



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/066

Judgment No.: UNDT/2021

Abena Kwakye Berko

BARUD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

Introduction

1. This is an application filed by the Applicant contesting the United Nations Hybrid Operation in Darfur (UNAMID) decision not to renew her fixed term appointment beyond its expiration date (the contested decision). The Respondent argues that the contested decision was lawful because UNAMID did not

17. Her post had been classified as Administrative Assistant by the Field

personnel action advising of the change in her job title. This was demonstrated by UNAMID's and reliance on the new FMA/TORs to justify her inclusion among the pool of FMA staff in the CRP and to justify the termination decision.

22. The FMA/TORs of 15 May 2018 were applied to her retroactively as they did not fall within the actual duties she was performing during the period covered by the CRP which require the latest two e-PAS documents and the PHP. The CRP is bound by a performance period not exceeding 31 March 2018 which marked the end of the second e-PAS cycle. Her placement within a CRP pool of FMA represented a procedural error vitiating the decision to terminate her appointment.

23. Throughout her career with UNAMID, she performed her administrative duties faithfully and always exercised due diligence in the interest of the Organization. This included alerting UNAMID management about practices within FMU which exposed UNAMID to corruption, thefts, nepotism and overpayments, among other risks. None of her concerns were addressed. In some cases, she was directed by her superiors to refer matters to other offices when they failed to address them knowing that the concerns she raised fell within their responsibilities. As a result of such efforts, she was unfairly characterized over time as a trouble-maker who did not get along with others and several measures were taken against her to marginalize her and her role to remove her from any supervisory role despite being the most senior FMU staff member after the Chief and by regularly delaying the finalization of her e-PAS.

24. None of the FMU Chiefs were properly appointed to the jobs. One abused his authority and she raised concerns about his wrongdoings. He was allowed to resign to avoid the negative outcome of an investigation into his actual qualifications. The other colleague had no background in FMU and relied fully on the FMU colleague with whom she was falsely compared in the CRP. Another colleague was appointed as Officer-in-Charge of FMU despite the Applicant having longer and more diverse experience.

25. The Applicant submits that as a result of the contested decision, she has suffered emotional harm in the form of anxiety, stress, insomnia, migraine, heart and stomach pains.

26. The Applicant requests the following reliefs:

- a. rescission of the contested decision
- b. retroactive reinstatement in service from 1 July 2019 and for her to be considered as having had continuous service without any break including all applicable benefits and entitlements;
- c. for UNAMID Administrator to be held accountable for bias, unfair practices as well as for abuse of authority and procedures leading to the breach of her right to due process
- d. compensation for mental anguish, loss of reputation, humiliation and uncertainty.

The Respondent

27.

nominated by UNAMID management and staff representatives from both the Field Staff Union and National Staff Union. None of the Panel members were from the Engineering Section. The basis for their scoring is also documented.

34. The CRPTORs required UNAMID to review staff members by section, functions and grade across duty stations. Within a section staff members were to be reviewed against other staff members performing the same or similar functions at the same level and category. The determination of which staff members were to be compared together within each section was primarily guided by the functional title as

35. In cases where the functional title did not reflect the actual functions performed, the Chief Human Resources Office individuals fell into which occupational group within the same occupational grade while documenting the basis upon which the determination was made.

36. _____ at she performed. Although her functional title was Administrative Assistant, the TORs for her position which the FMU Chief sent on 15 May 2018 show that she was performing FMA functions. The PHP that she submitted for the CRP stated that since 15 May 2018 the Applicant was working as an FMA within FMU.

37. The Applicant makes various allegations against the former and current FMU Chiefs. However, neither had any input in the CRP. The Applicant failed to discharge her burden of showing that the contested decision was based on improper motives. The A retaliation against her for alerting senior management about corruption and for whistleblowing are unsupported by evidence.

38. In view of the foregoing, the Respondent submits that the Applicant is not entitled to any relief. She has not demonstrated any procedural or substantive breach of her rights, nor has the Applicant adduced any evidence of harm. The Applicant has to support a claim of both procedural breaches and breaches of a fundamental nature.

FMU. As rightly argued by the Applicant, this analysis is irregular

claim²¹. It is declined.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 3rd day of March 2021

Entered in the Register on this 3rd day of March 2021

(Signed)

Abena Kwakye Berko, Registrar, Nairobi

²¹ *Kalln* 2017-UNAT-742 and subsequent judgments