



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2020-UNAT-1021

Lynn Elizabeth Collins
(Appellant)

v.

Secretary -General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Martha Halfeld , Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No:	2020- 1351
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Ms. Collins: GeorgeG. Irving

Counsel for Secretary-General: Maryam Kamali

JUDGE MARTHA HALFELD , PRESIDING .

1. Ms. Lynn Elizabeth Collins, a former staff member of the United Nations Population Fund (UNFPA) at the P-5 level, filed an application before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) contesting the termination of her fixed -term appointment as a result of the abolition of her post. She claimed that the decision was based on improper motivations and that UNFPA failed to comply with its obligations to make all reasonable efforts to consider her for other available suitable posts. The UNDT issued Judgment No. UNDT/2019/164, dismissing the application on grounds that the contested decision was the result of a valid exercise of discretion and that UNFPA had complied with procedural requirements.
2. On appeal, the Appeals Tribunal grants the appeal in part.

Facts and Procedure

3. The UNDT established the following facts:¹

... Before the termination of her appointment, the Applicant served as the Technical Advisor at the P-5 level with the HIV/AIDS Branch, Technical Division in UNFPA. The Applicant is an expert in linking/integrating HIV and sexual and reproductive health and rights.

... On 25 February 2016, the Director of the Technical Division sent an email to the HIV/AIDS Branch staff members, including the Applicant. The Director wrote that in the context of UNFPA's declining income, its senior management had been reviewing ways to maximize the use of the resources, and in the Technical Division, this meant a functional review of the Division's work, and at the level of human resources, this would begin by abolishing the post of Chief, HIV/AIDS Branch. The Director further noted that beginning 2017, the HIV/AIDS Branch would be integrated into the Sexual and Reproductive Health Branch.

... In September 2016, through the interoffice memorandum addressed to the UNFPA Executive Director, the Director of Technical Division noted that due to the resource mobilization shortfall for the 2016 Unified Budget, Results and Accountability Framework ("UBRAF") budget, funding allocations to all Cosponsors were reduced by 50 percent in 2016. The Director further noted that the UNAIDS Programme Coordinating Board meeting held in June 2016 presented an additional significant funding shortfall for 2017. The Director wrote that the Technical Division already decided not to renew 21 appointments and a few appointments were maintained through cost-sharing at the country and the regional level. In light of the substantial

¹ Impugned Judgment, paras. 3-13.

reduction of available funding in 2016 -2017, the Director proposed two alternative scenarios to address the financial shortfalls. The Director noted at the outset that both scenarios have the same implications for the posts funded through UBRAF in the field, and the variations lie in the way headquarters posts would be affected: more incumbents would be affected by Scenario A whereas less funds would be available for programming activities under Scenario B:

- a. Scenario A was guided by “a strategic approach” and proposed to abolish all h

... The Director and the Applicant talked again on the same day and the Applicant expressed her interest in continuing her service until her date of retirement and asked under what moda

4. On 19 November 2019, the Dispute Tribunal in New York issued Judgment No. UNDT/2019/164 in the case of . The UNDT disposed of the application submitted by Ms. Collins, namely, Case No. UNDT/NY/2017/030 against the decision to terminate her fixed-term appointment.

5. The UNDT dismissed the application as it found that the decision to terminate Ms. Collins' appointment had been the result of a lawful exercise of discretion. The UNDT further noted that, although the Organization had not entirely fulfilled its obligations under Staff Rule 9.6(e) to find an available or suitable post for Ms. Collins, she had failed to cooperate in the process by not applying for vacant positions.

6.

9. Specifically with regard to the termination of her appointment, Ms. Collins claims that the restructuring exercise was not documented and that she was given short notice of less than a

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2020-UNAT-1021

T

T

THE UNITED NATIONS APPEALS TRIBUNAL

THE U

THE UNITED NATIONS A

organizational constraint derives from financial restrictions, as was authorized by Subsection 7.2.2 and 7.2.3(c) and (d) of the UNFPA HR Manual.

28. The evidence establishes that the Organization acted fairly and transparently towards Ms. Collins when it decided to abolish her post. There is nothing on the record that would put under suspicion the decision to abolish the post she occupied. Which post to abolish and whether or not to merge departments falls within the discretion of the Organization and the Appeals Tribunal will not interfere with this lightly, since no improper motives have been evidenced in the present case.¹³ The UNDT was thus correct when it held that it would not have valid grounds to interfere with the UNFPA decision, even if the abolition of Ms. Collins' post had been unwise because the significance of her role had not been fully understood.¹⁴

29. For the same reason, whether or not there was an actual cost saving resulting from the abolition of the post when compared with the termination indemnity, is inconsequential for the purposes of assessing the legality of the decision. Conceivably poor managerial decisions are not sufficient grounds to justify judicial recourse by a staff member.

30. In this regard, Ms. Collins' personal skills, however strong or necessary they might have been, were not considered relevant in the decision to abolish her post and terminate her appointment. This factor alone does not constitute sufficient basis to reverse the administrative decision. For this to occur, the UNDT would need to have been provided with adequate evidence of improper motives, which did not happen in the present case. Ms. Collins' sole allegation that her post was the only one in her division singled out to be abolished without reassignment cannot be construed as tantamount to discrimination against her. There is no such evidence to this effect on the record. On the contrary, the UNDT was correct in its determination that all the elements taken into consideration allow the conclusion that the budgetary shortfall was the sole reason for restructuring the design of divisions within UNFPA, which resulted in the abolition of Ms. Collins' post and the termination of her appointment. ¹⁵ Moreover, any possible allegations of discrimination should have been challenged in observance of the appropriate procedure set out by the Bulletin for protection against discrimination.

¹³ Impugned Judgment, para. 38

¹⁴ , para. 37

¹⁵ , para. 27.

31. Against this factual background, the UNDT was correct in its finding that “UNFPA considered various factors in the restructuring and relied on correct information (i.e. which post was funded from which funding source) in reaching its conclusion”.¹⁶ The UNDT was also correct in its finding that the organizational restructuring that was undertaken, consisting of the integration of the HIV/AIDS Branch into the Sexual and Reproductive Health Branch and the review of the Technical Division’s posts including the abolition of the post then occupied by Ms. Collins, was genuine and was supported by the facts.¹⁷

32. For these reasons, we find that the UNDT did not err in law or in fact, resulting in a manifestly unreasonable decision, when it found that the decision to abolish the post was lawful.

33. The UNDT Judgment acknowledged that the matching exercise conducted by the Organization to find an available and suitable new position for Ms. Collins was too general and was based solely on job description, and therefore did not count as an effort to find a suitable post for Ms. Collins. As a consequence, it did not meet UNFPA’s obligations under Staff Rule 9.6(e).¹⁸ However, the UNDT held that, according to the jurisprudence established in _____, the Organization’s obligation under Staff Rule 9.6(e) to make reasonable efforts to find a suitable post is premised on the requirement that the affected staff member show an interest in a new position by applying fully and in a timely manner for the position.²⁰

34. In her appeal, Ms. Collins argues that she had been given every indication that her services could be continued. She maintains that the short notice of less than a month before her separation, coupled with the fact that most of the positions advertised were no longer open when she was informed of her separation, was not considered by the UNDT. She also claims that the UNDT did not address the issue of her receiving compensation, instead of the standard six-month notice, which would have allowed her to find, while still working, a possible placement until the mandatory retirement age of 65.

¹⁶ _____, para. 35.

¹⁷ _____, paras. 25 and 27.

¹⁸ _____, para. 43.

¹⁹ Reference is made to _____

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2020-

THE UNITED NATIONS APPEALS TRIBUNAL

decision, must be exercised lawfully, reasonably, fairly, proportionately and correctly in its procedure.²⁶

42. The Appeals Tribunal has already established that in cases where there is no obvious absurd, perverse, discriminatory, capricious or any other unreasonable justification on the part of the Administration for a decision, the burden of proof rests with the staff member concerned. In other words, if the Administration is able to even minimally show that the staff member concerned was given

Judgment

54.