



Before:

Registry:

Registrar:

JUDGMENT

Counsel for Applicant:

Counsel for Respondent:

Introduction

1. The Applicant filed on 22 June 2015 a request for the re-issuance of UNDP/12/01338 as a Position Ad, pursuant to P442 in the Regional Headquarters for Africa States at the UNDP Headquarters in New York. After various assignments in several different stations she was promoted to the P45 level on 15788 (0.874347(0) - 0.9(u) - 0.960221(s) -
2. The Respondent filed a request on 24 August 2015.

Facts

The Applicant joined the United Nations Development Programme (UNDP) in 1998 as a Position Ad, pursuant to P442 in the Regional Headquarters for Africa States at the UNDP Headquarters in New York. After various assignments in several different stations she was promoted to the P45 level on 15788 (0.874347(0) - 0.9(u) - 0.960221(s) -

>. ! " ema\$ of 22 August 201 ' <+. <a+tineA45o\$%man %info+med t(e A##\$%&ant
t(at st+u&tu+a\$ &(anges 8%t(%n ;GC 8e+e needed due to t(e +%s: of a &ont%nued
dea+t(of fund%ng fo+ 2014' and t(at t(ose &(anges 8ou\$d a\$so affe&t t(e #+of%\$e of

to be, the Act of the #a+ne+s(# 8%t(No+8a" and to de,eso# a d%ffe+ent #+og+amme
fo+ t(e Cent+e.

12. !" \$ette+ dated 20)e*+ua+" 2014' <s. D%A 6u&:e+*" ; ff%&e+4%n4C(a+ge'
; 6 - ' fo+ma\$\$" not%fed t(e A##\$%&ant t(at (e+ #ost as D%+e&to+' DGG/! DP' 8ou\$d
*e a*o\$%s(ed 8%t(effe&t f+om 1 <a+&(2014. 5(e 8as a\$sso %nfo+med t(at s(e
8ou\$d *e #s&ed on t(e status of 0*et8een ass%gnmentI' and 8as en&ou+aged to
a##\$" fo+ ,a&an&%es at UNDP and ot(e+ s%ste+ agen&%es. T(e \$ette+ fu+it(e+ %nfo+med
t(e A##\$%&ant t(at t(e t(+ee mont(s .o* sea+&(#e+%od 8ou\$d sta+ on t(e date of
t(e \$ette+' and +un t(+oug(to 1 <a" 2014. 5(e 8as

t(e !DP Gende+ team' %n !+uges' !e\$g%um. T(ese #osts 8e-e tem#o+a+" assignments.

15. ;n 1 <a+&(2014' t(e A##\$%&ant \$eft (e+ #ost.

16. !" \$ette+ dated 1 <a+&(2014' t(e 5tate 5e&+eta+" <%n%st+" of)o+e%gn Affa%+s' No+8a"" t(an:ed t(e A##\$%&ant fo+ (e+ &\$ose &oo#e+at%ion and +e\$ent\$ess &ommtment to st+engt(en t(e +e\$e,an&e of ;GC. 6e also st+essed t(at Ot(an:s to Ft(e A##\$%&ant'sG effo+ts' Ft(e"G no8 (a,e so\$d +esu\$ts and e=#e+%en&es to *u\$d on as UNDP and t(e <%n%st+" of)o+e%gn Affa%+s (a,e +ene8ed Ft(e+%G &ommtment to &ont%nu%ng t(e #a+tnes(%# on t(e UNDP ;s\$o Go,e+nan&e Cent+e1 .

1>. !" \$ette+ of 1 <a+&(2014' ; 6 -/! ; < %nfo+med t(e A##\$%&ant t(at a fu\$\$" funded tem#o+a+" assignment (ad *een %dent%f%ed fo+ (e+ as 5en%o+ Ad,%so+ to t(e B=e&ut%,e Coo+d%nato+ and De#ut" B=e&ut%,e Coo+d%nato+ of t(e United Nations Vo\$untee+s /0UNV12 #+og+amme %n !onn. T(e A##\$%&ant a&&e#ted t(at #ost' and too: u# t(e one4"ea+ tem#o+a+" assignment on A#+%\$ 2014. T(e \$ette+ noted t(at t(e assignment 8as fo+ a def%ned #e+%od of one "ea+' t(at %t 8%\$\$ sta+t on 1 A#+%\$ 2014 and 8%\$\$ e=#%+e on 1 <a+&(2015 and t(e+e 8%\$\$ *e no #oss%*%\$%t" of e=tension. @t fu+t(e+ stated t(at OF%Gn t(e e,ent t

positions. The email further stressed that staff should be able to secure a position in the event of the suspension of the relevant staff member. The email also stated that the suspension of the UN staff members and the UNDP Personnel Assignment Process and Processes should be a priority during the suspension.

2. On 8 June 2014, the Applicant filed a complaint with the UNDP Office of Audit and Investigations (OAI) regarding the assessment and use of staff on

the email of 25 July 2014. That communication too: #& on 28 July 2014. The
A##\$&ant 8as offered a one4da" e=tension of the dead\$ine for a##\$&ation.

23. !" email of 1 July 2014' the A##\$&ant info+med <+. Candest(at ast(oug(
the 8e+e a num*e+ of #os#tions %n the Jo*)a%+ t(at suited (e+ #+of%se' s(e (ad
de&ded not to #a+t%&#ate %n %t' s%ne s(e &ou\$ not *e e=#e&ted' %f se&ted' to sta+t
%n a ne 8 #ost so soon afte+ (e+ e&ent e\$o&ation. @n t(at email\$' the A##\$&ant also
soug(t &Sa+f%&ation as to 8(et(e+ (e+ &u++ent status 8as e\$ated to the on4go%ng
st+u&tu+a\$ &(anges.

0. !" email of 6 August 2014' entitled 0-BH Pa+t%&#at%on on the st+u&tu+a\$

3. !" \$ette+ of 3 A#+%\$ 2015' t(e A##\$%&ant %nfo+med t(e Ass%stant Adm%nst+ato+ and D%+e&to+' ! ; < ' t(at s(e (ad o#ted to se+, e t8o out of t(e t(+ee mont(s of te+m%nation not%&e and +e&e%, e &om#ensation %n \$%eu of t(e +ema%n%ng mont(of not%&e #e+%od.

40. ;n 13 <a" 2015' t(e Asso&%ate Adm%nst+ato+' UNDP' +es#onded to t(e A##\$%&ant?s +e7uest fo+ management e,a\$uation.

41. @n \$%g(t of t(e A##\$%&ant?s de&%s%on &on&e+n%ng (e+ not%&e #e+%od' (e+

Case No. UNDT/GVA/2015/148

Judgment No. UNDT/2016/102

#+o,%de #+%o+%t" #s&a&ement to (e+ 8%t(%n o+ outs%ide t(e st+u&tu+a\$ &(ange
#+o&esse

7. 5(e +e7uests &om#ensat%on %n t(e amount of t8o "ea+s? net *ase #a"E
&om#ensat%on fo+ t(e ,%osation of (e+ &ont+a&tua\$ +%g(ts and +esu\$ting
damage to (e+ &a+ee+ and +e#utat%on and +e7uests t(at t(e +es#ons%*%se
manage+s *e (e\$d a&&ounta*%se.

44. T(e -es#ondent?s #+%n&%#a\$ &ontent%ons a+eH

a. 5%n&e t(e A##S%&ant fa%sed to su*m%t a +e7uest fo+ management
e,%uation of t(e de&%s%on to a*o\$%s(t(e #ost of D%+e&to+' ;GC' (e+
a+guments %n t(%s +es#e&t a+e not +e&e% ,a*%se rati^one materiae and t(at
de&%s%on %s not su*%e&t to .ud%&%a\$ +e,%e8 *% " t(e T+%*%una\$E

*. T(e de&%s%on to te+m%nate t(e A##S%&ant?s a##o%ntment does not
&onst%tute a ne8 adm%n%st+at% ,e de&%s%on to a*o\$%s(t(e #ost of D%+e&to+'
;GC' (en&e' t(e T+%*%una\$ %s +e7uested to find' as a #+e\$%m%na+" matte+' t(at
t(e a##S%&at%on 8%t(+es#e&t to t(e de&%s%on to a*o\$%s(t(e #ost of D%+e&to+'
;GC' %s not +e&e% ,a*%se rati^one materiae and rati^one temporisE

&. C%t(out #+e.ud%&e to t(e fo+ego%ng a+guments on +e&e% ,a*%\$%t"" t(e
-es#ondent notes t(at t(e de&%s%on to a*o\$%s(t(e #ost of D%+e&to+' ;GC'
deo f%' ;GC' %us t% n *% " t(a*%t\$%t(e
7. (##\$ & ' 8 58 . 9913 . 960221 () 9 . 69849 () - 17239 (+239 (-

Case No. UNDT/GVA/2015/148

Judgment No. UNDT/2016/102

t(ose ad,e-tised %n t(e Jo*)a%. @f' as s(e &\$a%ms' t(e A##\$&ant 8as not

Case No. UNDT/GVA/2015/148

Judgment No. UNDT/2016/102

Case No. UNDT/GVA/2015/148

Judgment No. UNDT/2016/102

/

a. The decision to abolish the post encumbered by the Applicant is a direct consequence of a structural review

*. The Applicant's obligations under staff rules 3.6/e2 and 1.1/d28 (on termination of the Applicant's permanent appointment)

&. The Applicant is entitled to an "earned" amounting from the termination of (the Applicant)

Was the decision to abolish the post encumbered by the Applicant a direct consequence of a structural review

54. This Judgment is not intended to be an examination of the sufficiency or otherwise of the staff rules and the manner in which they are applied to the Applicant. This matter (as seen dealt with in Judgment EI-Kholy UNDT/2016/028. The Tribunal finds that the post of Director, GC/D412' DGG' and the Applicant at the material time was abolished as a direct consequence of the restructuring exercise. A termination of a contract of employment "reason of restructuring of the organization" is a sufficient reason for the Applicant's dismissal at the time of the restructuring and obligations towards the dismissed staff member in accordance with 3.6.6.523(f) - 8.44 T.D.() 529 (f) 2.57.62() 250] TJD - 261.15892(+)

the award of the contract to the respondent organization for the contract for the purchase of goods and services. The award was made by UNDP.

57. Staff under 3.6/f2 submits that the Administration's duty is to ensure that staff members in the Geneva office are not subject to discrimination on the basis of sex, race, or religion. The Administration does not have a policy of discrimination against staff members in the Professional category. The Administration is committed to ensuring that all staff members are treated equally.

58. The request for damages is rejected because the respondent demonstrated that the contract was awarded on the basis of good faith and that the respondent acted reasonably under staff rules 3.6/e2, 3.6/g2 and 1.1/d2.

59. The award of the contract indicates that the respondent acted reasonably as to date when it awarded the contract to UNAT to ensure the continuation of the Geneva office. The respondent's obligation to award the contract to UNAT was based on the Administration's duty to use good faith efforts to find qualified staff members to ensure the continuity of the permanent assignments.

and 8 (" t(at 8as so /Hussain Judgment No. 1403 /20082E /oares Judgment No. 310 /13382E Carson Judgment No. 85 /136222.

6 . T(e @D ; AT stated %n Judgment No. 4 > /20152' #a+a. 6' t(at

T(e T+%*una\$?s &ase \$a8 (as &ons%stent\$" u#(e\$d t(e #+%n&%#%e t(at an %nte+nationa\$ o+gan%Aat%on ma" not te+m%inate t(e a##O%ntment of a staff mem*e+ 8 (ose #ost (as *een a*o\$%s(ed' at \$east %f (e o+ s(e (o\$ds an a##o%ntment of %ndete+m%inate du+at%on' 8%(out f%+st ta:%ng su%ta*\$e ste#s to f%nd (%m o+ (e+ a\$te+nat%,e em#%o"ment /see' fo+ e=am#%e' Judgment 263' unde+ 2' 1>45' unde+ >' 220>' unde+ 3' o+ 2 8' unde+ 102. As a +esult' 8(en an o+gan%sat%on (as to a*o\$%(a #ost (e\$d *" a staff mem*e+ 8(o' \$%:e t(e &om#%ainant

Case No. UNDT/GVA/2015/148

Judgment No. UNDT/2016/102

Reasonable for the respondent to set up the office. This is a means for assisting the Administration in giving effect to the obligation to give the 'full and reasonable' consideration to securing the continuing service of staff members " 8a" of the Convention. It is not one element of a process " 8 (c) (i) Administration is required to take steps to ensure the service of staff members.

as the - employment # of " # of, # of for state a \$ mo, es on" in the same *business unit' *e a ## \$ed to staff mem *e+s 8 (o (o \$d a #e+manent a##o%ntment 8 %t(out an " \$m%tation to a #a+t%&u\$a+ off%&e.

>>. @n t(%s +es#e&t' %t %s note 8o+t(" t(at unde+ #a+a. 116 of t(e UNDP -e&+u%tment Po\$%&"' 6%+ing <anage+s ma" se\$e&t an unass%gned staff mem*e+

to f\$\$ a ,a&ant #ost 8%t(out a &om#et%t%,e #+o&ess %f t(e staff mem*e+ (as *een ,etted *" ; 6 -/!o< and found to fu\$\$" meet t(e

om#et%,e #+o&ess. C%t(%n t(e f+ame8o+: of t(e st+u&tu+a\$
&(ange' \$ate+a\$ mo,es to anot(e+ *us%ness un%t 8%\$\$ a\$so *e a\$\$o 8 ed.

80. 5%n&e t(e #o\$%&" e=#\$%&%t\$" a\$\$o 8s fo+ \$ate+a\$ mo,es to anot(e+ *us%ness un%t
8%t(%n t(e f+ame8o+: of t(e st+u&tu+a\$ &(ange e=e+&%se' t(e -es#ondent?'s
a+gument %n t(%s +es#e&t must fa%\$.

81. T(e T+%*una\$ t+ed to assess 8(%&(' %f an"' #osts' m%g(t (a,e *een a,a%\$a*\$e
at t(e +e\$e,ant t%me' and fo+ 8(%&(t(e A##\$%&ant s(ou\$d t(us (a,e *een
&ons%de+ed. Et noted t(at t(e -es#ondent' u#on t(e T+%*una\$'s e=#+ess +e7uest /&f.
;+de+ No. 115 /GVA/20162 and t(e -es#ondent?'s f%\$ng of 15 June 20162
&onf%+med t(at at t(e +e\$e,ant t%me' se,e+a\$ #osts at t(e P45 and D41/P46 \$e,e\$
8e+e f%\$\$ed *" 8a" of \$ate+a\$ mo,e o+ #a&ement of an unass%gned staff mem*e+
(o\$d%ng a #e+manent a##o%ntment 8(o fu\$\$" met t(e +e7u%+ed 7ua\$%f&at%ons fo+ t(e
#os%t%on. T(at #+esu##oses t(at t(e su%ta*%\$%t" of t(ese staff mem*e+s aga%nst t(ese
#os%t%ons 8as assessed *" t(e Adm%nst+ation' 8%t(out t(em (a,%ng a##\$%ed fo+
su&(#osts. En an" e,ent' t(e Adm%nst+ation?'s dut" to f%nd su%ta*\$e a\$te+nat%,e
em#o"ment fo+ a d%\$%a&ed staff mem*e+ 8%t(a #e+manent a##o%ntment %n&\$udes'
%f a##+o#+%ate' t(e &ons%de+at%on and offe+s of #osts at t(e same \$e,e\$ o+ one \$e,e\$
\$o 8e+. G%,en t(at t(e -es#ondent &onf%+ms t(at t(e+e 8e+e su&(#osts' t(e" 8e+e
%n e++o+ *" not &ons%de+%ng t(e A##\$%&ant fo+ an" su&(#ost.

82. T(e -es#ondent stated t(at t(e #ost of D%e&to+' ;GC' ad,e+t%sed on
> No,em*e+ 2014' 8as not #a+t of t(e Jo*)a%+s unde+ t(e st+u&tu+a\$ &(ange
#+o&ess. T(e T+%*una\$ does not ag+ee 8%t(t(e -es#ondent?'s su*m%ss%on t(at s%n&e
t(e A##\$%&ant &(ose not to a##\$" fo+ t(e #os%t%on' s(e &ou\$d not *e &ons%de+ed fo+
%t' and t(e Adm%nst+ation &ou\$d \$a 8fu\$\$" #+o&eed to +e&+u%t an e=te+na\$ &and%date.

2014. It submits its conclusion to finding that (a) as a matter of fact, the Commission's decision to terminate the employment of the Applicant's permanent appointment. The Commission's decision is supported by the fact that the Applicant's superior officers, the Director of Administration and the Director of Finance, have consistently assessed the Applicant's performance as "not satisfactory" for most of the period of the Applicant's duty under staff rules 3.6(e) and 1.1(d). The Commission's decision is also supported by the fact that the Applicant's performance is deemed to be "not satisfactory" or "not satisfactory" on the issue of the Applicant's performance as a matter of fact, as well as the fact that the Applicant's performance is deemed to be "not satisfactory".

85. The same rationale applies to an "interim" appointment. The Commission's decision to terminate the employment of the Applicant's permanent appointment is supported by the fact that the Applicant's superior officers, the Director of Administration and the Director of Finance, have consistently assessed the Applicant's performance as "not satisfactory" for most of the period of the Applicant's duty under staff rules 3.6(e) and 1.1(d). The Commission's decision is also supported by the fact that the Applicant's performance is deemed to be "not satisfactory" or "not satisfactory" on the issue of the Applicant's performance as a matter of fact, as well as the fact that the Applicant's performance is deemed to be "not satisfactory".

31. 6a, %ng &on&\$uded t(at t(e de&is%on to te+minate t(e em#o"ment of t(e

obligations under Staff Rules 3.6(e) and 1.1(d). The Tribunal has awarded the sum of USD 2'000 as moral damages.

3 .

