
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/075

Judgment No.: UNDT/2016/119

Date: 30 August 2016

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

CLARKSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Duke Danquah

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM

Alister Cumming, ALS/OHRM

discussed the fact that another staff member in the Finance section had retired and that there was a vacant post which had been lent to another section.

10. On the next day 19 June 2015, Mr. Nidos confirmed to the Applicant that he could not be recruited to the vacant post because it had been lent to another section and was pending the recruitment of someone else.

11.

17. Ms. [redacted] stated further that an FS-4 post had been located and would be borrowed to extend his contract for three months until the end of September 2015. The Applicant was also informed that in order to continue in employment at UNMIL, he needed to apply for and be selected for an existing vacancy that would extend beyond September 2015.

18. On 28 September 2015, the Applicant filed an application seeking suspension of the decision not to renew his appointment beyond 30 September 2015.

19. On 30 September 2015, the Tribunal granted the application for suspension of action in the interim and informed the Parties that a reasoned order would be issued by Friday, 2 October 2015.

20. On 2 October 2015 by its Order No. 307 (NBI/2015), the Tribunal refused the Application for suspension of action in so far as it sought an order for the retention of the Applicant beyond 30 September 2015.

the Applicant on 25 June 2015 was only in regard to the decision not to renew his contract.

c. Alternatively, even if the Applicant can challenge the decision of the GA, he is time-barred. The GA's decision to abolish the post was published on 23 July 2013. A request for management evaluation ought to have been filed by the Applicant by 21 September 2013.

d. At the time of the filing of the Application, the Applicant remained in the employment of the Organization and had not been separated. Accordingly, the contested decision has been superseded by a subsequent event, which renders this claim moot and, as such, not receivable. Also, the Applicant cannot challenge the length of his appointment.

22. The Applicant's issue. He is not challenging any action of the GA. Rather, he attacks the apparent identification of his post for abolishment by the mission, the subsequent inadequate notice given to him by the mission, the irregular and non-transparent procedure of the abolishment and the subsequent attempt to render those actions immune from challenge by issuing a short term extension. Those aspects of the abolishment, which now, three months later have led to separate him, are, in fact, subject to challenge and therefore receivable.

23. The Applicant asks the Tribunal to find that the original issue cannot be rendered moot by an unlawful piecemeal three month extension. Although, at the time of the Application the Applicant was still employed, the detrimental effect of the abolishment of his post or non-renewal of his contract was only delayed not erased by the issuance of the short term extension. Furthermore, since the filing of the Application, that detriment has become realized and it is not in the interests of fairness or expeditious justice to deprive the Applicant of the ability to timely challenge the initial actions which led to the three-month extension.

24. This Tribunal found that the lack of adherence to proper abolishment procedures in this case gave rise to *prima facie* unlawfulness in Order No. 232 (NBI/2015) (para. 31). The Tribunal also found that the three month extension did not render the urgency of the A at the Applicant would have to wait until the end of the three month extension. However, upon filing a new application at that stage, the Respondent will inevitably argue that the original issue is again moot or time-barred and that the limited extension itself is regular and immune from any challenge. This puts the Applicant in an impossible position.

25. The Applicant submits that he did not have to file a request for management evaluation of the three month renewal because it is inextricably tied up with the original issue of abolishment and non-renewal. If a staff member were to file a request for management evaluation for each act in a series of acts which stems from the same original decision, the MEU and the

28. The very fact that the extension only came about once litigation commenced suggests it was not originally considered. Furthermore, it served to render the mission immune from attack on the original circumstances under which it did not grant the Applicant a one year renewal like other staff members. The Mission did not have to explain or provide reasons for the previously -
renewal. When the Applicant resorted to litigation, the Mission stated its intention to extend so as to appease the challenge. The M

Applicant complied with the applicable rules governing the filing of applications before the Tribunal.

Decision to abolish the Applicant's post

33. On 25 April 2013, the UNMIL Director of Mission Support informed the Applicant by a memorandum that his post would be abolished on 30 June 2013. He was also informed that UNMIL would give priority consideration to his candidacy where suitable vacancies occurred within the Mission.

34. Although the abolition of his post was to take effect on 30 June 2013, on 17 June 2013 the Applicant was transferred to the Office of Internal Oversight Services (OIOS) for six months through 31 December 2013. Thereafter, he was given short contract extensions until September 2015.

35. The uncontested evidence before the Tribunal is that the Secretary-General proposed the abolition of four Field Service posts within the UNMIL Finance Section slated for abolition. On 28 June 2013, the GA approved the said budget and abolitions through Resolution A/RES/67/277.

36. The Tribunal finds and holds that to the extent that the decision to abolish A, this Tribunal lacks jurisdiction to review the said decision.

37. It was held in *Ovcharenko et al*⁴⁴ that decisions of the GA are binding on the Secretary-General. Any administrative decision based on the decision of the GA is lawful and cannot be challenged.

⁴⁴ 2015-UNAT-530, para. 35.

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(Signed)

Judge Nkemdilim Izuako

Dated this 30th day of August 2016