

UNITED NATIONS DISPUTE TRIBUNAL



8. Following the Secretary-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 her of this development. She 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
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 -term appointment would not be renewed beyond 30 June 2015 and that accordingly, her separation from the Organization would take effect at the close of business on that same date.

15.

th paragraph  
3.7 of ST/AI/2013/4.

e. -  
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 and her attendant separation were unlawful because no comparative review was conducted.*

f. MO

be abolished and the remaining 92 LA posts be reassigned to different offices within the Mission.

g. dum of 22 May 2015 to the

*The purported abolition of the Applicant's post was in fact a conversion of her fixed-term contract into an IC contract.*

i. The functions of the fixed-term appointment that the Applicant had been encumbering are identical to those of the IC contract that she was offered by UNOPS.

j. By hiring the Applicant on an IC contract following the purported abolition of her post, the Organization enjoys the benefit of obtaining exactly the same services from her that she had previously provided to the Organization under her fixed-term appointment. This state of affairs contravenes the provisions of section 3.7(b) of ST/AI/2013/4 (Consultants and individual contractors).

*Unequal treatment of similarly situated staff members*

k. Another LA whose post had been abolished was placed against a vacant post in another section and this constitutes unjustifiable and unequal treatment among similarly situated staff members.

*Remedies sought*

l. Due to her wrongful separation from service, the Applicant has suffered greatly due to lack of job security, loss of the entitlements and benefits she enjoyed as a staff member such as insurance and pension.

m. The Applicant accordingly pray  
base salary for her wrongful separation from the Organization. She also

### **Respondent's case**

17. The

*Receivability*

a. A decision by the General Assembly to abolish a post is not a contestable administrative decision.



improper purposes. The Applicant bears the burden of proving that the discretion not to renew his or her appointment was not validly exercised.

*A comparative review was not required and the outsourcing of the LA functions was proper in the circumstances.*

h. There was no requirement for the Mission to subject the Applicant and others similarly placed to a comparative review process. The Department of Field Support Downsizing Guidelines provide that locally recruited staff must be comparatively reviewed by duty station. Since all LA posts in the Bukavu and Kinshasa duty stations were abolished, a comparative review was unnecessary.

i. Due to the need for LAs to be more mobile and to effectively interact and liaise with the local population by providing linguistic support during their engagement, it was agreed to engage LAs through individual contractor agreements to be administered by UNOPS.

j. As a result, it was no longer viable to use national General Service posts to provide for LA positions to a force that is highly mobile, that deploys at short notice, and sometimes requires a surge in its numbers for a limited duration. Additionally, there is no suitable allowance for the travel of national staff.

k. MONUSCO decided to outsource the provision of LA functions in response to the recommendation of the Civilian Staffing Review (CSR) report.

l. MONUSCO already outsources a number of services and considers that the outsourcing of language services satisfies the military force current requirements. Information Circular ST/IC/2005/30 (Outsourcing and impact on staff) issued on 15 June 2005, sets out guidance for programme managers when considering outsourcing.

m. In accordance with that guidance, MONUSCO informed staff representatives that language services would be outsourced and the staff



representatives had an opportunity to respond by engaging in discussions

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 her appointment in so far as it is properly

21. In *Ovcharenko et al*<sup>3</sup>, 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 her 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 abolishment. The said section contemplates a situation where the post formerly encumbered by a former or retired staff member continues to exist and the separated staff member is reengaged as a consultant or IC to continue to perform the same functions.

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26. The Applicant in supplementary pleadings raised the issue of about five other LAs in Bukavu and Kinshasa who continued to enjoy fixed-term contracts after all LA posts in these two duty stations were said to have been abolished. She also raised the issue of another former LA who was laterally transferred to an Administrative Assistant post. Her argument was that she did not receive equal treatment with these staff members following the abolition of her post.

27. The Respondent in reply explained that the five LAs in question had encumbered borrowed posts from other sections at the time of the abolition of the 80 LA posts in Bukavu and Kinshasa and were therefore not affected by the abolitions. One of them although identified as an LA was actually serving as a Supply Assistant. Their fixed-term contracts were later extended to 30 June 2016.

28. With regard to the one other LA who was laterally transferred to a vacant post of Administrative Assistant at the Mission at the time of the abolitions, there is evidence that the Mission had published an Information Circular dated 18 May 20

to be affected by the abolitions were invited to apply to other vacant posts at the Mission that matched their profiles. The said LA successfully applied and was laterally transferred to the post of Administrative Assistant.

29. These explanations by the Respondent were not challenged. The Tribunal in these circumstances does not find that unequal treatment occurred in the  
the abolition of 80 LA

### **Conclusions**

30. -renewal of  
her fixed-term appointment is not receivable. Further, her claims regarding her recruitment under an IC contract by UNOPS and lack of equal treatment have no merit. The Application is accordingly refused.

