
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/156

Judgment No.: UNDT/2016/163

Date: 23 September 2016

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MANINGA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Nicole Washienko, OSLA

Counsel for the Respondent:
Stephen Dietrich, ALS/OHRM
Nicole Wynn, ALS/OHRM

8. Following the Secretary-General's budget proposal to the General Assembly, MONUSCO issued Information Circulars to its entire staff on 6 and 9 March 2015, 14 April 2015, and 20 April 2015, with regard to the proposed budget, the establishment of a Comparative Review Panel (CRP), and the review criteria.

9. Under the proposed new structure for the Mission, which was approved by the General Assembly, the military force in Bukavu was to be reduced by one battalion and Kinshasa would no longer be an operational base. As a result, LA posts in Kinshasa and Bukavu were abolished. This meant that a budgetary reduction of 80 LA posts in the 2015/2016 budget cycle for MONUSCO was done.

10. The Applicant, who was an LA in Bukavu, was affected by the abolition. A memorandum from the MONUSCO Director of Mission Support (DMS) informed him of this development. He was also informed through a memorandum from the Chief Civilian Personnel Officer (CCPO), Ms. Xaba-Motsa.

11. As at 16 June 2015, the Applicant, along with the other LAs at the Mission whose posts were at the time proposed for abolishment sent a letter to the Special Representative of the Secretary-General (SRSG) for MONUSCO contesting the non-renewal of their fixed-term appointments by reason of abolition of post.

12. On 8 June 2015, Mr. Eric Blanchard Jibikila, who was a member of the Executive Committee of the National Staff Union, sent a request for management evaluation to the Management Evaluation Unit (MEU) in respect of the then impending abolishment of the 80 LA posts, including the Applicant's post.

13. MEU replied to the designated focal point for the affected LAs on 2 July 2015 and promised to send its decision by 13 August 2015.

14. Meanwhile, on 24 June 2015, the Applicant received a memorandum from MONUSCO's CCPO stating that his fixed-term appointment would not be renewed beyond 30 June 2015 and that accordingly, his separation from the Organization would take effect at the close of business on that same date.

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themselves does not alter the Organization's obligations under paragraph 3.7 of ST/AI/2013/4.

e. Moreover, the decision to essentially convert the Applicant's fixed-term appointment to an IC contract, administered by UNOPS, was taken while the Applicant was still a staff member of the United Nations Secretariat and thus ST/AI/2013/4 applies to the Applicant.

The non-renewal of the Applicant's fixed-term appointment

The purported abolition of the Applicant's post

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representatives had an opportunity to respond by engaging in discussions with the National Staff Union representatives under the UNOPS contractual modality.

The Respondent did not violate any provisions of ST/AI/2013/4.

n. The Applicant's claim that the Organization violated section 3.7(b)

of his post by a decision of the General Assembly which by itself is akin to a country's constitution, the higher norm, and the supreme organ of the Organization.

20. By the same token, a decision of the General Assembly is binding on the Secretary-General who has a duty to implement it. The Applicant lacks the capacity to challenge the non-renewal of his appointment in so far as it is properly implemented in consequence of the General Assembly's decision to abolish it.

21. In *Ovcharenko et al*³, it was held that an administrative decision taken as a result of the decisions of the General Assembly is lawful and that the Secretary-General cannot be held accountable for executing such a decision.

22. With regard to the question whether the provisions of section 3.7(b) of ST/AI/2013/4 were contravened by the hiring of the Applicant under an IC contract by UNOPS after the abolition of his post to provide language services to the Mission, the Tribunal finds and holds that the said rules were not contravened.

23. This is because section 3.7(b) does not envisage a situation of post abolition. The said section contemplates a situation where the nea7(brJET7327 Tm[W]-5(it)-3(pq

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(Signed)

Judge Nkemdilim Izuako

Dated this 23rd day of September 2016

Entered in the Register on this 23rd day of September 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi