

Introduction

1. The Applicant is a

8. Following the Secretary-Assembly, MONUSCO issued Information Circulars to its entire staff on 6 and 9 March 2015, 14 April 2015, and 20 April 2015, with regard to the proposed budget, the establishment of a Comparative Review Panel (CRP), and the review criteria.
9. Under the proposed new structure for the Mission, which was approved by the General Assembly, the military force in Bukavu was to be reduced by one battalion and Kinshasa would no longer be an operational base. As a result, LA posts in Kinshasa and Bukavu were abolished. This meant that a budgetary reduction of 80 LA posts in the 2015/2016 budget cycle for MONUSCO was done.
10. The Applicant, who was an LA in Bukavu, was affected by the abolition. A memorandum from the MONUSCO Director of Mission Support (DMS) informed him of this development. He was also informed through a memorandum from the Chief Civilian Personnel Officer (CCPO), Ms. Xaba-Motsa.
11. As at 16 June 2015, the Applicant, along with the other LAs at the Mission whose posts were at the time proposed for abolishment sent a letter to the Special Representative of the Secretary-General (SRSG) for MONUSCO contesting the non-renewal of their fixed-term appointments by reason of abolition of post.
12. On 8 June 2015, Mr. Eric Blanchard Jibikila, who was a member of the Executive Committee of the National Staff Union, sent a request for management rvaluation to the Management Evaluation Unit (MEU) in respect of the then
13. MEU replied to the designated focal point for the affected Language Assistants on 2 July 2015 and promised to send its decision by 13 August 2015.
14. Meanwhile, on 24 June 2015 the Applicant received a memorandum from -term appointment would not be renewed beyond 30 June 2015 and that accordingly, his separation from the Organization would take effect at the close of business on that same date.

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The purported abolition of the Applicant's post was in fact a conversion of his fixed-term contract into an IC contract.

- i. The functions of the fixed-term appointment that the Applicant had been encumbering are identical to those of the IC contract that he was

b.

Dispute Tribunal lacks jurisdiction to review the matter of the abolition of the post the Applicant encumbered and the recommendation of the Secretary-General to the General Assembly that led to the abolition of the post. These claims are not receivable and should be rejected.

c. The only reviewable administrative decision before the Dispute Tribunal is the de

the abolition of the post.

Submissions on the Merits

The decision not to renew the Applicant's appointment was lawful as the post he encumbered was subject to a legitimate restructuring of the Mission.

d. A fixed-term appointment does not carry any expectancy of renewal, irrespective of length of service (staff regulation 4.5(c); staff rule 4.13(c)).

e. The Applicant has adduced no evidence that the decision not to renew his fixed-term appointment was unlawful. On 25 June 2015, the General Assembly abolished 80 LA posts to meet the operational and budgetary needs of the Mission. In conjunction with the MONUSCO military force, the MONUSCO Administration identified the LA posts in Bukavu and Kinshasa as the posts to be abolished. This decision was made in accordance with the change in Mission operations as mandated by the Security Council.

f. A proposal to restructure a mission that results in loss of employment for staff members falls within the Secretary-discretionary authority.

g. The exercise of the Secretary-

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.

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constitution, the higher norm, and the supreme organ of the 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 his 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 contract by UNOPS after the abolition of his post to provide language services to the Mission, the Tribunal finds and holds that the said rules were not contravened.

23. This is because section 3.7(b) does not envisage a situation of post abolishment. The said section contemplates a situation where the post formerly encumbered by a former or retired staff member continues to exist and the separated staff member is reengaged as a consultant or IC to continue to perform the same functions.

24. The mischief that that section seeks to avoid is the continued indirect encumbrance of a post under the guise of a consultancy or individual contract by a staff member who by reason of retirement or other form of separation has left the Organization.

25. In the case of this Applicant, the post he previously encumbered as a Language Assistant had ceased to exist at the time UNNo5(s)-220the10(u)ae()-9(a)-219(indn)-10m]

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(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