
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/054

No.: UNDT/2016/063

Date: 31 May 2016

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

YASIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Nicole Washienko, OSLA

Counsel for the Respondent:
Stephen Margetts, ALS/OHRM

7. On 12 November 2010, she was placed on a roster for the position of Chief Administrative Services, at the D1 level, after undergoing a written examination, a competency-based interview and review by a Central Review Board.

8. The Applicant was selected by the Head of Mission of UNAMI for the post of Chief of Mission Support, UNAMI in late 2012 at C

Mission Support of UNAMI effective 21 January 2015 for a period of one year. The USG further stated that the appointment of MM was made pursuant to her authority to move a staff member laterally as per section 11.2 of ST/AI/2010/3 (Staff selection system). The USG also stated that in order to ensure a smooth transition and handover, MM would travel to Baghdad on 18 January 2015 and that his stay in Baghdad from 18 January to 20 January 2015 should be treated as official business travel.

23. On 15 January 2015, the Applicant received an email from the generic address UNAMIServicedesk@un.org. The email stated:

In connection to your end of assignment with UNAMI on 20 January 2015, I hereby attach your check-out memo, which will guide you through the process.

All the best in your future endeavors.

24. The Applicant replied to the email, stating:

Please provide me with the basis for your email below that I am ending my assignment on 20 January. For the record, this is not the case so i ask that you cease any action you have started in this regard. Thank you.

25. On 16 January 2015, the Applicant submitted a management evaluation request contesting the decisions of the USG/DFS to terminate her mission assignment with UNAMI as of 20 January 2015. The Applicant filed a Suspension of Action on 19 January 2015, seeking an injunction against the same decision.

26. On 23 January 2015, the Tribunal issued Order No. 028 (NBI/2015), holding W K D W H P F L K H L R Q Q R W W R H [W H Q G W K H \$ S S O L F D Q W ¶ V D V been made in bad faith and tainted by extraneous factors, thus making it prima facie X Q O D Z I X O ´ 7 K H 7 U L E X Q D O R U G H U H G W K D W W K H \$ S S O L F Chief of Mission Support of UNAMI pending management evaluation.

27. On 3 February 2015, the Applicant received an email from the Chief, Office of the USG/DFS, informing her that DFS had decided to rescind the decision that she

return to New York with immediate effect. She was to remain in her then-current

decision was issued. There are no legal consequences for the Applicant arising from that decision and therefore the said decision is not contestable.

32. The Applicant did not request management evaluation of any decision not to extend her appointment for a third year. On 22 January 2015, two and a half weeks before the end of her assignment to UNAMI, the Applicant requested an extension of her assignment for a third year. On 3 February 2015, the Administration confirmed that the assignment would end on 9 February 2015.

33. On 16 January 2015, the Applicant had requested management evaluation of the decision to cut short her assignment at UNAMI after 20 January 2015. She did not request management evaluation of the decision not to extend her assignment for a third year from February 2015 onwards. The non-extension claim is outside the scope of her management evaluation request and is not receivable.

34. The Applicant did not request management evaluation of the decision to return her to New York at the end of her assignment. On 9 February 2015 when her mission assignment at UNAMI expired, the Applicant was placed against the post at the United Nations Headquarters over which she held a lien. The Applicant has not requested management evaluation of that decision. This claim is outside the scope of the Application.

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mission assignment is not well-

36. The rescission ofThe

aware that the Applicant did not wish to relinquish her post in UNAMI if it would entail her being reassigned to a P-5 level post.

41. When the Applicant was informed on 12 December 2014 that MM was being assigned to her post in UNAMI, this constituted an implicit decision on behalf of the Administration to deny her request to remain in UNAMI if she could not be assigned to a post at the D-1 level elsewhere.

42. Con WUDU\ WR WKH 5HVS RQGHW ¶V DVVHUWLRQV management review of the decision not to extend her assignment with UNAMI. In her request, the Applicant asked the Management Evaluation Unit to review two decisions, namely:

the GHFLVLRQ WR WHUPLQDWH and DSSURKHWPHQW ZLWK appointment of [MM] against the post that I am currently encumbering as [it] p2h() TJETBT/F5 12 Tf1 0 0 1 153.02 450.55 Tm[00470048 half twolinin

occurred after the Applicant filed her request for management evaluation does not render the prior decision not to extend her assignment with UNAMI without effect.

45. 7KH GLUHFW UHVXOW RI 00¶V DVVLJQPHQW WR WKH

that the Applicant was compelled to return to New York at the P-5 level. Thus, by requesting management review of the decision to assign MM to the post that she was encumbering in UNAMI, the Applicant was inherently contesting the related decision to return her to New York to assume functions at the P-5 level.

46. At the time that the Applicant submitted her request for management evaluation, she was self-represented and therefore, she could not be expected to

49. The Respondent objected to the receivability of this Application on the grounds that: (i) The day after the Applicant had filed a suspension of action challenging the cutting short of her mission assignment by about two and a half weeks, the decision to do so was rescinded by the Respondent. As a result, there were no legal consequences of the rescinded decision; (ii) The Applicant did not request management evaluation of a decision not to extend her mission assignment for a third year. This fact renders that aspect of her claim non-receivable by the Tribunal; and (iii) The Applicant did not request management evaluation of the decision to return her to New York at the end of her mission assignment.

50. Two critical questions that arise are: (i)

