

Introduction

phasing out of 352 civilian positions (162 international staff, 138 national staff, and 52 United Nations volunteers) by the end of June 2012.

5. The Secretary-_____ for MINUSTAH for the period of 1 July 2013 to 30 June 2014 was considered by the Advisory Committee for Administrative and Budgetary Questions (ACABQ) in its report 67/780/Add.5 dated 29 April 2013. Among the proposed staffing changes was the creation of RCU, under the direct supervision of the Office of the Special Representative for the Secretary-General SRSG to perform regional coordination and management responsibilities. Specifically, the ACABQ noted that 10 posts (five P-5 and five P-4 posts) were being reassigned from CAS to RCU to facilitate cross-mission liaison and monitoring at the local level, confidence-building, conflict resolution and the extension of State Authority.

6. On 1 and 2 May 2013, the Head of CAS held a coordination meeting with the Chiefs of Regional Offices within MINUSTAH, which the Applicant attended. The Head of CAS informed staff concerning the Secretary-General's proposal to downsize CAS and distributed the draft plan of the proposed new mission structure that included Regional and Departmental Offices outside of CAS. The new structure and new positions were discussed and staff were given draft terms of reference (TORs) for the heads of Regional and Departmental offices. Staff members were informed that the heads of the Regional Offices will represent the SRSG in the regions and that the region-3(ff1 172.04 258.14)80 0 1 Tm[(n)-27(1)-29(a

and five P-4 posts) from CAS to the newly created RCU and the change in functions to be performed against these posts from Civil Affairs Officers to Chief Departmental Officers. The General Assembly requested that the Secretary-General ensure their full implementation. Once the post encumbered by the Applicant was reassigned to RCU, the Applicant was reassigned to work within RCU with a new functional title of Chief Departmental Officer and with new functions. The Applicant's new duties included new terms of reference that were distinct from her prior work with CAS.

8. in MINUSTAH
signed a Letter of Appointment offering the Applicant a one year FTA at the P-4 level as a Civil Affairs Officer from 1 July 2013 until 30 June 2014. The Letter of Officer, mentioned that an FTA did not carry any expectancy, legal or otherwise, of renewal, and that the contract was to expire without prior notice on 30 June 2014

Please note that, in accordance with staff regulation 1.2(c), staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the

the SRSG through the Regional Coordinator as First provided each Chief with TORs for their offices.

11. On 15 July 2013, the Applicant was informed in writing of the terms of reference for Chiefs of Regional and Departmental Offices, which were effective immediately in a revised format to reflect the decision to transfer the Chiefs of Regional and Departmental Offices to the Office of the SRSG and to reiterate their managerial/supervisory responsibilities. On the same day, the Applicant was reassigned to her new position within RCU.

12. On 28 January 2014, DMS issued Information Circular No.

20. On 16 June 2014, the Applicant submitted a request for management evaluation of the decision not to renew her FTA and to separate her from service.

21. On 11 July 2014, the Under-Secretary-General for Management responded the Secretary-General had endorsed the finding of the Management Evaluation Unit that the first request for management evaluation was not receivable and its recommendation to uphold the decision not to renew FTA.

22. On 18 July 2014, the Applicant filed an application before the Tribunal and, on 20 August 2014, the Respondent filed his

c. The Applicant had a legitimate belief, expectation and understanding that her work was in the field of civil affairs. The position of Chief Departmental Officer maintained many of the job specifications as that of Civil Affairs Officer and the revised budget for 1 July 2014 to
ould be
carried out by an existing Civil Affairs Officer.

d. The manifest failure of the Administration to inform the Applicant of the change of her post impacted directly on her inability to apply for civil affairs posts in the comparative review and the non-renewal of the

e. The Applicant also states that the Administration did not respect the general obligation to find alternative posts for staff members whose posts are abolished as provided by the Staff Rules because she was not considered for the remaining positions in CAS.

24. principal contentions may be summarized as follows:

a. In keeping with the standard procedures for downsizing missions, a review process was conducted to identify which positions were to be retained. Staff members were informed of the comparative review process and its terms of reference. Specifically, they were informed that they would either be included or not included in the comparative review process based on whether or not the section and occupational group within the section they were assigned to was required to downsize.

b. The downsizing exercise for RCU for the year 2014 involved the abolition of all five P-4 Chief Departmental Officer posts. The comparative review exercise did not apply to RCU for the reason that

Case No. UNDT/NY/2014/052

Judgment No. UNDT/2016/002

Section 1

General

1.1

cuts to align mandate implementation with expected resource allocation.

5. In order to prepare for the proposed reduction, MINUSTHon,

ability to perform the functions in the new Mission structure. This determination will be made in accordance with the evaluation pre-approved criteria by the CRP and a documented record of satisfactory performance and conduct.

10. , to expedite the review process, the present e-Performance cycle will not be taken into consideration. Therefore, in addition to updating their

process (for example, an Administrative Assistant performing his/her functions on a post of Legal Assistant).

4. The CRP will not review posts where staffing by Section, occupational group/functional title, category and level are equal to or less than the proposed numbers in the revised Mission structure.

10. International and National Staff were required to send their completed PHPs and e-PER to minustah-careers@un.org by 28 February 2014. Staff members who did not comply with the established deadline are required to immediately submit their documents no later than 05 April 2014.

11. The following personnel are not subject to review by the Comparative Review Panel:

Documentation

10. In order to guide the review process, the MINUSTAH Human Resources Section will provide the CRP review group members with the following documents:

- The official lists of posts where staffing by Section, occupational group/functional title, category and level is greater than the proposed number of posts in the revised Mission structure.
- CRP Terms of Reference;
- -PER reports for 2011
2012 and 2012 2013;

34. the Rules of Procedure clearly distinguish between the receivability requirements as follows:

a. The application is receivable *ratione personae* if it is filed by a current or a former staff member of the United Nations, including the United Nations Secretariat or separately administered funds (arts. 3.1(a) (b) and 8.1(b) of the Statute) or by any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered funds and programmes (arts. 3.1(c) and 8.1(b) of the Statute);

b. The application is receivable *ratione materiae* if the applicant is

Receivability *ratione temporis*

37. The Applicant was notified of the contested decision to exclude her from participation in the comparative review process for Civil Affairs Officers on 29 March 2014 and filed a request for management evaluation on 29 April 2014. She was notified of the decision not to renew her FTA on 13 May 2014 and filed a request for management evaluation on 16 June 2014. The MEU response was notified to the Applicant on 11 July 2014.

38. As results from the mandatory provisions of art. 8.1(d)(i)(a) (b) of the

iled
within 90 days either from the date of notification of the outcome of management evaluation or the date of expiry of the 45-day deadline for management evaluation (for staff stationed outside of New York), whichever is earlier.

39. The Applicant Procedure, filing her application on 18 July 2014, within 90 days of the 11 July 2014 response to her requests for management evaluation. Therefore the Tribunal finds the application is receivable *ratione temporis* in respect of both contested decisions.

Receivability *ratione materiae*

40. The Applicant was notified of the contested decision to exclude her from participation in the comparative review process for the Civil Affairs Officers on

41. As results from the management evaluation response, the MEU considered the decision to exclude the Applicant from participating in the comparative review process not to be in itself an administrative decision, because the comparative review was conducted within CAS to ascertain which staff members in that section would continue to encumber the residual posts and this comparative review it would lead to certain administrative decisions such as renewal or non-renewal of appointments

3. Tenure of appointment

This appointment is for a fixed term of 1 year from the effective date of appointment shown above [1 July 2013]. It therefore expires without prior notice on 30th day of June 2014.

5. Special conditions

Please note that, in accordance with staff regulation 1.2 (c), staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In this context, all staff members are required to move periodically to new positions, organizational units, duty stations or occupational groups in accordance with established rules and procedures.

This appointment is limited to service with the mission specified in Part 1. Functional title as per Offer of Appointment.

44. On 1 and 2 May 2013, the Head of CAS held a coordination meeting with the Chiefs of Regional Offices during which the participants, including the Applicant, were informed of the proposed new mission structure that included Regional and Departmental Offices outside of CAS. On 28 June 2013, the General Assembly approved the Secretary- CAS and to create RCU.

45. As results from the terms of reference of MINUSTAH Chief Departmental Officer, which became part of the contract on 15 July 2013 since they were effective immediately, the following elements of her contract were changed: the sectT1 0 [()002A00480051600480055>5ct

functional title was Chief Departmental Officer in RCU, which was distinct from CAS, with new functions and direct reporting lines to the SRSG. It results that the modification contract became effective as indicated in the part of the pu onal and Departmental and the terms of reference for MINUSTAH Chief of her contract.

47. Consequently, from 15 July 2013 until 30 June 2014, the Applicant was the Chief of the North-East Departmental Office/Fort-Liberté in RCU and she was no longer part of CAS. The terms of reference indicated that Chief Regional and Departmental Officers reported to the SRSG through the Regional Coordinator, who was also Chief of CAS, so the only staff member with responsibilities related both to CAS and RCU.

48. The Tribunal

Downsizing exercise

50. The Tribunal underlines that IC DMS/006/2014 stated in paras. 3-9 that the scope and the principles that applied to the downsizing process in MINUSTAH were as follows:

3. While the proposed budget will not be finalized by the General Assembly until mid-2014, the current proposal, in line with Headquarters directives, calls for a reduction of approximately eight (8) percent of civilian staffing in the next budget cycle.

4. In consultation with Field Personnel Division (FPD), the Mission prepared a draft Framework on retrenchment describing each aspect of the process as it will be handled for the 2014-2015 budget year. Once finalized and endorsed by the SRSG, the Framework will be disseminated to all staff.

5. In order to prepare for the proposed reduction, MINUSTAH undertook a review of its current staffing strength to identify within each Section or standalone Unit occupational group, category and level, positions to be retained; established; abolished and/or nationalized

Case No. UNDT/NY/2014/052

Judgment No. UNDT/2016/002

/

56. In her application, the Applicant stated that (emphasis in original):

14. In late March 2014, the Applicant became aware that the Administration had sent out emails to all Civil Affairs Officers, informing them of the Comparative Review Exercise and requesting them to submit various documentation including their

15. On 29 March 2014, as the Applicant had not received such an e-mail, she contacted Chief of Human Resources Office [CHRO], MINUSTAH, requesting an update on when she would be formally notified of the Comparative Review Exercise and the

contacted DMS and she was informed that the Mission charter reflected her position under SRSG and not under CAS.

58. The Respondent indicated in his reply that the downsizing exercise for RCU for the year 2014 involved the abolition of all five P-4 Chief Departmental Officer posts and the downsizing exercise for CAS for year 2014 included the abolition of seven posts within the Professional category (one P-2, three P-3, and three P-4 posts). CAS staff members were required to go through a comparative review exercise because the number of posts within the Section was less than the number of currently serving staff members. The comparative review exercise did not apply to RCU because the number of established P-4 posts in the 2013 2014 budget cycle was equal to the number of positions to be abolished in the proposed budget cycle for 2014 2015.

59. The Tribunal concludes that both RCU and CAS were affected by the retrenchment process since the number of posts in the new structure was less than the number of serving staff members. In RCU, the number of proposed posts in the new structure was zero

to be informed about the retrenchment exercise, the establishment of the panel and the review criteria.

61. On 29 March 2014, the Applicant was informed by CHRO that the post she was encumbering not part of CAS. It belongs to RCU, which falls under the direct authority of the SRSG. If the [staff member] did not receive any e-mail from [her] then he/she will not be part of the CRP review .

62. Regarding the second obligation of MINUSTAH to have all the staff members affected by the retrenchment process reviewed by the CRP, the Tribunal concludes that it was not respected, since it was wrongly decided against the terms of reference included in IC DMS/010/2014 that the CRP review will include only the staff of CAS and not the five P-4 staff members of RCU, a unit under the SRSG where all P-4 posts were to be abolished entirely. Consequently, the right of the Applicant to be reviewed by the CRP was not respected. The Tribunal underlines that the scope of the downsizing process was to identify staff to be retained in the entire new mission structure and not only in one of its sections, CAS. Consequently, the first contested decision not to include the Applicant in the comparative review exercise is unlawful, because this decision had the legal effect of limiting the CRP mandate only to CAS. This by the CRP with respect to all the remaining posts in the new mission structure.

Non-renewal of the Applicant's FTA: expiration of appointment versus termination of appointment for abolition of post and reduction of staff

63. The Tribunal notes that staff rules 9.1 and 9.4 state that the expiration of appointment constitutes a separation from service and that a temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment. Staff rules 9.6(a) and (b) state that a termination is a separation from service initiated by the Secretary-General and that separation as a result of expiration of appointment shall not be

regarded as termination. According to staff rule 9.6(c)(i),

the downsizing exercise, intended to effectively address evolving operational requirements.

As a result of the downsizing of posts in the 2014 2015 budget proposal, I regret to inform you that your fixed-term appointment with MINUSTAH which is expiring on 30 June 2014 will not be extended any further. In this regard, your separation from the Organization will be initiated and Human Resources Section will forward you the necessary separation package and instructions in due course.

Kindly note that the Field Personnel Division (FPD) in the Department of Field Support (DFS) at UN Headquarters and MINUSTAH will continue to explore possibilities for the reassignment of staff members who wish to continue their services with the United Nations either through (a) selection from the Field Central Review Body (FCRB) roster; or (b) internal placement within MINUSTAH considering that staff have gone through the standardized selection process. Therefore, in the event that you are selected through the FCRB roster or internally reassigned to a position within MINUSTAH by *COB 30 June 2014*, your separation from the Organization will no longer be processed.

If you are not yet on the FCRB roster, you are strongly encouraged to apply to the generic job openings posted on Galaxy or Inspire for which you are qualified. You are also strongly encouraged to apply to positions in other UN entities, in HQ or in the field which match your profile.

67.

Appointment, her appointment for a fixed-term of one year was to expire on 30 June 2014. Moreover, all the P-4 posts in RCU, included were to be abolished from 1 July 2014 and in these circumstances MINUSTAH had two legal options: to separate the Applicant as a result of the expiration of her FTA or to term the post was to be abolished.

68. The non-renewal decision issued by MINUSTAH on 13 May 2014 constitutes a separation decision based on the expiration of the contract and not a termination decision, as confirmed by the Respondent in his reply. The fact that the date of expiration of his contract is 30 June 2014 agreed by

Case No. UNDT/NY/2014/052

Judgment No. UNDT/2016/002

