



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/050
Judgment No.: UNDT/2022/052
Date: 27 May 2022
Original: English

Before: Judge Margaret Tibulya.
Registry: Nairobi
Registrar: Abena Kwakye-Berko

MWIZERWA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Jacqueline Lule, OSLA

Counsel for the Respondent:
Nicole Wynn, AAS/ALD/OHR, UN Secretariat
Maureen Munyolo, AAS/ALD/OHR, UN Secretariat

Introduction and Procedural History

1. On 8 July 2021, the Applicant, an Administrative Assistant, at the FS-4 level, working with the United Nations-African Union Hybrid Operation in Darfur filed an application contesting n to terminate her continuing appointment without any attempt by the Administration to secure her alternative positions.¹

2. On 9 August 2021, the Respondent filed a reply where it was argued that the contested decision is lawful.

3. The Tribunal held a case management discussion on 13 April 2022. During the discussion, the parties declared readiness to informally resolve the dispute.

4.

consultation with section leaders and senior leadership, the reduction of staff will take place in staggered phases with staff departing the mission effective 1st February 2021, based on the functions required in each unit/section as well as the reduced operational requirements at each

It is with regret that I have to inform you that your functions are among

by
approved the termination of your continuing appointment on the grounds of staff reduction in line with Staff Regulations 9.3(a)(i) and

We encourage you to apply to suitable job openings in INSPIRA and if you not already done so, ensure that your profile is uploaded in the HORIZON platform.

9. This is the impugned decision. The scheduled date of separation was to be 11 April 2021.

10. On 10 March 2021, formally sought an extension of her contract through to 30 June 2021.

11. On 12 March 2021, the Applicant sought review of the impugned decision by management evaluation.

12. On 2 April 2021, the Applicant applied for an FS-5 post in Nairobi.

13. On 9 April 2021, the Applicant received a response from the Management Evaluation Unit . The response read, in part, as follows:

The MEU noted, firstly, in the submissions of the Mission, that your candidature has been flagged in Horizon as that of a staff member affected by downsizing. The MEU also noted that you only applied for positions at the FS-5 level, i.e., positions at one level higher than your actual grade (FS4). However, as noted above, the Administration has an obligation to make proper, reasonable, and good faith efforts to assist you in finding an alternative post at the FS4 level or even at a lower grade, if you had applied. Taking into account that your candidature was appropriately flagged for priority consideration for suitable job

obligation to consider you for suitable posts at your level, FS-4, the

23. Had the Applicant expressed interest in and applied for any of the FS-4 level positions, the hiring managers would have been on notice that she was a downsized staff member subject to priority consideration. Instead, she applied for an FS-4 position two days before she separated, and for two more FS-4 positions after separation.

Deliberations

24. That the Respondent acted within his mandate *per* staff regulation 9.3(a)(i) and staff rule 9.6(c)(i) when he terminated the A

25. Indeed, the Applicant ~~question the discontinuation of the position she~~ encumbered, but rather maintains that the Administration terminated her continuing appointment without making reasonable and good faith efforts (e)4po60 0 1 189.62 633.94 Tm0 g0 G(e)

deemed to have been satisfied if such staff members have received consideration for

of securing alternative positions for herself, was a mere reminder to her to fulfil her staff rule 9 obligations.⁶

32. The Applicant further asserts that since she had roster membership for Administrative Assistant positions at the FS-4 and FS-5 levels, she met the criteria for the FS-5 roles and was competent for those positions. That being so, she maintains that she should only have been interviewed to confirm her suitability for the positions, only competing against others holding continuing or permanent appointments. This, it is further argued, would be consonant with *Timothy* in which UNAT found that the a preferred non-competitive basis considering her competence, integrity and length of service, as well as other factors such as nationality and gender.

33. , however, the assertion that the Applicant met the criteria for the FS-5 roles and was competent for those positions by virtue of her roster membership for Administrative Assistant FS,4 and FS,5 posts is fallacious. The appellate jurisdiction guidance is that roster membership does not necessarily mean that a staff member meets the requirements or possesses the specific qualifications for a particular job opening.⁷ A roster candidate must still be suitable for the specific position.⁸ rosters relate to job openings falling within the same job family and at the same level, and that the suitability of a roster candidate is assessed against the specific requirements of a job opening which vary depending on the particular vacancy being filled, represents the correct position.

34. It follows therefore (as Counsel for the Applicant indeed concedes and in keeping with Tribunal jurisprudence in *Krioutchkouv*⁹) that the Applicant roster membership did not give her a right to appointment to FS-5 positions and did not give

⁶

⁷ *Lemonnier* 2017-UNAT-762, para. 29; *Krioutchkouv* 2016-UNAT-807, para. 29; *Charles* 2014-UNAT-416, para.28; ST/AI/2010/3, sec. 7.

⁸ *Timothy*, *op cit.*, para. 38; *Fasanella* 2017-UNAT-765, para. 31.

⁹ 2016-UNAT-807.

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Judgment

50. The application is dismissed.

(Signed)

Judge Margaret Tibulya

Dated this 27th