
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/123

Judgment No.: UNDT/2016/134

Date: 23 September 2016

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Introduction

1. The Applicant is a former staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO). He served at the GS-3 level.

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

3. The Respondent filed a Reply to the Application on 14 December 2015.

4. The Tribunal, with the consent of the Parties decided, in accordance with art. 16.1 of the Tribunal's Rules of Procedure, that an oral hearing is not required in determining this case and that it will rely on the Parties' pleadings and written submissions.

Facts

5. The Applicant had served in Kinshasa within MONUSCO as a Language Assistant (LA) until his fixed term appointment which ended on 30 June 2015 was not renewed on grounds of abolition of post.

6. Before the said abolition, the United Nations Security Council in its Resolution 2147 (2014)¹, had called on MONUSCO to enhance the flexibility, effectiveness and capacity of the operations of the military force in the implementation of the Mission's mandate. It also pointed to the need for a clear exit strategy.

7. Thereafter, on 26 February 2015, the Secretary-General proposed a budget for MONUSCO for the period from 1 July 2015 to 30 June 2016². The said budget, among other things, proposed the abolition of 80 General Service (GS) LA posts.

¹ (Democratic Republic of Congo), adopted on 28 March 2014.

² Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo submitted pursuant to paragraph 39 of Security Council resolution 2147 (2014).

8. Following the Secretary-General's budget proposal to the General 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 Kinshasa, 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 Unde 27 1 99.dSR360. 360.437.7(s7mCv4F5.66 5292oli)-3(shment)-40(se)3(nt)-41

b. Pursuant to art. 2.1(a) of the Dispute Tribunal's Statute, the 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 decision not to renew the Applicant's appointment due to 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 resolution 2092 (2012).

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 recruited staff must be comparatively reviewed by duty station. Since all LA posts in the Bukavu and Kinshasa duty stations were abolished, a comparative review was unnecessary.

i. Due to the need for LAs to be more mobile and to effectively interact and liaise with the local population by providing linguistic support during their engagement, it was agreed to engage LAs through individual contractor agreements to be administered by UNOPS.

j. As a result, it was no longer viable to use national General Service posts to provide for LA positions to a force that is highly mobile, that deploys at short notice, and sometimes requires a surge in its numbers for a limited duration. Additionally, there is no suitable allowance for the travel of national staff.

k. MONUSCO decided to outsource the provision of LA functions in response to the recommendation of the Civilian Staffing Review (CSR) report.

l. MONUSCO already outsources a number of services and considers that the outsourcing of language services satisfies the military force's current requirements. Information Circular ST/IC/2005/30 (Outsourcing and impact on staff) issued on 15 June 2005, sets out guidance for programme managers when considering outsourcing.

m. In accordance with that guidance, MONUSCO informed staff representatives that language services would be outsourced and the staff

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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. He also raised the issue of another former LA who was laterally transferred to an Administrative Assistant post. His argument was that he did not receive equal treatment with these staff members following the abolition of his 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.

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