (“EO”), DM, referred to the discussion held on 14 August 2013 with the Applicant, and encouraged her to apply to temporary vacancies as well as to openings in Inspira.

... By email of 24 September 2013 from the Administrative Officer, EO/DM, the Applicant was informed of her selection for a temporary job opening as Administrative Assistant in the Office of Information and Communication Technology (“OICT”). The email also stated the following:

[P]lease note that Umoja has agreed to your release on temporary assignment to OICT/PMD/KMS effective 5 October 2013 through 31 December 2013. As advised by Umoja, since your post in that office will be abolished effective 1 January 2014, they are not in a position to reabsorb you beyond 31 December 2013. As advised in my email to you of 28 August 2013, you are encouraged to apply to positions both within and outside of Inspira.

... By email of 10 October 2013, the Applicant received a copy of a Personnel Action (“PA”) issued to record her new assignment to OICT. On 11 October 2013, she sought clarifications from the Executive Office, DM, with respect to the sentence “S/M has no lien against Umoja post” that figured on the PA.

... Also on 11 October 2013, the Applicant submitted a request for management evaluation (“ME request No. 1”) of the “decision to abolish two posts in [MSS], OUSG/DM”, which included the one she was encumbering.

... By email of 14 October 2013, the Administrative Officer, EO/DM, responded to the Applicant’s query reminding her of her previous meeting with the EO, as well as of previous email communications regarding the “abolishment of [her] post effective 1 January 2014”, and confirmed that the Applicant did “not have a lien on [her] post in Umoja beyond that date”. The Applicant replied on 16 October 2013, asking for further clarifications regarding her situation.

... On 19 November 2013, the Applicant received a reply to her ME request No. 1, advising her that the Secretary-General had decided “to uphold the decision not to renew [her] fixed-term appointment”.

... On 22 November 2013, the Applicant requested management evaluation (ME request No. 2) of the decisions “1. (...) to abolish [her] post effective 1 January 2014. 2. (...) not to reabsorb [her] beyond 31 December 2013. 3. (...) not to

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such decisions with the Chief, [MSS]. 8. (...) to create a new Umoja business re-engineering group”.

... By a reply to her ME request No. 2 dated 29 November 2013, the Management Evaluation Unit (“MEU”) advised the Applicant that her ME request No. 2 was not receivable as it contested the same matters and repeated arguments set out in her ME request No. 1. Furthermore, the MEU informed the Applicant that it considered her ME request No. 2 as duplicative of her ME request No. 1.

... In a letter dated 27 November 2013 from the Executive Officer, DM, to the Applicant, which was handed to her during a meeting held on the same day, the Executive Officer, DM, reiterated the content of the meeting of 1 February 2013 in which the Applicant had been informed of the proposal to abolish her post, subject to the approval of the GA. The letter further stated that:

This letter thus serves as advance notice that your fixed-term appointment may not be extended beyond 31 December 2013 pending the decision by the [GA] on the proposed Programme Budget of 2014-2015, which is expected during the month of December 2013.

[...]

In the event that the [GA] decides not to abolish your post, we will inform you on your contractual status with the Organization.

... On 24 December 2013, the Applicant received a document entitled “Note for the File” of the same day, in which the Executive Officer, DM, recalled the two prior meetings held with the Applicant on 1 February 2013 and 27 November 2013. From the note, it transpires that the Applicant was informed that pending the decision of the GA on the proposed programme budget 2014-2015, hypothetical *licet utraque* Antra

...

... By email of the same day, the Administrative Officer, EO/DM, informed the Applicant that OICT had requested the extension of her temporary assignment for an additional period of three months through 31 March 2014. Said email further stated the following (emphasis in the original):

In this regard, please note that to date the [GA] has not made a decision regarding the proposed abolishment of your post.

In light of the above and while we await the GA's decision regarding your post, the three-month extension of the assignment would be based on one of the following conditions:

1) If the [GA] **approves the abolishment of your post**, your [FTA] would be extended through 31 March 2014 to coincide with the duration of the Temporary Assignment and you will be on assignment with **no lien on a post in MSS or any other post in the Department of Management**
OR

2) If the [GA] **does not approve the abolishment of your post**, your [FTA] would be extended based on the recommendation from MSS and subject to satisfactory performance. In this case, you will maintain a lien on your post in MSS for the duration of your assignment in OICT with return rights to MSS.

We will inform you as soon as we receive the GA's decision on your post and provide an update to this message.

... By email of 27 December 2013, the Applicant expressed her worries about her being on a temporary assignment with OICT without having a lien against any post as of 1 January 2014, noting that had she known that she would not have a post while on a temporary assignment, she would have focused more on applying for Inspira job openings rather than for temporary job openings. In her email, the Applicant also requested some assistance for an "exceptional" placement against another post, should her post be abolished. In the email she received in reply on the same day, the Administrative Officer, EO/DM, proposed to meet with her on 30 December 2013, but the Applicant replied that before having such a meeting, she would like to receive clarification about who made the decision to abolish MSS posts to ensure that the decision-maker(s) participate at the meeting.

... On the same day, *i.e.* 27 December 2013, the GA endorsed the ACABQ recommendations on the proposed programme budget for the biennium 2014-2015 (A/68/7) [...].

... By email of 31 December 2013, the Administrative Officer, EO/DM, informed the Applicant that the GA had endorsed the proposal for abolishment of posts within DM effective 1 January 2014, and that, consequently, her post number 6003 in MSS/OUSG would be abolished effective that date. The Applicant was also informed

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6. On 30 September 2014, the UNDT issued Judgment No. UNDT/2014/121. The UNDT dismissed Ms. Lee's application in its entirety, finding that: (a) the decision to abolish her post was made by the General Assembly and was therefore not reviewable by the UNDT; (b) Ms. Lee was still employed on a fixed-term basis at the time of the Judgment and therefore, contesting the decisions to separate her from service on 31 December 2013 was moot; (c) Ms. Lee did not qualify for exceptional placement under Section 11.1(b) of Secretary-General's Bulletin ST/AI/2010/3 (Staff selection system); (d) the notification sent to Ms. Lee that the lien on her previous post had been extinguished did not constitute an administrative decision; and (e) there was no legal basis to Ms. Lee's contention that she had a right to be informed about "the accountability for specific posts and resources".³

7. By Order No. 208 (2014) dated 26 December 2014, the Appeals Tribunal rejected Ms. Lee's request for suspension, waiver or extension of time to file an appeal, but ordered that she could file her appeal by 9 January 2015.

Submissions

Ms. Lee's Appeal

8. The UNDT erred in fact, law, and procedure. Ms. Lee's case is similar to the *Guzman* case in which the UNDT issued an interim order to suspend Ms. Guzman's separation having found that the decision to separate her from service was made before any decision by the General Assembly had been taken.⁴ The UNDT further erred by not holding an oral hearing on the issue of receivability and by refusing to permit Ms. Lee to file additional documents.

9. With respect to the decision to withhold information regarding accountability for MSS posts and resources, Ms. Lee contends that the UNDT misapplied the Appeals Tribunal judgment in *Zeid*⁵ when it failed to recognize her right to be informed of the identity of the decision-makers responsible for the abolition of her post. In support of her claim, Ms. Lee quotes paragraphs 18 and 19 of the International Civil Service Commission (ICSC) Standards of Conduct for the International Civil Servant (Standards of Conduct) and paragraph 11.2 of Administrative Instruction ST/AI/2015/5 (Performance Management and Development

³ *Ibid.*, para. 49.

⁴ UNDT Order No. 264 (NBI/2013).

⁵ *Zeid v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-401.

System). Ms. Lee submits that the decision to withhold information regarding accountability for her post had direct legal consequences for her terms of appointment.

10. Ms. Lee requests that the Appeals Tribunal vacate the UNDT Judgment, remand the case to a different UNDT Registry and refer her case for accountability.

The Secretary-General's Answer

11. Ms. Lee provides no evidence that the UNDT erred in its management of the case, much less so in a manner that justifies the Appeals Tribunal's intervention. Under Article 9 of the UNDT Statute, the UNDT has the authority to determine whether to hold hearings on specific issues and whether it requires additional documentary evidence on factual issues before it. The UNDT has broad discretion with respect to case management decisions with which the Appeals Tribunal will not lightly interfere. In the instant case, the UNDT properly exercised its authority and ruled that the extensive evidence already submitted by Ms. Lee and the hearing held on 4 September 2014 were sufficient for the UNDT to fairly and

to the provision of information on organizational restrn

18. In the absence of an error in the procedure adopted by the UNDT which may render the hearing of the case unfair, the Appeals Tribunal will not interfere with the discretion of the UNDT to manage its cases.⁹ In the instant case, the UNDT was in possession of the respective applications and documentations which it considered to be sufficient to make the relevant decisions to facilitate the fair and expeditious disposal of the case.

19. Ms. Lee contends that the UNDT erred in failing to recognize her right to be informed of the identity of the decision-makers responsible for the abolition of her post. Does she have such a right?

20. The Appeals Tribunal has consistently held that “the key characteristic of an administrative decision subject to judicial review is that the decision must ‘produce [] direct legal consequences’ affecting a staff member’s terms and conditions of appointment; the administrative decision must ‘have a direct impact on the terms of appointment or contract of employment of the individual staff member’”.¹⁰ Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

21. In the present case, the UNDT correctly found that Ms. Lee did not contest an administrative decision and therefore, there was no legal basis to support the contention that she had a right to be informed of the identity of the decision-makers responsible for the abolition of her post. Moreover, she had been informed on several occasions, including during the 1 February 2013 meeting that it was for the General Assembly to decide upon the suggested abolition of her post.

22. We find that there is no merit to this appeal.

Judgment

23. The appeal is dismissed and the UNDT Judgment is upheld.

⁹ *Pérez-Soto v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-329, para. 21.

¹⁰ *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 49, citing *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, para. 17 and former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)
Judge Thomas-Felix,
Presiding

(Signed)
Judge Chapman

(Signed)
Judge Simón

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)
Weicheng Lin, Registrar