



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/066

Judgment No.: UNDT/2020/061

Date: 30 April 2020

Original: English

Before: Judge Joelle Adda

8. On the same day, MONUSCO informed the Applicant that, due to budget reduction, decisions were made to reduce civilian staff in the mission including his section. He was informed that since there were more staff members in his section with the same functional title at the same level than available posts, a comparative review process would be conducted. He was asked to send his updated personal history profile and the last two completed performance reports to the Human Resources section.

9. On 25 August 2017, the Applicant was informed that MONUSCO would seek the termination of his appointment effective 30 September 2017.

10. On 5 September 2017, the Comparative Review Panel, which conducted the comparative review process of 430 staff members covering 67 functions from 22 August to 5 September 2017, transmitted the report to the Compliance Review Committee.

11. On 14 September 2017, the Compliance Review Committee endorsed the
that the panel followed correct
procedures.

12. On 25 September 2017, SRSG for MONUSCO informed staff members that the process required more time than anticipated and as a result the effective date of separation of affected staff members would be 31 October 2017.

13.

The Applicant was informed that he was among those identified for retrenchment in the comparative review process and his fixed-term appointment would be terminated

15. On 26 October 2017, the Applicant was notified that his appointment would be terminated effective 31 October 2017.

16. On 27 October 2017, the Applicant requested a management evaluation of the decision to terminate his fixed-term appointment and the suspension of action of the contested decision.

17.

21. Based on
Applicant raises two issues regarding the contested decision.

22. First, the Applicant claims that the contested decision is tainted by improper motives. He argues that he was reassigned from the post of Logistics Assistant to the post of Administrative Assistant in 2015 under questionable circumstances and the Administration reassigned him to the post of Administrative Assistant knowing that this post would likely be abolished. In response to the Res objection that the reassignment decision in 2015 is not receivable, the Applicant contends that he is not contesting the 2015 decision but provides relevant factual circumstances as evidence.
y the prejudicial actions of

23. Second, the Applicant claims that the Organization did not fulfil its obligation to make a good faith effort to find him an alternative post under staff rule 9.6(e). The Applicant claims that he applied for posts in logistics group but was apparently not given any priority consideration.

24. The Tribunal will review each of the two issues raised by the Applicant.

Whether the decision to abolish the Applicant's post and to terminate his fixed-term appointment is tainted by improper motives

25. The Tribunal will first assess if the decision to abolish post and terminate his fixed-term appointment as a result of the retrenchment exercise is tainted by improper motives.

26. Staff regulation 9.3(a)(i) and staff rule 9.6(c)(i) provide that the Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member for abolition of posts or reduction of staff.

27. It is also well settled jurisprudence that an international organization necessarily has power to restructure some or all of its departments or units, including

36. As the Appeals Tribunal held that all reasonable efforts have been made to consider the staff member concerned for available suitable posts. Where there is doubt that a staff member has been afforded reasonable consideration, it is incumbent on the Administration to prove that such *Timothy*, para. 32).

37. Nevertheless, while efforts to find a suitable post for the displaced staff member rest with the Administration, it is lawful and reasonable to expect that the affected staff members cooperate fully in the process: the relevant staff member is required to cooperate fully in these efforts and must show an interest in a new position by timely and completely applying for the position. Once the application process is completed, however, the Administration is required by staff rule 9.6(e) to position in an effort to retain him or her (*Timothy*, paras. 45-47).

38. In this case, since the Applicant was f intent to seek his termination in August 2017, he applied for three Logistics Assistant posts at the FS-4 level. He also applied for posts at the FS-5 level. However, the Applicant is not entitled to priority consideration for a position at a higher grade than his grade level under staff rule 9.6(e) as the Appeals Tribunal held in *Timothy* that

40. The other position the Applicant applied for was Job Opening 81519 advertising two Logistics Assistant positions with MONUSCO. The record shows that these two posts were reclassified upwards from the FS-3 to the FS-4 level and that after a competitive recruitment process, two incumbents were selected and promoted.

41. The Applicant applied for the post but did not respond to an invitation to a written assessment. The Applicant submits that he did not respond since he received an email from the Chief, Logistics Operations Unit in MONUSCO who informed him
position they are already occupying so they

non-competitive basis under staff rule 9.6(e) and therefore opening up the position to competition was highly irregular and unlawful.

42. The Respondent responds that advertising the reclassified positions and allowing the incumbents to compete for a promotion is allowed under sec. 4.3 of ST/AI/1998/9 (System for the classification of posts), and the non-selection of the
himself from consideration. The Respondent argues that the Applicant did not fulfil
pply for positions
under *Timothy*.

43. As stated above, the Appeals Tribunal held in *Timothy* that once a redundant staff member shows an interest in a new position by timely and completely applying for the position, the Administration is required by staff rule 9.6(e) to consider such
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to retain him or her. The reason why the Appeals Tribunal requires that a redundant staff member must show an interest in a new position by timely and completely
in a fruitless exercise, attempting to pair the staff member with a position that would not be accepted *Timothy*, para. 35).

Remedies

48.

illegality not occurred. As such, the Tribunal sets the in-lieu compensation at

e. If payment of the above amount is not made within 60 days of the date at which this judgment becomes executable, five per cent shall be added to the United States Prime Rate from the date of expiry of the 60-day period to the date of payment. An additional five per cent shall be applied to the United States Prime Rate 60 days from the date this Judgment becomes executable.

(Signed)

Judge Joelle Adda