



NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/069

Judgment No.: UNDT/2019/080

Date: 10 May 2019

Original: English

8. The Tribunal has decided that an oral hearing is not required in determining the issues in this case and as such, has relied on the parties' pleadings and additional submissions.

9. The Applicant works in the Registry Sub-Unit in the Public Information and Knowledge Management Division (PIKMD) of ECA. When his supervisor and First Reporting Officer (FRO), Ms. Aster Abebe, joined the Registry Unit in September 2011, there were five Mail Assistants, including the Applicant, in the Registry. Two of the Mail Assistants were at the G-6 level, two were at the G-4 level and the Applicant was at the G-5 level.

10. Mr. DE, a G-4 staff member, was assigned to work with Mr. CM, one of the G-6 Mail Assistants, who was *inter alia* responsible for incoming and outgoing pouch services, which included data entry, distribution of mail from the pouch and delivery and collection of the pouch from the airport.

11. Mr. CM was on sick leave between 23 March 2011 and 8 February 2012 thus the other Mail Assistants in the Registry Sub-Unit performed his duties as a team. Mr. CM passed away on 9 February 2012.

12. On 3 May 2012, Ms. Abebe drafted a proposal on the reassignment of work, which she discussed with the Applicant and another senior colleague in the Registry. Ms. Abebe's proposal included the assignment of the Applicant to assume Mr. CM's G-6 duties and for Mr. DE to perform the Applicant's G-5 duties.

13. On 4 May 2012, Ms. Abebe sent her draft proposal to her supervisor, Mr. Konstantin Tsenov, the then Chief of the Protocol and Logistics Unit, for his advice. After several follow up emails from Ms. Abebe, Mr. Tsenov responded as follows on 23 January 2013: "Please let's wait to see the restructuring exercise. At this point under a completely new leadership we cannot comment or take unilateral decisions."

14. The Registry Sub-unit's management reports for May 2012, December 2013 and February 2014 included the following challenge:

One G-6 post is vacant and the Registry Sub-unit is under staffed. The Office is waiting for the GSS to take action. Till then, the request submitted to Mr. Tsenov to reassign [the Applicant] and [Mr. DE] to do [Mr. CM's and the Applicant's] job respectively but action was not taken.

15. Between 16 May 2014 and 15 June 2014, ECA advertised the post of a G-6 Mail Assistant in the Registry Sub-Unit/PIKMD. The Applicant applied for the vacancy and took a written test in January 2015. He did not pass the written assessment and was therefore not selected for the post.

16. The minutes of a Registry Sub-unit staff meeting held on 1 June 2015 included the following discussion:

[The Applicant] mentioned that he would be happy if the work of incoming pouch can be assigned to another staff member because it is too much for him. The supervisor explained the reason why he was assigned as follows: (1) [the Applicant] was complaining in the previous years that the pouch work was assigned to a junior staff while he was a senior; (2) the pouch job was given to him to have fair distribution of work. The supervisor also mentioned that the current distribution of work is right.

17. On 24 July 2015, the Office of Staff Legal Assistance (OSLA) wrote to the ECA Human Resources Services Section (HRSS) requesting a Special Post Allowance at the G-6 level for the Applicant for three years, commencing from 1 March 2012.

18. After a Registry Sub-unit staff meeting on 5 August 2015, Ms. Abebe sent an email to the Applicant requesting that he hand over all the files of incoming pouches, pending pouch mails and mails from UNFCU to another staff member, Ms. MM, since these tasks were part of her duties. She further informed him that Mr. DE would re-commence collecting pouches from the airport and assist Ms. MM in the distribution process.

19. By memorandum dated 17 February 2016, the Chief/HRSS informed the Applicant of the decision not to grant him SPA as requested by OSLA on 24 July 2015 for the following reasons: Mr. CM's duties had been assigned to Mr. DE; the

Applicant had never been assigned to perform the full functions of a G-6 Mail Assistant in the Registry Sub-unit; and the Applicant had failed the written technical test for the G-6 Mail Assistant post that was advertised in 2014. Ms. Abebe confirmed in a witness statement dated 17 October 2016 that during the period in question, she had not asked the Applicant to carry out any functions of a G-6 Mail Assistant.

20. On 26 March 2016, the Applicant requested management evaluation of the Chief/HRSS's decision of 17 February 2016. In a response dated 28 June 2016, the Under-Secretary-General for Management informed the Applicant of the Secretary-General's decision to uphold the decision not to grant him SPA.

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21. The decision not to grant the Applicant SPA is unlawful because the reasons advanced by his supervisor, Ms. Abebe, are untrue and contradictory. On one hand, she claims that Mr. CM's duties were assigned to Mr. DE and on the other hand, she claims that most of the G-6 functions, which were supervisory, were performed by the Registry Supervisor who is at the G-7 level.

22. Ms. Abebe sent the 3 May 2012 draft proposal to Mr. Tsenov after she assigned the Applicant to perform the functions of the G-6 post. As a result of her instructions, he performed all the functions of the G-6 post from 5 March 2012 to 5 August 2015. During this period, Ms. Abebe repeatedly reported to her supervisor that the Applicant was performing the functions of the G-6 post.

23. The Applicant and Ms. Abebe agreed on his work plan in accordance with the United Nations Performance Appraisal System Guidelines & Reference Material dated January 1995. He performed the managerial and supervisory task of time management for the Registry Sub-unit.

24. The email of 5 August 2015 is proof that he was performing the functions of the G-6 post since he was instructed to hand over said functions only after he requested payment of an SPA on 24 July 2015.

25.

32. The Applicant's supervisor did not deliberately delete the list of functions of the Applicant. The email was submitted by the Respondent to show that the change in functions was merely a request and that a response was still pending. Since there was no implementation, the Respondent's counsel did not consider the list to be relevant.

33. The Applicant's submission that the Respondent filed a "fake or fraudulent e-PAS document" is unfounded and unsupported by the evidence. The Applicant has deliberately withheld information from the Tribunal as to the facts surrounding the e-PAS labeled as annex 7. The said e-PAS is a true and correct reflection of the Applicant's e-PAS for 2013/2014.

34. The Applicant was initially rated as "partially meets expectations" at the end of the 2013/2014 performance cycle. After discussions with his FRO, she agreed to change the rating to a positive one. Since it was not possible to roll back

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Mr. Tsenov to reassign the Applicant carry out the functions of the G-6 post was not acted upon.

43. The Applicant's supervisor Ms. Abebe gave a witness statement. In that statement, she averred that a G-4 level staff member Mr. DE had assisted Mr. CM, the deceased G-6 level staff member, in his day to day work which included the handling of pouch services. After the demise of Mr. CM, Mr. DE continued to deal with pouch services but the Applicant complained that it was a G-6 job being performed by a G-4 staff member.

44. She further stated that although following his complaints the Applicant was allowed to share the handling of pouch services with Mr. DE in the 2013/2014 performance cycle, in the next reporting cycle of 2014/2015 he added the entire handling of pouch services to his goals and was allowed to carry out the task which is also a function of the G-5 level position.

45. When midway into the 2014/2015 reporting cycle the Applicant began to complain that he was overworked and wanted the handling of pouch services assigned to another staff member, his complaints were captured in the minutes of the Registry staff meeting of 1 June 2015. On 5 August 2015, Ms. Abebe instructed the Applicant in an email to hand over the handling of pouch services to two other staff members.

46. The Applicant contended that from 5 March 2012 until 5 August 2015, he performed all the functions of the G-6 level post and that throughout that period, his supervisor repeatedly reported to Mr. Tsenov that he was performing the G-6 level functions and that his reassignment to the higher functions were not rejected.¹ He claimed that he continued to perform the functions of the G-6 level post until directed by his supervisor to hand them over to other staff members.

47. The Applicant while asserting that he carried out functions at the higher level of G-6 did not enumerate what these higher-level functions consisted of except to mention that he performed the supervisory task of time management for the sub-unit. He did not prove his assertion that his supervisor reported to Mr.

¹ Application, paragraph 2, page 5.

Tseno

