

Judgment No. 2022-UNAT-1204



Counsel for Obah Yusuf A Mt5964ud (4)JTJO Tc 0 96 99581 0 T:(-)Tj32181 0 Td()386181 0 Td()T

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from 15 May 2018 as well as Administrative Assistant. On 9 and 17 September 2018, UNAMID broadcasts informed all mission staff members about the proposed reduction in personnel and confirmed the establishment of the CRP. In the 17 September 2018 e-mail to staff members, UNAMID confirmed the TOR for the CRP.

7. After assessing the future needs of the Engineering Section during UNAMID's wind-down period, the Chief of the Engineering Section determined that only one of the two FMAs would be required to carry out the mandate of the Engineering Section. Ms. Barud and the other staff member, both of whom were performing the functions of an FMA at the FS-5 level, participated in the CRP to determine which of them would be retained and which would be retrenched. Ms. Barud scored lower than the other staff member and was identified for retrenchment.

8. By e-mail dated 29 October 2018, UNAMID's Human Resources Management Section (HRMS) informed Ms. Barud that she was among staff identified for retrenchment effective 1 July 2019.

9. The General Assembly approved the revised budget on 22 December 2018.

10. On 24 February 2019, the Acting Director of Mission Support informed Ms. Barud that her fixed-term appointment would not be renewed beyond 30 June 2019 (the contested decision). She applied to the UNDT challenging the contested decision.

11. In the resulting Judgment, the UNDT rescinded the contested decision. The UNDT held that the CRP was unlawful because the Secretary-General was not entitled to assess Ms. Barud based on her job description as described in her TOR and his reliance on the FMA TOR was irregular and unlawful. In addition, the UNDT held that the Secretary-General had no discretion to set up a CRP as the sole FMA position was expressly and clearly identified in the new UNAMID structure for abolition. Ms. Barud had demonstrated her functions were neither the same nor similar to those performed by her comparator and whose post was expressly identified for abolition. Ms. Barud's annual performance reviews for the two years prior to her redesignation as an FMA showed that she had performed Administrative Assistant tasks and because her post was designated as an Administrative Assistant position, the Organization should have ignored the fact that the TOR for her post had been altered before the commencement of the CRP and ignored that she was no longer working as an Administrative Assistant but as an FMA. Consequently, the

UNDT held that, during the downsizing exercise, Ms. Barud should have been treated as an Administrative Assistant and should not have been considered for retrenchment. The UNDT ordered rescission of the contested decision, reinstatement in her position from the date of separation, and in lieu compensation in the amount of one year's net base pay salary. The UNDT denied Ms. Barud's request to address alleged misconduct on the part of her supervisors and her request for moral damages.

Submissions

The Secretary-General's Appeal

12. The Secretary General says the UNDT erred in fact and law by finding that Ms. Barud was not a Facilities Management Assistant, and that consequently it was unlawful to subject her to a Comparative Review Process. In coming to this conclusion, the Secretary-

Engineering Section at her level. Thus, with regard to the first step in the process, it did not matter, for the sake of the “grouping” or classification of Ms. Barud’s functions at the time of the Comparative Review Process, that in the past she had performed the functions of an Administrative Assistant. At the relevant time she was performing the functions of an FMA and as such, UNAMID legitimately compared her to the other FMA during the process.

14. At the second stage of the Comparative Review Process, described in the “Order of Preference (Retention)” and “CRP Evaluation Criteria” sections of the TOR for the Comparative Review Process, staff members within each category would be evaluated and given a score to p

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challenged on the grounds the Agency has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive against the staff member. The staff member has the burden of proving such factors played a role in the administrative decision.”²

33. In reviewing instances of abolition of a post, the settled jurisprudence is that an international organization necessarily has the power to restructure some or all its depaaps or

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37. The Dispute Tribunal held that the Administration was not entitled to assess Ms. Barud based on a job description as described in the FMA TOR and that the only legitimate documents to consider her actual functions were the “letters of appointments” as recorded in the PHP.

38. However, there is nothing in the terms of reference of the Comparative Review Pro.3 (r.)It thw Pmp25 (r)0

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Judgment

53. We vacate Judgment No. UNDT/2021/017 and reinstate the contested decision.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

(Signed)

Judge Sandhu, Presiding
Vancouver, Canada

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Murphy
Cape Town, South Africa

Entered in the Register on this 26th day of April 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar