



Introduction

1. The Applicant is a former staff member of the United Nations Mission in

Case No. UNDT/NBI/2014/114

UNDT/NBI/2015/035

Judgment No. UNDT/2016/095

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38. On 15 October 2014, the Applicant submitted a classification appeal and sought an extension of his appointment pending the classification appeal. The request for extension was denied. His Counsel was advised that as the post that the Applicant had encumbered had been reclassified and the P-5 post abolished there was no post to extend his appointment. He was advised that he could apply for the P-4 post once the recruitment was initiated.

39. After the downward classification became effective on 1 September 2014, the [REDACTED] of Unit-Transport post was advertised through a recruit from roster job opening on 13 November 2014. As there were no suitable candidates, UNMIL re-advertised the post in April 2015. The Applicant applied for the post but was not selected.

40. On 19 Nov 2014, the Applicant's Classification appeal was submitted to the C

Applicant's submissions

42. The reasons given to the Applicant at the time he was notified of the non-renewal of his contract were not substantiated. On 29 May 2014, he was told his post was being abolished when it had not been proposed for abolition. The reasons

post is proposed for reclassification; any reclassification decision cannot be implemented until the classification decision has become effective.

50. At the time the Applicant received his non-renewal letter the Mission had

Respondent's submissions

77. The fact that the Applicant made a timely request for management review of the non-renewal decision which subsequently resulted in full consideration of his challenge to the non-renewal decision demonstrates that he was not precluded from exercising his legal rights in relation to that decision.

78. The decision was clear on its face that it was due to budget cuts and downsizing. The Tribunal holds that the reference to the abolition of his post was a technical error that did not impact on the Applicant's rights and the non-renewal decision cannot be impugned on this ground.

Was the re-classification decision made in accordance with ST/AI/1998/9?

79. The competence of the Tribunal is limited to reviewing the procedure adopted for the classification request. It may not embark on a review of the merits of the decision.

80. Staff rule 2.1 provides that posts other than those of Under-Secretary-General and Assistant Secretary-General shall be classified in categories and

83. Section 2.3 requires that a classification analysis is to be conducted independently by two classification or human resources officers. The classification decision is then taken by or on behalf of the ASG/OHRM or the head of office.

84. Section 2.4 stipulates that notice of the results is sent to the requesting executive or administrative office who will provide a copy to the incumbent of the post.

85. Pursuant to section 4.1, classification decisions are effective from the first of the month following receipt of the classification request or, when it has been submitted for advice prior to a budgetary submission, once the classification has been approved in the budget.

86. The facsimile dated 22 July 2014, which offered guidance to missions on the issue of reclassification of mission posts, advised missions to commence the reclassification process before the budget process or to submit requests while the budget proceeds.

87. This advice marked a significant change to the process that had been previously adopted by the mission. It is instructive about best practice as advised by FPD/DFS, but does not have the force of law. In addition, it post-dates the decision in this case and therefore does not apply.

88. The Applicant alleges that the decision not to renew his contract was made before the reclassification process in section 2 of ST/AI/1998/9 was undertaken. As it was made in reliance on the expectation that the General Assembly would approve the proposed downward classification he alleges that the “the mission effectively allowed the General Assembly to usurp the reclassification process”.

89. This submission confuses the three separate although interrelated matters: the non-renewal decision; the General Assembly’s approval of the UNMIL budget estimates for 1 July 2014 to 30 June 2015; and the reclassification exercise.

90. The non-renewal decision was made in anticipation of the downward classification of the Applicant's post (as well as changes to other affected posts at UNMIL) given the need to scale back the operations of UNMIL and substantially reduce its budget.

91. The ACABQ report, A/68/782, dated 8 May 2014, followed the Secretary-General's budget proposal which had been submitted in February 2014. It recommended approval of the proposal for the abolishment of 54 posts as well as changes to many other posts and positions at UNMIL but was not a decision to reclassify.

92. By resolution 68/291, dated 31 July 2014 the General Assembly, endorsed ACABQ's recommendations in A/68/782. This was not a re-classification decision.

93. The classification request was commenced in accordance with section 1 of ST/AI/1998/9 as the duties and responsibilities of the post had changed substantially due to restructuring within an office and/or a General Assembly resolution. The classification analysis was conducted by the Chief of FPD's Organisational Design and Classification Unit on behalf of the Director FPD/DFS. Notice of the result was sent to the UNMIL Human Resources Section, which had made the request.

94. As the Applicant was no longer the incumbent of the post at the time of the classification request there was no lawful requirement for him to have been informed of the outcome.

95. The Tribunal concludes that the reclassification procedure was commenced and processed lawfully.

Should the Applicant's appointment have been renewed until the classification process was over?

96. The decision to separate the Applicant from service prior to the conclusion of the classification process is challenged by the Applicant on the ground that it was in breach of the relevant provisions of ST/AI/1998/9.

97. An incumbent of a post who considers that their post has been substantially altered by restructuring may seek a classification review pursuant to section 1.3.

98. Section 4.2 states that the classification of a post shall not negatively affect the existing contractual status, salary or other entitlement of the staff member encumbering the post. Staff members whose posts are classified at a level below their personal grade level will retain their current grade and salary level, on the understanding that every reasonable effort will be made to reassign them to a post at their personal grade level.

99. Section 1.1 of ST/AI 1998/8 stipulates the preconditions for making a request for classification but does not specify the chronology for making the request in relation to the individual encumbering the post.

100. The references in the ST/AI to the incumbent of the post can be interpreted to mean either that the request must be made during the term of the incumbent of the existing post and before any decision is made on the future employment of that person. In the alternative such references can be interpreted as specific protective provisions for incumbents whose posts are subject to classification change while they are still in office.

101. The interpretation of an ambiguous ST/AI may be informed by the context and the policy of the document as a whole. In this case, the AI was promulgated as a "System for the Classification of posts" and "for the maintenance of the post classification system". Its principle purpose is therefore to ensure that posts are

102. In addition to this purpose the ST/AI addresses the impact that changes to the post may have on persons encumbering it. The ST/AI materially provides that the incumbent of a post which has been the subject of a classification request is entitled by section 2.4 to a copy of the result. In addition, the contractual status of incumbents shall not be negatively affected by a downwards classification. Their personal grade and level are to be maintained and reasonable efforts are to be made to reassign them to a post at their personal grade level.

103. The Tribunal holds that these are protective provisions which apply only to those staff members who are actually on the post at the time that a request for reclassification is made.

104. In this case the Tribunal finds that by the time the classification request was made on 22 August 2014, the Applicant's fixed-term contract had expired. Although he was held on a GTA funded post pending the outcome of the management evaluation of the decision not to renew his fixed-term appointment, he was no longer an incumbent of the post to which he had been appointed.

105. The Tribunal holds that the ST/AI did not require the administration to renew the Applicant's appointment pending the classification decision.

Was the appeal procedure in accordance with ST/AI/1998/9?

106. Under section 5 of ST/AI/1998/9, the incumbent of a post at the time of its classification may appeal the decision against the classification level on the ground that the standards were incorrectly applied, resulting in the classification at the wrong level.

107.

Were the contested decisions influenced by extraneous considerations?

109. The burden of proving that the non-renewal of a fixed-term appointment was arbitrary or motivated by bias, prejudice or improper motive is on the staff member who makes the allegations⁵.

110. The Applicant alleges that ill motivation behind the decision is shown by two matters. The first is what he describes as the inexplicable delay between the decision to seek downward classification of the CTO post in February 2014 and then the submission of the classification request six months later. He says this points to the desire to deny him his right to appeal prior to separation.

111. The second is the difficult relationship between him and his SRO demonstrated by the refusal to allow the Applicant to attend a conference in 2013, the SRO's reaction to the OIOS audit and the publication of the critical IOL News report and his opinion that the Applicant had not been performing adequately.

112. The Tribunal finds that the procedure and timing of the reclassification of the post formerly held by the Applicant has been examined above and found to have been lawful. The gap between the non-renewal decision and the reclassification process is not evidence of ill-motivation.

113. When a justification is given by the Administration for the exercise of its discretion it must be supported by the facts. In the case where there may be more than one reason for non-renewal but the genuine reason was a valid re-organisation, the question of performance deficiencies and shortcomings is immaterial⁶.

114. There is no doubt that the SRO was displeased with the performance of the Applicant. This was reflected in his performance reviews from as early as 2012. The IOL News report which reflected badly on the performance of the Transport Division predated the non-renewal decision by over a year. There was no

⁵ *Hepworth* 2015-UNAT-503.

⁶ *Islam* 2011-UNAT-115.

