
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/081

Judgment No.: UNDT/2019/052

Date: 9 April 2019

Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ABOUA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, AAS/ALD/OHR
Nusrat Chagtai, AAS/ALD/OHR

Introduction

1. The Applicant is a former GS-5 Web Assistant with the United Nations Operation in Côte d'Ivoire (UNOCI).
2. On 26 October 2016, he filed an

the withdrawal of all uniformed and civilian UNOCI components, other than those required to carry out the complete closure of the Mission.⁶

12. In a Code Cable dated 10 May 2016, the Under-Secretary-General of the Department of Peacekeeping Operations (USG/DPKO) provided strategic guidance to UNOCI on the implementation of key aspects of the mandate as set out in resolution 2284. The USG/DPKO instructed the Mission to prepare its exit strategy and the drawdown of uniformed and civilian personnel.⁷

13. On 20 May 2016, the SRSG held a townhall meeting with UNOCI staff to discuss the implementation of the exit strategy. In a Code Cable to the USG/DPKO dated 24 May 2016, she relayed her account of what had transpired. The key parts of her account are reproduced below:

In my initial statement, I reiterated to all staff that UNOCI was now entering a final and critical phase towards its closure by 30 June 2017, with the endorsement by the UN Security Council p00e6W*nBTe 0 1 195.895.89034

management committees, including the Comparative Review Committee. The coincidental timing between the labour action initiated by the APEL Executive Board on 20 May 2016 and the *en masse* release of nationally-recruited staff

27. Security Council Resolution 2284 stated that UNOCI would not exist beyond 1 July 2017. With respect to the PIO, resolution 2284 specifically referred to a reduced and very limited mandate that did not prioritize website maintenance.

28. Following on from the reduced mandate for the PIO, UNHQ in New York requested the United Nations to provide a reduced mandate for the PIO. The United Nations agreed to provide a reduced mandate for the PIO on the basis of the following: the PIO would be responsible for the maintenance of the United Nations website on the United Nations website platform. In addition, the PIO web team included a Webmaster (international UNV) and a P-3 Public Information (PI) Officer who could perform the remaining functions of the team. The Applicant served as a Web Assistant in the PIO. His functions included maintaining and updating the United Nations website. The Applicant's functions were no longer required under the reduced mandate.

29. The Applicant requested that the United Nations provide a transparent process. It was based on the United Nations' commitment to transparency and accountability. The United Nations agreed to provide a transparent process for the selection and appointment of the Applicant. The United Nations agreed to provide a transparent process for the selection and appointment of the Applicant from its phasing down.

30. The Applicant requested that the United Nations provide a transparent process. It was based on the United Nations' commitment to transparency and accountability. The United Nations agreed to provide a transparent process for the selection and appointment of the Applicant. The United Nations agreed to provide a transparent process for the selection and appointment of the Applicant from its phasing down.

term appointments, which expire automatically and without prior notice on the expiration date specified in the letter of appointment. Nevertheless, on 1 June 2016, UNOCI informed the Applicant in writing that his appointment would not be renewed beyond its expiration on 30 June 2016.

The Applicant is not entitled to termination indemnity

37. No indemnity payments shall be made to a staff member, who had a temporary or fixed-term appointment that was completed on the expiration date specified in the letter of appointment as per Staff Regulations and Rules, Annex III *f +*k+0' Vj g" Crr rkecpv" crr rkpvo gpv" y cu" pqv" vgtolpcvgf " rwtuwcpv" vq" staff regulation 9.3. It expired. Expiration of an appointment is not a termination within the meaning of the staff rules (staff rule 9.6 (b)). The Applicant has no right to a paymen

- iii. Whether the Applicant was improperly singled out for abolition whereas he should have been included in a comparative review process; and
- iv. Whether there was a violation of notification procedure.
- b. Whether the contested decision was tainted by improper motives.
- c. Whether the Applicant is entitled to termination indemnity

The Tribunal will address these issues below.

Whether the decision regarding the Applicant's appointment due to the abolition of the post violated the applicable rules.

39. As expressly stated in staff rule 4.13(c), United Nations staff members have no expectation of renewal of their fixed-term appointments. The evidentiary burden of proving a legitimate expectancy of renewal lies upon the applicant, who is required to show that the Administration made an express and firm commitment in writing to extend his or her fixed term appointment.¹⁵ No such showing has been made in this case. Conversely, it is shown that starting from the February 2016 Transition Plan, the Mission had no intention to renew the Applicant's appointment and proceeded with the downsizing.

40. To the extent the Applicant bases his claim on the UNOCI budget, the Tribunal recalls that the availability of budgetary funds only authorizes the Organization's expenditures in connection with certain posts but does not create a right on the part of the incumbent to have the post retained.¹⁶ The Tribunal, therefore, agrees with the Respondent that the 4 May 2016 Report of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) did not require UNOCI to renew his appointment. The Applicant's claim that the UNOCI should have implemented the phased drawdown in accordance with the Security Council Resolution 2284. The Tribunal finds that the Applicant is not entitled to termination indemnity.

¹⁵ Ahmed 2011-UNAT-153; Abdalla 2011 UNAT-138. Munir 2015-UNAT-522.

¹⁶ Toure 2016-UNAT-660; Oguntola, 2018-UNAT-848; Filippova UNDT/2016/008.

41. Based on the documents on the makeup of the Web and Digital Media team, the reasons stated by the Respondent for not conducting a comparative review of the Applicant's service, relied upon by the Applicant, would have had impact in the comparative review process. It has, however, no import for the legality of abolishment of a sole post of specific level and functionality, as in this case. Similarly, of no relevance are the Applicant's complaints about the tensions that his employment with UNOCI had caused in his family.

42. Turning on to the question of notice of non-extension, the Tribunal concedes that indeed, there is no legal notice requirement with respect to fixed-term appointments, which expire automatically on the expiration date specified in the letter of appointment. The absence of such requirement is unfortunate but, as observed by the Tribunal, the prevalent practice is to give such a notice. In the present case, a notice of one month was entirely appropriate, considering the fixed-term nature and short duration of the appointment; the downsizing, which had even earlier signaled the reduction of posts; and the fact that the Applicant was a national staff member, not exposed to a total uprooting. The circumstance that the notice would have been delivered after the working hours is immaterial.

Whether the contested decision was tainted by improper motives

43. A non-renewal decision must not be vitiated by extraneous factors or any improper motives. The evidentiary 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 allegations.¹⁷ In the present case it appears that the Applicant maintains the suggestion made in the management evaluation request, that the non-renewal was influenced by the deteriorated labour

