



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/002/R1
Judgment No.: UNDT/2018/068
Date: 26 June 2018
Original: English

Before: Judge Goolam Meeran
Registry: Nairobi
Registrar: Abena Kwakye-Berko

AFEWORKI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Alister Cumming, ALS/OHRM

INTRODUCTION

1. The Applicant is a former Administrative Assistant at the Regional Service Center in Entebbe (RSCE). On 28 December 2015, she filed an application contesting the decision not to renew her fixed-term appointment beyond 30 June 2015. It was apparent from the full details that she provided that she was also complaining about the decision not to grant her a continuing appointment.

2. By judgment No. UNDT/2017/011 dated 3 March 2017, the Tribunal dismissed the application as not receivable.

3. By judgment No. 2017-UNAT-794 dated 27 October 2017, the United Nations Appeals Tribunal (UNAT) found the application to be receivable, vacated judgment No. UNDT/2017/011 and remanded the case to the UNDT for a consideration of the merits.

4. In April 2018, the case was assigned to the undersigned Judge who held a case management discussion on 9 April 2018 with the participation of the Applicant and Counsel for the Respondent.

5. Having regard to the preference of the parties, by Order No. 099 (NBI/2018) dated 14 June 2018, the Tribunal ordered by consent that the application be considered and determined on the documents.

THE CLAIM

6. The Applicant challenges two administrative decisions. First is the decision not to grant her a continuing appointment. She states that she was informed by an *Inspira* generated email on 1 August 2013 that she was being considered for a continuing appointment. She submits that despite her meeting all eligible criteria to be granted a continuing appointment in accordance with the relevant policy, she was not awarded that appointment for reasons unknown to her. She submits that if she had been granted a continuing appointment in 2013, she would not have been subject to a Comparative Review Process (CRP) and

that results in loss of employment for staff members falls within the Secretary-

c. The CRP carried out at the RSCE was established to review cases

authorized posts in the budget. Therefore, the review was carried out by reference to function, not functional title. As the Applicant performed travel functions, she was placed in the pool of staff at the FS-4 level performing travel functions. All FS-4 posts in the Travel Unit were abolished. Accordingly, a CRP was unnecessary and none was carried out in relation to the Applicant

Applicant had been reviewed against other FS-4 Administrative Assistants, she would not have been treated differently since no FS-4 Administrative Assistant posts existed in the new structure. Accordingly, her appointment would not have been renewed and she would have been separated from service;

d.

at the FS-4 level in the Travel Unit is misguided. All FS-4 posts in that Unit were abolished. Mr. SN was selected for a temporary assignment with the United Nations Interim Force in Lebanon (UNIFIL) with effect from 30 June 2015. He did not retain a lien on his post at the RSCE. He later returned to the RSCE and was placed against a vacant higher level post. The other four staff members mentioned by the Applicant who were retained at the RSCE, either performed different functions from the Applicant, or were at a higher level. Accordingly, they are not true comparators.

e. The Applicant was fairly treated during the entire process. She was provided with the same opportunities as similarly placed staff members.

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14. By a circular dated 3 March 2015, RSCE staff members, including the Applicant, were informed of a retrenchment exercise in which 75 FS staff posts would be converted to national posts for the 2015/2016 financial year. RSCE staff members were also informed that a comparative review was to the

and three posts at the FS-3 level were available in the system for the period 2015-2016. At the time of the review, there were five staff members performing travel functions at the FS-4 level, including the Applicant. All of them were affected by the retrenchment exercise. Four of them were assigned to other peacekeeping missions. However, the Applicant was not offered a position by any of the missions and was accordingly not reassigned. In the circumstances, she was to be separated upon the expiry of her appointment.

21. On 30 June 2015, the Applicant received a formal letter informing her that her fixed-term appointment was not to be renewed beyond that date. She was separated from service.

22. On 28 August 2015, the Applicant requested management evaluation of the decision not to renew her appointment.

23. By letter dated 30 September 2015, the Officer-in-Charge, Management Evaluation Unit (OIC/MEU) replied to the Applicant's request for management evaluation. MEU determined that her request was not receivable because it was time-barred and even if it was receivable it had no merit.

THE APPLICABLE LAW

24. The Applicant requested that she be reinstated to her position at the FS-4 level. She argued that she was entitled to be reinstated to her position at the FS-4 level because she was not offered a position by any of the missions and was accordingly not reassigned. In the circumstances, she was to be separated upon the expiry of her appointment.

duration or separated from the Organization during the review period shall be withdrawn from the review. Eligible staff members on secondment to another United Nations organization or placed on special leave who are withdrawn from the review may be considered in future reviews under the provisions of section 2.7 above.

Staff regulation 4.5 (c)

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examination of the following issues having regard to the guidance and rulings by UNAT in *Khalaf* and *Matadi*:

- a) Was there a genuine restructuring of the workplace resulting in the loss of several posts because of the need to achieve economies and efficiencies?
- b) Did the RSCE have a reduced need for staff members performing the duties and functions being carried out by the Applicant?
- c) In carrying out the restructuring exercise did the Respondent discharge its duty to act fairly, transparently and justly in its dealings with staff who were at risk of losing their jobs?
- d) Has the Applicant been able to show that the restructuring exercise was tainted by discrimination, favouritism, bias or any other impermissible consideration to her detriment in that it resulted in her not being reassigned to a suitable alternative post within RSCE or any other mission?

31. The foregoing issues will now be considered:

a) The Restructuring

The Tribunal finds that the civilian staffing review conducted by the RSCE, resulting in the reduction of several posts, was conducted for a *bona fide* reason and its proposals were endorsed by the General Assembly.

b) Comparative review process by function

The decision to conduct the comparative review by comparing staff with the same functions, regardless of service line or office, as indicated by RSCE Circular, dated 3 March 2015, was an appropriate principle guiding the review and properly within the discretion of the Administration. Moreover, the fact that the Applicant was not part of the review process was not due to any discrimination or desire to subject her to less favourable treatment but because all the posts at FS-4 level in the Travel Unit, which included the Applicant, were abolished.

c) Equal treatment of staff during the retrenchment exercise

The record shows that all staff affected by the retrenchment exercise were similarly treated in the communications received and the opportunities that were made available for consideration of alternative job offers including, in particular, opportunities in other peacekeeping missions.

d) Discriminatory Treatment

The Applicant alleges that five staff members (Mr. MG, Ms. EW, Ms. CC, Mr. SN and Ms. AD) at the FS-4 level of the former Travel Unit continue to perform travel functions in RSCE. The evidence shows that all FS-4 posts in that Unit were abolished. Except for Mr. SN who was temporarily assigned to UNIFIL and returned later to RSCE at a higher-level post, the other four staff members mentioned by the Applicant, who were retained at the RSCE, performed different functions from the Applicant, or were at a higher level. They were therefore not appropriate comparators.

The Applicant also claims that she was discriminated in comparison to four staff members performing the same functions as herself at the FS-4 level. These allegations appear to be prompted by the fact that Mr. BK, Mr. BY, Mr. WJ and Mr. SN succeeded in obtaining job offers in other missions and were accordingly reassigned. However, the Respondent has produced an adequate explanation and reasons to rebut any suggestion or inference of discrimination or favouritism towards those staff members who were reassigned in that DFS sent to the Chief of Human Resources of all missions, a spreadsheet identifying all staff members who were affected by the retrenchment exercise. The Applicant and her named comparators were included in this list. It was for the missions to decide whom to select for offers of alternative employment. Unfortunately for the Applicant, she was not chosen. As for the various allegations of discrimination, favouritism and bias it was for the Applicant to show that she was subjected to any form of discriminatory treatment. The Applicant having made these bold allegations has failed to produce any evidence in support thereof.

Judgment

32. The application fails and is dismissed.

(Signed)

Judge Goolam Meeran

Dated this 26th day of June 2018

Entered in the Register on this 26th day of June 2018

(Signed)

Eric Muli, Legal Officer, for
Abena Kwakye-Berko, Registrar, Nairobi