



UNITED NATIONS DISPUTE TRIBUNAL

## **Introduction**

1. The Applicant is a former GS-5 Telecommunications Assistant in the Field Technology Section of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo MONUSCO based in Entebbe, Uganda. He filed an application and an amended application on 25 September 2019 and 10 March 2021 respectively, contesting the decision not to extend his fixed-term appointment ( the contested decision ).

2. The Respondent filed a reply on 25 October 2019. The Respondent argues that the contested decision is lawful because, the A renewed following a lawful restructuring exercise. The Applicant has not proved the contrary. For reasons provided below the application is dismissed.

## **Facts and Procedure**

3. The Applicant joined the Organization on 4 March 2014 as a GL-5 Information Management Assistant in Entebbe on a fixed-term appointment. On 1

Assistant following the implementation of the classification of the post he encumbered.<sup>1</sup>

4. On 29 March 2019, the Secretary-General submitte - 2020 proposed Budget to the General Assembly.<sup>2</sup> The Budget proposed the abolition of six Telecommunication Assistant posts in the Field Technology Section in the General Service category.<sup>3</sup>

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<sup>1</sup> Reply, para. 3 and annex R/1.

<sup>2</sup> A/73/816.

<sup>3</sup> Budget, para. 96.



11. On 3 July 2019, the General Assembly approved the Budget.<sup>11</sup>
12. On 20 September 2019, the Under-Secretary-General for Management Strategy, Policy and Compliance upheld the contested decision.<sup>12</sup>
13. On 26 September 2019, the Tribunal issued Order No. 147 (NBI/2019) in which it found that it was not competent to suspend the contested decision because it was an appointment decision and therefore fell under the exclusionary clause of art. 10.2 of the UNDT Statute and art. 14 of the Rules of Procedure.<sup>13</sup>
14. The Applicant was separated effective 1 October 2019.<sup>14</sup>
15. A case management discussion took place on 23 February 2021. On 24 February 2021, the Tribunal issued Order No. 055 (NBI/2021) which directed the Applicant to, *inter alia*, file an amended application which he did on 10 March 2021.
16. At the CMD, the parties agreed that the 0 Mahcati1(h)w4(r)-6(e)4( )-9(Ra)4(t)-21(e)4(d)JTJET

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*a. Delayed communication on the CRP*

29. The relevant and guiding materials

Reference of the CRP /3) which provides in paragraph 19 that;

Staff members who are subject to the comparative review process will be individually notified and must submit their updated PHPs/P.11 and two completed ePerformances covering 2016-2017 and 2017-2018 performance circles to monusco-hrs-crp2019@un.org. Non-submission of a completed PHPs/P.11 will result in the CRP reviewing the latest PHP that is on file for the staff member.

30. The question that the Tribunal must answer is whether, as alleged by the Applicant, the Administration failed to comply with this requirement by communicating with the Applicant on 16 May 2019 instead of 4 April 2019. The Respondent has argued that although MONUSCO, in error, sent the Applicant a notification regarding his participation in the CRP on 15 May 2019 this did not affect the CRP results. The Applicant was able to timely provide the requested PHP and performance evaluations to HR. The CRP Panel reviewed the Applicant based on the same information provided by the three other staff members.

31. ~~The Applicant has confirmed that he complied~~ with the communication of 16 May 2019, by submitting the requested documentation within the deadline. He has not made any reference to any provision in the CRP TORs that sets a specific date by which he should have been notified of participation in the CRP. He has not demonstrated how submitting his PHPs/P.11 and relevant ePerformances on 16 May 2019 instead of 4 April 2019 1Ppletely9/atpppppppply9/atpp21(t)]18(s)9( )U0 g0 G( )JTJET

33. There is a presumption that official functions are regularly performed<sup>17</sup>. The Respondent has a minimal burden of proof to justify his actions in administrative matters<sup>18</sup>. Once discharged the burden shifts to the staff member to show the contrary through clear and convincing evidence.<sup>19</sup>

34. In the instant application, the Tribunal finds that the Applicant has not satisfied his burden of proof to show through clear and convincing evidence that his separation was unfair.

contract of employment.

35. In terms of allegations of ulterior motive, it is now well established that allegations of bias, ill will, discrimination must be supported by evidence.<sup>20</sup> The Applicant has not shown any material to suggest that non-renewal of his contract was motivated by bias on the part of the Administration against him.

36. The record shows that the Administration based the CRP on art. 101 of the Charter of the United Nations as a guiding principle to ensure that the staff members under review met the highest standards of efficiency, competency and integrity. The Applicant and one other staff member scored the lowest points and were retrenched based on this assessment. The Applicant has not disputed the fact that he scored the lowest points.

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<sup>17</sup> *Rolland* 2011-UNAT-122, para. 26; *Ibekwe* 2011-UNAT-179, para. 30; and *Landgraf* 2014-UNAT-471, para. 28. This principle was also confirmed in *Dhanjee* 2015-UNAT-527, para. 30; *Zhuang, Zhao & Zie* 2015-UNAT-536, para. 48; *Staedtler* 2015-UNAT-547, para. 27; *Survo* 2015-UNAT-595, para. 68; *Niedermayr* 2015-UNAT-603, para. 23; *Ngokeng* 2017-UNAT-747, para. 33.

<sup>18</sup> *Rolland* 2011-UNAT-122, para. 26. Reaffirmed in *Ibekwe* 2011-UNAT-179, para. 30; *Luvai* 2014-UNAT-417, para. 40; *Simmons* 2014-UNAT-425, para. 23; *Landgraf* 2014-UNAT-471, para. 28; *Dhanjee* 2015-UNAT-527, para. 30; *Zhuang, Zhao & Zie* 2015-UNAT-536, para. 48; *Staedtler* 2015-UNAT-547, para. 27; *Survo* 2015-UNAT-595, para. 68; *Niedermayr* 2015-UNAT-603, para. 23.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Al Najjar* 2021-UNAT-1084, para. 34; *Obdeijn* 2012-UNAT-201 para. 38; *Azzouni* 2010-UNAT-081, para. 35.



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