
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/120

Judgment No.: UNDT/2016/131

Date: 23 September 2016

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KAGIZI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Nicole Washienko, OSLA

Counsel for the Respondent:
Stephen Dietrich, ALS/OHRM
Nicole Wynn, ALS/OHRM

Introduction

1. The Applicant is a former staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). She served at the GS-4 level.

2. On 11 November 2015, she filed an Application contesting the decision not to renew her fixed-term appointment and to separate her from service on the grounds of abolition of her post.

3.

8. Following the Secretary-

15. Shortly thereafter, the Applicant was offered an Individual Contractor (IC) contract by the United Nations Office for Project Services (UNOPS) for the position of LA within MONUSCO. This IC contract was for a period of one-month effective 1 July 2015 but was subsequently extended.

Applicant's case

16. The Applicant

The recommendation of the Secretary-General to the General Assembly that led to the abolition of the Applicant's post was in violation of the United Nations statutory framework.

a. The Secretary-

Assembly regarding the proposed financing arrangements for MONUSCO for the period from 1 July 2015 to 30 June 2016 recommended the abolition of 80 LA posts in MONUSCO for the 2015/2016 budget cycle. The said report did not make any reference to reengaging these LAs as ICs.

b. That report was in turn considered by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) which then issued a report to the General Assembly on 1 May 2015 approving the Secretary-

the report of the Secretary-General, no reference was made to the fact that these 80 LAs would be reengaged as ICs.

c.

then proceeded to inform the Applicant of the non-renewal of her fixed-term appointment and separation after 30 June 2015. Shortly thereafter, the Applicant was then offered an IC contract.

d. The mere fact that MONUSCO decided to engage the LAs under agreements administered by UNOPS, a United Nations Common System entity, as opposed to directly engaging the individual contractors

t paragraph
3.7 of ST/AI/2013/4.

e. -
term appointment to an IC contract, administered by UNOPS, was taken while the Applicant was still a staff member of the United Nations Secretariat and thus ST/AI/2013/4 applies to the Applicant.

The non-renewal of the Applicant's fixed-term appointment and her attendant separation were unlawful because no comparative review was conducted.

f. M

be abolished and the remaining 92 LA posts be reassigned to different offices within the Mission.

g. ndum of 22 May 2015 to the Applicant stated that she had been the subject of a comparative review process in which she was not successful, no comparative review was actually undertaken with respect to her. It was never communicated to the Applicant how the purported comparative review with regard to the 172 LA posts was conducted, or where she ranked in the exercise. The Applicant was never asked to provide the Mission with her PHP and recent e-PASes before the purported comparative review process took place.

h. This apparent lack of a comparative review process further renders service unlawful, as she ought to have been given the opportunity to undergo a comparative review process in order to be considered for the remaining LA posts in the Field Administrative Offices of MONUSCO.

- b. Pursuant to art. 2.1(a) of its Statute, the Dispute Tribunal lacks

improper purposes. The Applicant bears the burden of proving that the discretion not to renew his or her appointment was not validly exercised.

A comparative review was not required and the outsourcing of the LA functions was proper in the circumstances.

h. There was no requirement for the Mission to subject the Applicant and others similarly placed to a comparative review process. The Department of Field Support Downsizing Guidelines provide that locally

of her post by a decision of the General Assembly which by itself is akin to a

Organization.

20. By the same token, a decision of the General Assembly is binding on the Secretary-General who has a duty to implement it. The Applicant lacks the capacity to challenge the non-renewal of her appointment in so far as it is properly

21. In *Ovcharenko et al*³, it was held that an administrative decision taken as a result of the decisions of the General Assembly is lawful and that the Secretary-General cannot be held accountable for executing such a decision.

22. With regard to the question whether the provisions of section 3.7(b) of ST/AI/2013/4 were contravened by the hiring of the Applicant under an IC

26. The Applicant in supplementary pleadings raised the issue of about five other LAs in Bukavu and Kinshasa who continued to enjoy fixed-term contracts after all LA posts in these two duty stations were said to have been abolished. She also raised the issue of another former LA who was laterally transferred to an Administrative Assistant post. Her argument was that she did not receive equal treatment with these staff members following the abolition of her post.

27. The Respondent in reply explained that the five LAs in question had encumbered borrowed posts from other sections at the time of the abolition of the 80 LA posts in Bukavu and Kinshasa and were therefore not affected by the abolitions. One of them although identified as an LA was actually serving as a Supply Assistant. Their fixed term contracts were later extended to 30 June 2016.

28. With regard to the one other LA who was laterally transferred to a vacant post of Administrative Assistant at the Mission at the time of the abolitions, there is evidence that the Mission had published an Information Circular dated 18 May 2015. I

to be affected by the abolitions were invited to apply to other vacant posts at the Mission that matched their profiles. The said LA successfully applied and was laterally transferred to the post of Administrative Assistant.

29. These explanations by the Respondent were not challenged. The Tribunal in these circumstances does not find that unequal treatment occurred in the
abolition of 80 LA

Conclusions

30. -renewal of her fixed-term appointment is not receivable. Further, her claims regarding her recruitment under an IC contract by UNOPS and lack of equal treatment have no merit. The Application is accordingly refused.

Case No. UNDT/NBI/2015/120

Judgment No. UNDT/2016/131

(Signed)

Judge Nkemdilim Izuako

Dated this 23rd day of September 2016

Entered in the Register on this 23rd day of September 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi