

Case No.: UNDT/NBI/2015/068

OrderNo.: 232 (NBI/2015)

2015-09-15

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Introduction

1. On 25 June 2015, the Applicant, an FS4 Finance Assistant in the United Nations Mission in Liberia (UNMIL), filed an Application with the Dispute Tribunal seeking suspension of implementation of the decision not to renew his appointment.
2. The Respondent filed his Reply on 29 June 2015 in which he submitted that the Application was moot as the Applicant's fixed term appointment has been renewed beyond 30 June 2015¹.
3. The Tribunal heard the matter on 30 June 2015. At the hearing, Counsel for the Respondent was ordered to make further submissions in respect to an email dated 29 June 2015. The said email on the one hand informed the Applicant that his appointment would be renewed for three months, while also assuring him that his letter of appointment would be generated when Headquarters updated the staffing table to extend all posts at the mission through 30 June 2015.
4. The Respondent filed the said submissions on 30 June 2015. The Applicant filed his response to the submissions on the same day.

Facts

5. The Applicant joined the United Nations in 2009. He currently holds a fixed term contract at the FS4 level as Finance Assistant in UNMIL.
6. During the month of May 2015, UNMIL sent out notifications to affected staff members regarding a retrenchment exercise and the abolishment or nationalization of certain posts, subject to the approval of the General Assembly. The Applicant was not in receipt of such a memorandum.

¹ The Respondent's Reply indicates 30 June 2016. In an email dated 29 June 2015 addressed to the Tribunal and the Applicant, Counsel for the Respondent indicated that the correct date should be 30 June 2015 and not 30 June 2016.

7. On 18 June 2015, the Applicant was notified orally by the Chief Finance Officer, Mr. Anthony Azaglo, that he (Azaglo) had received an email ~~from~~ Chief of Staff's Office regarding the ~~abolishment~~ of the Applicant's post.

8. Later that day, the Officer-in-Charge(OIC) of the Finance Section, Mr. Hanno Nidos, informed the Applicant that he (Nidos) had received communication that the Applicant's ~~post~~ would be abolished effective 30 June 2015. They then discussed the recent retirement of another staff member in the Finance Section which meant that there was a vacant post in his section. The Applicant was told that the vacant post had been lent ~~to~~ the section.

9. Mr Nidos met with the Chief of Administrative Services and thereafter on 19 June 2015, he told the Applicant that he could not be recruited to the vacant post because it had been lent to another section and was pending the recruitment of someone else.

10. The Applicant, having received no information regarding the extension of his appointment beyond 30 June 2015, requested management evaluation on 25 June 2015. He then filed this Application.

11. On 29 June 2015, the Applicant received an email ~~from~~ Barbara Klopp, (OIC), Mission Support, UNMI which stated as follows:

As you [are] aware, an FS4 post was located late last week that will be used for the purpose of extending your appointment for a three month period. The formal post loaning form ~~was~~ completed by all parties on Thursday/Friday, 26/27 Jun 15, and action will be taken

of Appointment and the “extended appointment” personnel action that goes with it.

In the interim period, this email serves as confirmation of the extension of your appointment as per the above.

12. On 30 June 2015 pursuant to the Tribunal’s direction the Respondent filed further submissions to clarify Ms Klopp’s email and UNMIL Administration’s position. These further submissions showed that the Applicant’s extension of contract beyond 30 June 2015 was for three months only and that the extension of all posts at the mission through 30 June 2016 would not apply to them. The said further submissions are reproduced below:

...Posts for Field Missions are budgeted for on a yearly basis from 1 July until 30 June. Consequently, all posts expire automatically on 30 June.

Upon approval of the Mission’s budget by the General Assembly, the Field Personnel Division (FPD) of the Department of Field Support (DFS) takes action in the Integrated Management Information System (IMIS), a computerized programme, to discontinue all abolished posts and extend the remaining approved posts until 30 June the next year. FPD has not yet taken action to

supervisors and Human Resource. Therefore, it is reasonable for the Applicant to assume that his contract was not being renewed.

14. There is a duty on the Administration to respond to staff member's reasonable requests for information, assistance, and action, and to inform staff members of administrative decisions affecting them in a timely manner.

15. It is a general principle of administrative law that where there is no time specified for the doing of an act, it should be done within a reasonable time. The reasons for this include the need to have predictability, finality and speedy resolution of issues, which is clearly in the interests of both parties. What constitutes a reasonable time of course depends on a number of factors, including the length of delay and the reasons therefor.

16. The Applicant has spoken with his superiors about the alleged abolishment of his post and been told to await further information. As 30 June 2015 approached, UNMIL had not communicated any decision to him regarding his contract. The failure to act can be seen as an administrative decision.

17. The UNDT considered the proper procedures to be adhered to prior to the abolishment of a post in the case of *Alamy* UNDT/2012/090. A decision to abolish a post should follow a thorough staffing review taking account of the views of those best placed to consider office structuring. Once posts have been identified for abolishment a comparative review of staff members operating at the same level should be conducted according to approved guidelines in order to identify those staff members who will lose their employment.

18. In *Adundo et al* UNDT/2012/118 it was stated that whilst it is recognized that an employer may restructure or organize its workforce for legitimate reasons and based on its operational requirements, fair and equitable procedures must be followed. This includes a full and meaningful consultation process. It is generally accepted that employers that intend to embark on a retrenchment exercise are required to carry out effective consultations with employees or their representatives.

19. The Administration cannot abolish a post and terminate a staff member's fixed appointment arbitrarily. It must conduct an objective assessment and provide objectively verifiable reasons. The Applicant in this ~~case~~ does not know whether this is the case or whether he should have been subject to comparative review. The Applicant is aware that another ~~FS~~ Finance Assistant in his section was notified in May that her post was being abolished and she was reassigned to remain employed. The 2015 UNMIL proposed budget only lists one FS post to be abolished in the section. Therefore, it remains in doubt whether any further Finance Assistants can even be abolished and/or whether there should first have been a comparative review.

20. Furthermore, the Administration failed to provide any cogent reasons as

- d. The three month extension, as opposed to a one year extension, is

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28. The Respondent thereupon on 29 June 2015 sent Annex R1 to the Applicant granting him a three month extension of his appointment.

29. It is the Applicant's case that the 2014/2015 UNMIL budget had indicated

CONCLUSIONS

34. The Application for suspension of action in this case is successful

35. It is accordingly ORDERED that the decision not to grant the Applicant one year extension of his appointment is suspended pending management evaluation

(Signed)

Judge Nkemdilim Izuako

Dated this 3rd day of July 2015

Entered in the Register on the 3rd day of July 2015

(Signed)

Abena KwakyeBerko, Registrar, Nairobi