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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/6

Judgment No.: UNDT/2022/118

Date: 2 November 2022

Original: English

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**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

TURK

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant: EMGG & WAKICID BDC and others**

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of them who were serving on FTAs. Of the six staff members compared, the Applicant scored the lowest. Consequently, the CRP identified the Applicant for retrenchment.<sup>8</sup>

11. By letter dated 30 November 2021, the UNAMI Chief of Mission Support informed the Applicant that he had been identified for retrenchment in the comparative review process and as a result his appointment would not be renewed beyond 31 December 2021 in line with staff rule 9.4.<sup>9</sup>

12. On 7 December 2021, the Applicant sought management evaluation of the decision not to extend his appointment.<sup>10</sup>

13. The proposed budget was adopted by the General Assembly on 24 December 2021.<sup>11</sup>

14. By letter dated 28 December 2021, the Management Evaluation Unit decided to uphold the decision to not renew his FTA with UNAMI beyond 31 December 2021.<sup>12</sup>

15. On 19 June 2022, UNAMI advertised a P-4 PAO post<sup>13</sup> as well as a P-3 PAO post No.<sup>14</sup>

16. The Applicant is that the non-extension his FTA beyond its expiration date of 31 December 2021 was unlawful because the whole motive behind downgrading his post was motivated by OPA malicious and hostile intention to separate him from service. This, according to the Applicant, transpires from the following facts:

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<sup>8</sup> *Ibid.*, at annex R/5.

<sup>9</sup> *Ibid.*, at annex R/6.

<sup>10</sup> Application, annex 3.

<sup>11</sup> Reply, para. 13, referencing A/RES/76/246 / X, *Estimates in respect of special political missions, good offices and other political initiatives authorized by the General Assembly and/or the Security Council* (Adopted on 24 December 2021) and A/76/6(sec. 3) Add.6, *United Nations Assistance Mission for Iraq Proposed Budget Programme for 2022*.

<sup>12</sup> *Ibid.*, at annex 4.

<sup>13</sup> Responden annexes R/17 and

<sup>14</sup> *Ibid.*,

a. No rational reasons were given for initiating the process of downgrading his post. While the number of P-4 positions in OPA are 10, eight of these positions were filled and two positions remained vacant. Downgrading a position does not necessarily lead to saving in the allocated budget because of the different steps in the pay scale. A job opening in June 2022 for a P-4 position under his former post number, No. 30048407 is evidence that UNAMI's decision was not taken with good motive.

b. There also were two vacant P-3 positions in OPA Baghdad office, according to the OPA organizational chart.

c. In the request for classification (downgrading), his position was identified by the post number even before the comparative review panel was formed.

d. The CRP scores were manipulated to favour other staff members. One comparator staff member was not even with UNAMI. UNAMI HR directed the CRP members to deliberately accept all years of experience outside the United Nations as relevant experience. Specifically, the Applicant indicates that the score of another comparator, Mr. NN, was unduly inflated in this way. By contrast, his score of relevant experience was improperly lowered because the CRP did not consider as relevant his employment as Development Officer (2002-2004) with the Yemeni Development Foundation and News Editor at Ihlas Media Center in Turkey (1994-1997).

e. His score for the core value of respect for diversity was not properly recorded because of a technical malfunction, whereas it should be

f. To protect themselves from legal proceedings, UNAMI management



anticipation of approval by the General Assembly, UNAMI conducted a downsizing exercise. The Proposed Budget was adopted by the full General Assembly. The non-renewal of

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points.<sup>22</sup> Since the difference in scores between the Applicant and the next ranked individual was 11 points, the Applicant would have still ranked the lowest and would still have been retrenched. Had the Panel used the PHP uploaded by the Applicant on the *Galaxy* portal would have been even lower and the score difference between the Applicant and the next ranked individual would have been not 11, but 21 points.

i. The Applicant's relevant scores for the core value of respect for diversity were properly recorded. As per the CRP ToRs, the Panel scored the performance evaluations for the previous two performance cycles, i.e., the 2019-2020 and 2020-2021 performance only. The alleged inaccuracy of the Applicant's evaluation on the score of respect for diversity pertained to the 2018-2019 performance evaluation. It had no bearing on the comparative review.

j. The two-day lag in sending the Applicant the formal notification of the decision not to renew his appointment did not breach his rights. Inasmuch as it is normal practice for an applicant

k. The Applicant's claims. Therefore, the issue of alternative placement under staff rule 9.6(e) does not arise. The Applicant had no right to be retained or reassigned to another post as he claims in his notice of the contested decision.

l. There is no merit to the claim that UNAMI was biased because the Applicant worked from home under the Alternative Working Arrangement (AWA) while other staff members worked from the office. The Applicant's contested decision or the CRP. No points were awarded or deducted based on working arrangements.

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<sup>22</sup> Reply, annex R/9.

19. Finally, the Applicant has not produced evidence of harm in causal link between the contested decision.

physician, the cause of his injury is inconclusive and most likely due to his physical activity. There is no evidence that the injury was related to the contested decision.

20. The Respondent submits that the Applicant is not entitled to the requested remedies and requests the Tribunal to dismiss the application.

### **Considerations**

21. In the context of the grievances, the Tribunal frames the following questions for consideration: (a) lawfulness and reasonableness of downgrading one of the P-4 posts at POA; (b) whether the downgrading was a genuine exercise or a scheme aimed to re-advertise it; (c) procedural fairness of the comparative process; (d) substantive correctness of the outcome; and (e) various allegations of discriminatory treatment.

*(a) Lawfulness and reasonableness of downgrading one of the P-4 posts at OPA.*



retrenchment was proposed regarding a P-4 position of Coordination Officer<sup>30</sup>, indicate that it was an established *modus operandi* and not an *ad hoc* solution devised to target the Applicant.

*(b) Whether the downgrading of the post occupied by the Applicant was a genuine exercise or a scheme to re-advertise it.*

25. It has been sufficiently documented that post No. 30048407, to which the

(c) *Procedural fairness of the comparative review process.*

28. Based on the material before it, the Tribunal endorses arguments captured above under paras. 18(e) and (g). It also finds that the Respondent has rebutted the allegation that one of his comparators is assigned to the United Nations Interim Force in Lebanon ( UNIFIL ) and not UNAMI<sup>36</sup>; and documents that that staff member was reassigned to UNAMI on 24 February 2019.<sup>37</sup> , Mr. NN, should not have enjoyed a retention preference as a continuing appointment holder is also incorrect.<sup>38</sup> The Respondent demonstrates that NN had been granted a continuing appointment effective 2 June 2015.<sup>39</sup>, and as per staff rules 9.6(e) and 13.1(d), the Mission rightly preferred him for retention. This fact also relieves this Tribunal from considering the A professional experience. Altogether, the Tribunal finds allegations concerning these two individuals are baseless.

29. The comparative review process criteria included: relevant United Nations and outside United Nations work experience; performance ratings for the core val



Turkey. That PHP ends with the posting as a Secretary at the Jordanian Embassy to the United States of America ( USA ) at an unspecified time after 2010. The Inspira PHP, in turn, starts listing the relevant employment in 2004, i.e., presumably after the Applicant with the Yemeni Development Foundation as Development Officer, but continues beyond the Embassy of Jordan to the USA, until the most recent post with UNAMI. There are, moreover, differences in dates and duration of employments declared in both documents; these are ranging from weeks to years. The most serious discrepancies concern the employment as a Secretary at the Jordanian Embassy to the USA, which, according to the PHP from Galaxy began on 1 August 2010 and ended on 1 January 2079, the latter figure being obviously an error, whereas according to the PHP from Inspira, it began on 1 September 2011 and ended on 9 January 2012.

34. The Tribunal stresses that the credibility of either document is low in the face of apparent nonchalance in completing them. The Tribunal does not find that experience as a news editor, consisting in editing and translating news, is *prima facie* relevant for a P-4 PAO post. It notes, moreover, that the





