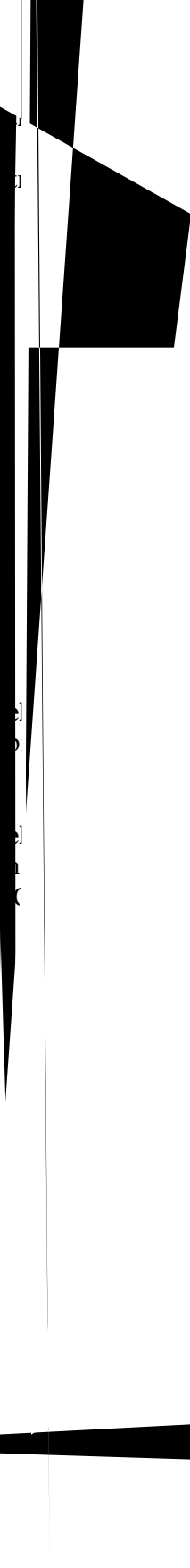
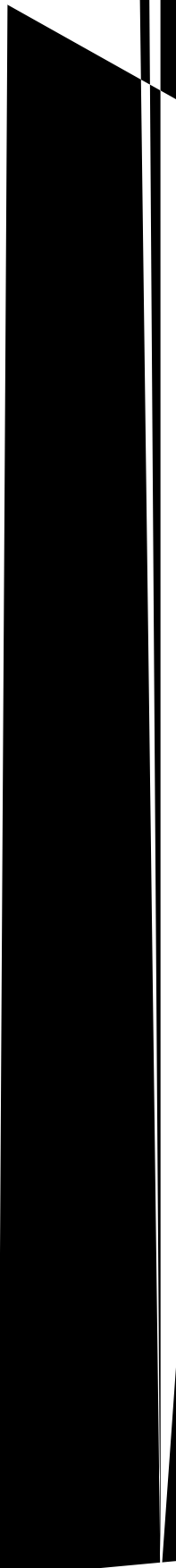
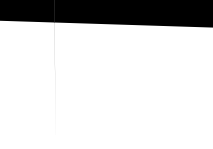
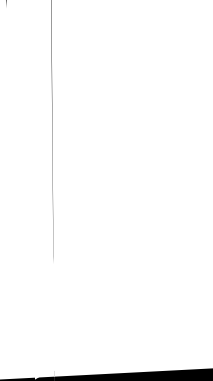
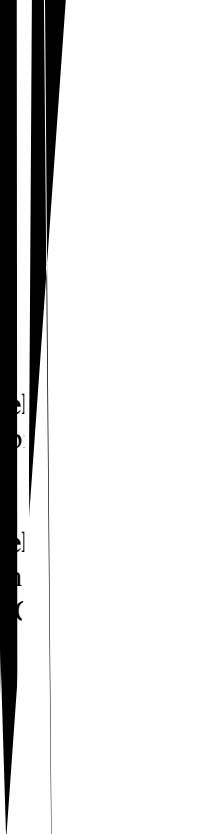
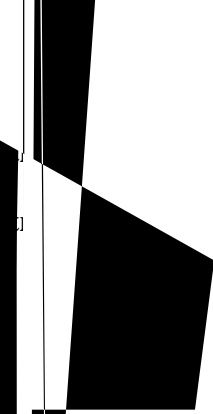


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Introduction

1. The Applicant is a former staff member who served at the United Nations Mission in South Sudan (UNMISS) as a National Professional Officer with the Civil Affairs Division (CAD) until her separation from the Organization on 31 July 2012.
2. On 21 December 2012 and 18 April 2013, she filed an Application and an amended Application respectively, contesting the administrative decision not to renew her fixed-term contract due to abolition of post.
3. The Respondent filed a Reply and a revised Reply on 7 Februar

- a. The Applicant joined UNMIS on 16 July 2009 as a Civil Affairs Officer at the NOB Step 2 level on a fixed-term contract for one year which was subsequently renewed until her separation on 31 July 2012. Her duty station upon recruitment was Abyei but Lance Clark, the CAD Director, decided to send her to Bor in Jonglei State. She was to undergo an induction in Khartoum and underwent two days of it with the rest to be organized in Juba at a later date.
- b. In Juba, the Applicant spoke to the Human Resources (HR) Officer who felt that her deployment to Bor was contrary to good practice as she had been recruited to the Abyei duty station. The Principal Civil Affairs Officer in Juba, Sam Barnes, then advised her to stay in Juba until her redeployment to Bor was regularized. A few days later Ms. Barnes called her again and told her that following discussions with Mr. Clark, she should go to Bor pending the formalization of her deployment.
- c. The Applicant was later invited to Juba for training by Ms. Barnes which never took place and she returned to Bor.
- d. Due to the fact that her redeployment was not regularized, she was not on the payroll and did not receive a salary for four months. Meanwhile in Abyei, because she had not reported for duty, it had been recorded that she was absent. The HR Office in Malakal, which undertook HR duties for Bor as well, organized for her to travel to Khartoum in order to affect her formal deployment to Bor and sort out her salary issues.
- e. She then travelled to Khartoum and spent about two weeks there. Her redeployment was formalized, she underwent induction and the non-payment of salary was sorted out.
- f. While still in Khartoum, it was reported that her trip had only been authorized

g. When she returned to Bor, she was asked to explain her absence and she filed a report accounting for each day which caused friction with her managers as she stated that she had the requisite permission to be away.

h. In July 2010 while returning to Bor through Juba following a surgery, the Applicant was assigned accommodation in Juba. On arrival, she found that a female staff member was already occupying the room. The occupant told her to see if the Camp Manager could organize some bedding so that she could share the room with her since she was to be there for only one night.

i. The Camp Manager gave her another key to a different accommodation which failed to work. She spoke on the phone with an internationally recruited Security Officer of the Juba duty station, "X", who promised to take her to the Camp Manager's residence to sort things out as offices were already closed at the time. She was driven by friends to X's accommodation and found him talking on the phone. X later sexually assaulted her, threw some bedding at her and told her to leave.

j. She took a phone handset which was in his room intending to call and report him. X forcefully retrieved the handset from her and threatened her saying that he knew a number of people in high positions, that he would report her and that she would lose her job in the CAD. She held on to a watch and ring which had been attached to the handset and threatened to report the Security Officer and use the items as evidence. He then said to her that he was a British officer while she was only a local staff member and that he would accuse her of theft.

k. She was hospitalized a few days later in Juba and then reported to Dianne De Guzman, Senior Civil Affairs Officer, what had happened. However during this time, X had reported that she had stolen a ring, a watch and beddings from him. At Ms. De Guzman's request, she handed

were rumours circulating that she was the subject of an OIOS investigation and her supervisors' attitudes towards her began to change negatively.

r. Her new supervisor, Mr. Fahmy, went as far as blaming her for the lack of projects being implemented in certain States due to her failure to present proposals for approval. This was due to her refusal to utilize her governmental contacts to investigate the disappearance of an Islamic Cleric when he requested her to do so.

s. In January 2012, she received an email from Mr. Clark that her post was being abolished and gave details of another post she could apply for. She later applied for this post but was told that it was below her grade. She also submitted a number of other applications for other posts but received no response.

t. When she returned to work on 15 January 2012, she was informed that a report had been made that she was absent from work without approval. As a result, her salary was withheld and she was given notice of the termination of her post due to abandonment and was advised to write a letter explaining her absence.

u. She had a medical condition and had to see a cardiologist during the Christmas period and was told to use her annual leave to cover the period for this referral. Her absence was fully approved.

v. She travelled to Juba and met with Mr. Clark. She asked why her post was being advertised as of November 2011 while she still encumbered the position and that as of January 2012 he was stating that it had been abolished. Mr. Clark informed her that her post was safe and that he would communicate the same to her in writing once she was in Wau.

w. She also spoke to Hilda Otieno the CCPO as well as her predecessor Martin Ojjerro, who stated that the matter would be resolved in due course.

x. Following her explanation, her salary was released and she returned to Wau. Upon arriving in Wau she received another call from HR in Juba stating that she had again been reported absent without leave. She followed up the issue with Mr. Fahmy who stated that he had been instructed by Mr. Clark to mark her as absent as Ms. De Guzman wanted her terminated. The Applicant called Mr. Clark who stated that she should follow the matter up with Mr. Fahmy as he was not her supervisor.

y. Mr. Fahmy later reported to SIU that she was aggressive towards him and she was requested to make a statement. She was also contacted by CDU and told that Mr. Fahmy had made a report of aggression against her and asked to comment on the matter.

z. Prior to her termination, around May 2012, she was asked by Victor Fasama, who was the Officer-in-Charge (OIC) of the Civil Affairs Unit

d. He does not know of anyone named Anthony Kapandu nor did he request the Applicant to investigate his disappearance when he was functioning as OIC in the Civil Affairs Office in Wau.

e. While acting as OIC in February 2012,

k. He spoke with the Applicant as regards the investigations of allegations against her and her conflict with her supervisor Mr. Ibrahim Ndiaye. He understood that CDU could not determine who was right or wrong.

l. He did not recommend the abolishment of the Applicant's post and it was his understanding that the vacancy announcement for the Applicant's post in November 2011 was a mistake by HR in making staffing decisions.

19. Mr. Khamsin's evidence is summarized below.

a. He was the president of the UNMISS National Staff Union at the time the Applicant served in the mission.

b. The Applicant was moved from Bor to Wau following accusations that she stole from a security officer's container. The matter was investigated by SIU and she in turn alleged that the security officer had sexually assaulted her. A fact finding panel, of which he was a member, was set up to investigate the matter.

c. He was later informed that the matter was being handled from New York but there was no feedback received on the outcome of the case. SIU stated that they had sent an investigation report to CDU which denied ever receiving it. When he followed up through the Ombudsman he was told that a report could not be obtained from OIOS.

d. The National staff had previously protested that complaints were not being handled properly by senior management and it was not only the Applicant's case but a number of others that he was told were being handled in New York.

e. The Applicant was informed by email in January 2012 that her post would be terminated in a month's time and she forwarded it to him. He then contacted the Director of Civil Affairs, Mr. Clark, to ask him what the process was for the abolition of posts.

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applications was 5 December 2011, yet the Administration claims that on 23 January 2012 it was already preparing to abolish the Wau NOB post. When the Applicant raised this issue with Civil Affairs Management, it was unable to explain the situation. Two days later the response from Human Resources was that the inclusion of Wau was an error.

29. There is therefore no doubt that a number of NOB Civil Affairs Officer posts were vacant at the time the Administration was proposing to abolish the Applicant's post. The failure of the Administration to consider continuing her employment through a lateral transfer to one of these similar vacant posts already advertised for other duty stations demonstrates that it was not in fact the abolition of her post that motivated the non-renewal of her contract but instead it was the result of the breakdown in her relationship with those supervising her.

30. The Applicant was the only NPO Civil Affairs officer to have her post abolished as a result of the restructuring. The fact that numerous other NPO Civil Affairs officers were being recruited at the same time is entirely inconsistent with the Administration's account that the post had to be abolished.

31. Staff rule 9.6 requires that the Administration have due regard to the

33. The Applicant submits that she applied for an NPO post with CAD in Juba on 25 July 2012. She was interviewed for this post on 21 September 2012 but found out from HR in December 2012 that rather than hiring her, the Administration had decided to re-advertise this post.

34. Despite having an excellent e-PAS history demonstrating performance in exactly this section of the mission and despite the fact she was sitting on a post allegedly scheduled to be abolished, the Applicant was on three occasions not hired for suitable posts. In relation to at least two of these applications it appears that the Administration preferred to hire no one than to re-hire the Applicant. The Applicant submits that this is not consistent with their account of why her contract was not renewed.

35. The Applicant submits that the requirement to mitigate the impact of post

another post. It is indeed for this reason that she would not have considered it necessary to apply for the posts advertised from 17 March and 11 July 2012. The number of suitable posts available during the period from 23 January to 20 June 2012 means that it was available to the Administration to fulfil this legitimate expectation through a lateral transfer.

39. Based on the foregoing, the Applicant seeks that the contested decision be rescinded and that she be reinstated as a

44. Based on the Panel's application of the main criteria in other reviews it had carried out, the Panel would not have recommended that the Applicant be retained by the Mission. In particular:

- a. Mr. Lobura and Ms. Dominic received higher performance ratings than the Applicant for the 2011-2012 e-PAS performance period;
- b. Mr. Lobura and Ms. Dominic were more senior than the Applicant.

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52. Contrary to the Applicant's submissions, she had no legitimate expectation that her appointment would be renewed, or that she would be reassigned to a vacant position in UNMISS.

53. In view of the foregoing, the Respondent requests the Tribunal to dismiss the Application and not to award the Applicant any compensation.

Issues

54. Having reviewed the entire case record, the Tribunal finds that the following questions arise for consideration in this case:

- a. Was the abolition of the Applicant's post based on extraneous factors?
- b. Is the absence of an investigation report following an investigation of the Applicant's complaint of sexual assault evidence of bias against her?
- c. Was a break down in the relationship between the Applicant and CAD Management and her immediate supervisors in any way responsible for the abolishment of the Applicant's post?
- d. How did a vacancy announcement come to be issued in November 2011 for a post encumbered by the Applicant?
- e. Was the failure of the Respondent to carry out a proper Comparative Review for the Applicant's post more than a procedural error and did she have a right to a lateral transfer?

Considerations

55. The main plank of the Applicant’s case is that the abolition of her post and her subsequent separation from service was due to a breakdown in her relationship with her supervisors and the CAD Management. She submitted that a series of incidents show that the abolition of her post was done for extraneous reasons and improper motives contrary to the established rules and procedures of the Organization.

56. The Respondent admitted that a procedural error was committed arising from UNMISS Administration’s failure to ensure that a Comparative Review Panel set up for national staff conducted a review of all three Civil Affairs Officers in Wau in order to recommend which two should be retained.

57. He however maintained that this would have had no impact on the Applicant’s chances as it would have ultimately been recommended that she not be retained. He submitted further that there was no connection between the Applicant’s eventual separation and any perceived breakdown in communication between her and her supervisors.

58. Bearing in mind the case for both parties to this Application, ~~the Tribunal~~ ~~BT~~ /F1 11.28 Tf 0 0 0 rg 0.9 sh-3(te)-3(l)-41(2 210.96(r)-1425(th)9(a)() TJ ET Q q BT(a)-3(l)]l) TJ ET Q q BT /F1 11.28 T

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the facts that are known and attaching all documentary or other evidence relevant to the case.

76. It is further provided in

82. Indeed the said bias was so strong that the responsible CDU, SIU and OIOS officers at the mission all defied the procedures provided for by ST/AI/371 for dealing with reports of misconduct.

Was a break down in the relationship between the Applicant and CAD Management and her immediate supervisors in any way responsible for the abolishment of the Applicant's post?

83. In both her written pleadings and testimony before the Tribunal, the Applicant gave detailed accounts of a breakdown in her relationship with CAD management and the animosity that existed between her and her supervisors in Bor and Wau duty stations where she served. She submitted that the real motivation for abolishing her post was simply to remove her from the Organization due to a breakdown in her relationship with both her supervisors at the duty station level in Wau and with the CAD management in Juba.

84. It was the Applicant's testimony that while she worked at the Bor duty station in the 2009/10 reporting cycle, she came into conflict with her manager Mr. Ceesay who threatened to give her a bad ePAS. She said that she reported his threats to the CAD management and when she was given a poor ePAS at the end of the reporting cycle; she sent a formal grievance complaint to HR, CAD management and the DSRSG. The matter was later resolved in her favour and shortly afterwards, her supervisor resigned.

85. When the Applicant was redeployed to Wau duty station in August 2010, she was to find that her supervisors and male colleagues had been warned about her. One of the supervisors made sexual advances at her and the Applicant threatened to report him.

86. Part of the Applicant's claim is that a personal relationship which she had developed with the State Governor also contributed to mistrust of her by her supervisors who believed that she would pass certain information concerning their actions to the Governor. Since they were prejudiced against her, they would repeatedly make false reports about her to the CAD Management in Juba and

inform CAD that she was frequently absent from work and also acting against their interest and the interests of the Mission.

87. The Applicant testified that on 6 February 2012, she reported to CAD Director, Lance Clark,

permission to extend her stay. He stated that a strain had developed in his working relationship with the Applicant because she accused him of siding with Mr. Fahmy against her following an incident on 17 February 2012 in the office during which she was very rude to Mr. Fahmy.

92. CAD Director, Mr. Clark, told the Tribunal that the decision not to renew the Applicant's contract was not based on a breakdown in her relationship with her supervisors and CAD management. He said he was told that the Applicant had anger management issues and used abusive language.

How did a vacancy announcement come to be issued in November 2011 for a post encumbered by the Applicant?

95. In both her written testimony and her pleadings, the Applicant told the Tribunal that in November 2011 she became aware that a vacancy announcement had been issued by the UNMISS HR office purporting to recruit a number of NOB Civil Affairs Officers for the Regions of Rumbek, Wau, Aweil, Bentui and Yambio.

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96. Upon becoming aware of the vacancy announcement which included the post she was then encumbering in Wau, the Applicant contacted the HR department who informed her that it was a mistake and would

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clearly betrays a desire to separate the Applicant from the Organization by any means necessary.

101. The Tribunal finds and concludes that the issuance of a vacancy announcement for the post then still encumbered by the Applicant could not have been a simple clerical error as the Respondent sought to urge upon it. It is rather curious that in spite of this explanation, CAD management soon thereafter embarked upon its own internal comparative review process to separate the Applicant.

Was the failure of the Respondent to carry a proper Comparative Review for the Applicant's post more than a procedural error and did she have a right to a lateral transfer?

102. The Tribunal was told that following the transition from UNMIS to UNMISS, a budget review was carried out for the period 2011/2012 in order to establish a staffing table for the new mission to take effect in January 2012. This eventually involved a reduction of staff members whose posts were

Affairs office in Wau would be retained. CAD took into account the track record of the performances as well as tenures in CAD and Wau.

106. It was Mr. Clark's account that from their review, CAD managers concluded that the two other Civil Affairs Officers were the stronger performers and had stayed longer in CAD and the Wau duty station than the Applicant. He therefore recommended the separation of the Applicant.

107. Mr. Clark said that Mr. Ojjerro upon being informed of his recommendation told him that the comparative review should be based only on the ePAS of that current year 2011/2012. The witness testified that when he left the mission in March 2012, Mr. Fahmy was still waiting for the Applicant to submit her ePAS.

108. The then National Staff Association President, Mr. Khamsin, who participated in the formation of a panel at the mission level for comparative review of national staff whose posts were being abolished, testified that the Applicant's name and post were not on the list for the exercise. He was surprised to learn later that her post had been abolished or that she was up for comparative review.

109. With regard to the internal comparative review of the three NPO Civil Affairs Officers in Wau said to have been carried out by CAD management, there is no gainsaying that the procedure adopted lacked transparency and integrity. The Respondent admitted in his pleadings and submissions that the exercise was both flawed and lacking in due process.

110. The evidence is that there were a number of vacant NOB Civil Affairs Officers posts at the time for which recruitment was then ongoing. Was this situation consistent with the Administration's account that it was necessary for the Applicant's post in Wau to be abolished?

111. Beyond a flawed comparative review, the Applicant argued that staff rule 9.6 requires that due regard be given to staff members whose posts are to be abolished. The Respondent contended that the Applicant's contract was not

terminated due to abolishment but was instead not renewed upon its expiry and that as such staff rule 9.6 was not applicable to the Applicant and she was not entitled to a lateral transfer.

112. Certain facts stand out in bold relief in the separation of the Applicant from UNMISS. The first is that CAD management and senior managers in the Mission had decided that the Applicant was to leave the mission. They took advantage of the creation of a new staffing table for UNMISS and put the Applicant's post in Wau up for abolishment.

113. Thereafter, they decided instead to conduct a comparative review of the Applicant and two of her colleagues, ostensibly to make it appear that the Applicant was afforded a level playing ground in her impending separation from the mission.

114. The Applicant was not afforded an opportunity for a transparent comparative review process by a panel set up by the mission for national officers but rather a sham and flawed comparative review was conducted internally by CAD and Mr. Fahmy, the Applicant's supervisor, who had scores to settle with her. The intention and predictable outcome was the separation of the Applicant.

115. The Respondent has struggled to urge upon the Tribunal that the Applicant

Applicant that would guarantee that she could not return to the Mission as a staff member.

118. Mr. Khamsin, who was involved in the formation of the Comparative Review Panel at the mission, told the Tribunal that the Applicant's name and post were not on the list that was submitted to the Panel for review and he was surprised to find her post had been abolished.

119. None of the Respondent's arguments justifying the Applicant's separation from UNMISS has any merit. The Tribunal is not in any doubt that CAD and Mission Management desperately wanted the Applicant out of the mission. An official report made by the Applicant against an international staff member alleging that she was sexually assaulted was never properly investigated and closed. All that the mission had to offer her as remedy for sexual assault was a referral for counselling.

120. Was the Applicant removed from the Mission in this way because in spite of being a lowly national officer, she had stepped on powerful toes? Was she considered a nuisance for insisting on her rights to have her allegations of criminal conduct against her properly investigated and action taken? Did CAD Management consider her an embarrassment for telling the HR office about her irregular transfer to another duty station other than the one for which she was recruited?

121. The Respondent's argument and submission that the Applicant had no right to a lateral transfer is self-serving. The fact remains that whether or not such a right exists, the Applicant's supervisors, had in the past transfer0 0 0 rg 0.9981 0 0 1 119.04 334.8 Tm [

decision, the Administration has the duty to act fairly, justly and transparently in dealing with its staff members.²

123. Was it fair, just or transparent for the Applicant's supervisors to refuse to transfer her laterally to other duty stations with vacancies for her job description having already done it before or were there extraneous factors that made it inconvenient for her to remain within the Organization?

124. It is well-settled jurisprudence that an international organization necessarily has power to restructure some or all of its departments or units,

(Signed)

Judge Nkemdilim Izuako

Dated this 15th day of January 2015

Entered in the Register on this 15th day of January 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi