
UNITED NATIONS DISPUTE TRIBUNAL	Case No.: UNDT/NY/2019/068 Judgment No.: UNDT/2020/070 Date: 12 May 2020 Original: English
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Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

HOUENOU

v.

SECRETARY-GENERAL

Case No. UNDT/NY/2019/068

Judgment No. UNDT/2020/

9. On 22 June 2017, the Director of Mission Support of MINUSCA signed a loan agreement for the loan of a post from the Service Delivery Section to the Engineering Section to which the Applicant was assigned since there was no vacant post for the Applicant beyond 30 June 2017. The loan period was from 1 July 2017 to 30 June

10. By 29 June 2017, MINUSCA was affected with a further budget reduction of USD19,907,300. On the same date, the USG/DFS sent MINUSCA a Code Cable requesting a plan of measures to reduce mission expenditure in light of the budget reductions.

11. recommended the temporary appointment to 30 June 2018.

12. On 12 July 2017, in the Director of Mission Support Officer-in-Charge (OiC) of the Division for Mission Support approved the recommendation for extension. MINUSCA Human Resources raised a personnel action (PA) notification to reflect the approved recommendation extension of appointment to 30 June 2018.

13. On 17 July 2017, the Director of Mission Support, upon his return, amended the recommended date for extension of appointment to 30 September 2017.

14. On 10 August 2017, the Director of Mission Support wrote to the USG/DFS regarding the mi 30 million in staffing costs.

15. On 18 August 2017, MINUSCA HR processed a PA notifying the Applicant that his temporary appointment expired on 30 September 2017, in accordance with the extension request amended by the Director of Mission Support.

16. On 13 September 2017, MINUSCA HR sent the Applicant a memorandum requesting him to initiate his check-out. On 19 September 2017, the Chief Human

4 level, for the period of 1 July 2017 to 30 June 2018 for the Hard Wall Project in

On 12 July 2017, in the Director absence, the OIC of Mission Support approved the recommendation for extension. The Applicant further submits that MINUSCA HR raised a PA notification to reflect the approved recommendation for the extension of his contract and that his security pass was extended consistent with grant of a contractual term of one year. The Applicant contends that while he did not receive a new letter of appointment, he understood that his appointment had been extended for one year until 30 June 2018, and continued to work on that basis. The Applicant submits that there continued to be an operational need for his services and his appointment was unlawfully curtailed.

24. The Respondent submits on the other hand that any appointment was never extended to 30 June 2018, nor did MINUSCA make an express

25. The Respondent further submits that the renewal of the Applicant's appointment to 30 June 2018 would have in any case been barred by ST/AI/2010/4/Rev.1 (Administration of temporary appointments) as there were no exceptional circumstances to justify an extension beyond 364 days of service.

26. The Tribunal notes that the Appeals Tribunal has held that in order for a staff member to be re-appointed, there must be a commitment in writing from the Administration to renew the appointment (see, for instance, *Igbinedion* 2014-UNAT-41, *Toure* 2016-UNAT-660, and *Kellie* UNAT-2018-875). Upon review of the record, the Tribunal finds that no official commitment was made to the Applicant in writing which would give rise to a legitimate expectation of renewal of his temporary appointment to 30 June 2018.

27. The Tribunal finds that although a recommendation was made by the Programme Manager on 30 June 2018, the recommendation was not approved by the Director of Mission Support who had the personal delegated authority to do so. In this regard, it is undisputed that the authority to extend appointments was delegated to the Director of Mission Support and had not been sub-delegated. Therefore, while the OIC of Mission Support could perform pe

obligations (*Kellie* 2018-UNAT-875). The Tribunal further notes that no letter of

28. In these circumstances, a PA notification which was erroneously raised by MINUSCA HR, or the extension of a security pass do not create an express promise or a legitimate expectation of renewal of appointment. Accordingly, the Tribunal finds that the recommenda

the erroneous approval by the OIC of Mission Support cannot be understood to create a legitimate expectation of the renewal.

29. The Tribunal notes that there was maladministration in terms of delay in communicating the error to the Applicant and the Respondent has provided compensation to the Applicant in that respect. MEU acknowledged an undue delay in notifying the Applicant of the

Exceptional extension of a temporary appointment beyond the period of 364 days

14.1 A temporary appointment may exceptionally be extended beyond 364 days, up to a maximum of 729 days, under the following circumstances:

(a) Where a temporary emergency or a surge requirement related to field operations unexpectedly continues for more than one year;

(b) Where a special project in the field or at a headquarters duty station unexpectedly continues for more than one year;

(c) Where operational needs related to field operations, including special political missions, unexpectedly continue for more than the initial period of 364 days. ear;

that the criteria of sec. 14 had been met, including within the written recommendation

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decision to outsource the Hard Wall Project, the Tribunal will examine the reasonableness of this decision.

39. The Respondent submitted that the decision to outsource the Hard Wall Project was in accordance with General Assembly resolutions 55/232 and 59/289, and ST/IC/2005/30 (Outsourcing and impact on staff). The Respondent explained that finding the most cost-effective and efficient means of completing the Hard Wall Project

safety and security of its uniformed personnel. Military and police personnel had been living in rudimentary conditions for an extended period. The Organization had committed to providing hard wall accommodation to participating contingents within six months of their initial deployment. By early June 2017, it was apparent to MINUSCA leadership that the Hard Wall Project was neither cost-effective, nor efficient. On 21 July 2017, the Director of Mission Support wrote to the Deputy of Mission Support stating:

Considering that the proposal for construction of Hard Wall accommodation was approved by the Under Secretary-General of the Department of Field Support on 04 July 2016 and recalling that I issued instruction in this regard on 14 July 2016, it is very disappointing to note that as of today (more than 12 months later) not one single building has been completed under the auspices of the 'Youth at Risk Project' under supervision of the Chief Service Delivery, who reports to you as Deputy Director of Mission Support.

40. By mid-July 2017, MINUSCA was confronted with budgetary cuts and MINUCSCA continued to face challenges with the efficient completion of the hard wall project. The Respondent submitted that by this point, MINUSCA was facing a USD30 million shortfall in staffing costs. MINUSCA had almost USD10 million available to it under existing multi-year construction contracts which needed to be committed to task and purchase orders before 30 June 2017. If not utilized, the funds would have been liquidated. Thus, MINUSCA used these funds by utilizing an existing contract for the Hard Wall Project and reduced its costs by not renewing the

would be more cost-effective and efficient. The Respondent submitted that the Hard Wall Project was outsourced to experienced existing contractors with the requisite technical skills who had completed similar projects with MINUSCA, and their services were not needed on a

42. It is clear that the Applicant had commendable commitment to the Hard Wall Project and had hoped to work on it for a longer period. However, as the Applicant himself acknowledges in his submission dated 20 March 2020, the decision to outsource decision was taken properly are irrelevant to its