



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

PORRAS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR

Rosangela Adamo, AAS/ALD/OHR

Introduction

1. On 22 July 2019, the Applicant, a former a P-4 Logistics Officer, working with the United Nations Interim Security Force for Abyei (UNISFA), Sudan, subsequently assigned to Gok Machar in South Sudan, filed an application before the Dispute Tribunal contesting a decision not to renew his appointment.¹

2. On 26 August 2019, the Respondent filed a reply, where it is argued that, to the extent the application challenges the decision not to reassign the Applicant back to Abyei, it is not receivable as it is time-barred. Secondly, it is argued that the decision on non-extension of appointment was lawful.

3. The Applicant filed a response to the Respondent's argument on receivability

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Applicant of UNISFA's decision to temporarily assign him to Gok Machar in South Sudan for 90 days pending UNISFA's efforts to reassign him to another mission.⁴

7. Effective 18 July 2017, following the expiration of the Applicant's 90-day temporary duty assignment period and due to the lack of an alternative reassignment option, the Applicant was reassigned to Gok Machar together with the post, which was reflected in his personnel action.⁵ His fixed-term appointment was renewed first until 30 June 2018⁶ and then until 30 June 2019.⁷

8. On 5 July 2018, the General-Assembly approved, as part of the 2018/2019 budget, the redeployment of the post from Gok Machar in South Sudan to the SCPMU in Abyei.⁸

9. On 4 December 2018, the Applicant acknowledged the reclassification of the post, its changed job description and movement from Gok Machar to the Supply Chain Performance Management Unit (SCPMU) in Abyei.⁹

10. On 14 May 2019, the Applicant was notified of the expiration of his fixed-term appointment and informed that he was to be separated from service upon expiry of the his appointment on 30 June 2019.¹⁰ The Chief of Mission Support (CMS) informed the Applicant that the functions of P-4 Logistics Officer were required in Abyei and not in Gok Machar while the efforts to place him in another mission had not materialized. By the same memorandum, the CMS stated that UNISFA was uncertain that the Applicant would be issued with a Sudan Visa to work in Abyei as a Logistics Officer considering the circumstances under which he had been moved out of Kadugli.

⁴ Reply, annex 6.

⁵ Reply annex 8

⁶ Reply annex 7

⁷ Reply annex 1 and 10.

⁸ A/c.5/72/25 (Approved resources for peacekeeping operations for the period from 1 July 2018 to 30 June 2019).

⁹ Reply annex 11

¹⁰ Application, annex F.

11. The Applicant requested management evaluation on 10 June 2019¹¹ and received the response on 18 July 2019.¹²

Submissions on receivability

12. The Respondent submits that to the extent the Applicant challenges the Organization's decision not to assign him back to Abyei, the application is not receivable *ratione materiae*. UNISFA informed the Applicant that it was not possible for him to serve in Abyei following the Government of Sudan's *Note Verbale* stating that it was not willing to have him as part of UNISFA personnel in Sudan. The Applicant did not request management evaluation of the decision not to reassign him back to Abyei within 60 days of being notified of the decision, as required. The 14 May 2019 non-renewal letter was not a new decision not to reassign the Applicant to Abyei. It did not reset the time limit for requesting management evaluation.

13. In his response to the Respondent's argument on receivability, the Applicant contends that the Respondent inaccurately frames the application as one in which he challenges solely the failure of Administration to reassign him back to Abyei. The application challenges the nature of the obligation relating to the Administration undertaking good faith efforts to reassign a staff member who, through no fault of his own, was declared *persona non grata* (PNG) in the Kadugli duty station and is

reassignment of the post. It is apparent that no such decision to transfer the post ever took place and as such the Administration should have reassigned him back to Abyei.

15. The Applicant also contends that it is accepted jurispru

will be allowed to stay. The logical consequence that follows a

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support of his government in applying for a visa afresh.¹⁵ The case, on the other hand, bears similarity to *Hassouna* where the issuance of a categorical *note verbale* by the Sudanese Foreign Ministry signified a firm position, which remained unchanged notwithstanding the Organization’s *démarche* on the level of the Permanent Mission of Sudan.¹⁶ Altogether, considering the views of the Governel o th Ary

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to staff on fixed-term appointments

JUDGMENT

30. The application is dismissed.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 16th day