
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/109

Order No.: 378 (NBI/2015)

Date: 24 November 2015

Original: English

Before:

Introduction

1. The Applicant is a staff member of the United Nations Interim Force in Lebanon (UNIFIL).
2. On 27 October 2015, he filed an Application for suspension of action pending management evaluation with the United Nations Dispute Tribunal (UNDT) in Nairobi challenging the decision to move him from the Joint Geographic Information System (JGIS) section to the Public Information Section on a three month Temporary Job Opening (TJO) contract.
3. The Respondent filed a Reply to the Application on 28 October 2015.

Relevant Facts

4. On 19 January 2015, the Report of the Secretary-General A/69/731 (Budget for the United Nations Interim Force in Lebanon for the period from 1 July 2015 to 30 June 2016) was issued. Paragraph 37 of the Report proposed to convert one FS level post in the JGIS section to a national post.
5. By letter dated 21 April 2015, the Applicant was informed that his post in the

7. On 25 June 2015, the General Assembly adopted resolution A/RES/69/302 (Financing of the United Nations Interim Force in Lebanon). Paragraph 10 of the resolution endorsed the conclusions and recommendations contained in the Report of the Advisory Committee on Administrative and Budgetary Questions A/69/839/Add. 8 (Budget performance for the period from 1 July 2013 to 30 June 2014 and proposed budget for the period from 1 July 2015 to 30 June 2016 of the United Nations Interim Force in Lebanon) of 29 April 2015. This Report also proposed to convert one FS level post in the JGIS section to a national post.

8. The Applicant requested a second management evaluation of this decision on 22 October 2015. On 27 October 2015, MEU again informed the Applicant that his second challenge was not receivable.

9. On 29 October 2015, the Respondent filed Annex R5, the GIS Staffing Tables for the 2014/15 and 2015/16 Budget Cycles.

10. Later on 29 October 2015, the Respondent's Counsel filed a Motion seeking leave to file further submissions. In the said Motion, the Respondent submits,

1. During the hearing held on 29 October 2015, Counsel for the Respondent advised the Dispute Tribunal that a staff member had returned from MINUSMA to UNIFIL, and was an Engineering Assistant within the GIS section of UNIFIL. This was based on the content of the mission's staffing table for the 2015-2016 budget cycle. Pursuant to the Dispute Tribunal's directions, Counsel for the Respondent filed this staffing table as Annex R5.
2. Following the filing of this staffing table, Counsel for the Respondent was informed by UNIFIL Administration that the staffing table was incorrect, insofar as it relates to the staff member who returned from MINUSMA. Contrary to the submission from Counsel during the hearing, UNIFIL Administration has clarified that this staff member is performing the functions of a Geographic Information Systems Assistant, at the FS-5 level.

3. In order to prevent the Dispute Tribunal from being misled about the functions performed by this staff member, the Respondent seeks leave to file these further submissions.

11.

post should be reinstated. There were no lawful grounds for abolishing his post and it should be reinstated.

16. In the meantime, an encumbered post has been brought into JGIS. The result is that there is no net reduction in posts in the Section after abolishing his post. The only net change is that a P2 level staff member is to be moved to Brindisi by 1 December 2015. What seems to have happened is the staff member has been replaced by one SB, whose post in the Engineering Section was abolished. Ultimately therefore, it would appear that this was nothing but a disguised move to replace him with another civilian staff member. UNIFIL is also seeking additional military resources for the blue line marking project. This is evidence that the function is not only continuing, but is expanding.

Prima facie unlawfulness

17. The reasons UNIFIL Management gave for abolishing his post were based on a mistaken understanding of the facts. The functions of the GIS Assistant post cannot be performed by a Lebanese National yet UNIFIL management did not state so in their budget document.

18. The UNIFIL management is required to give a reason for abolishing his post but in this case the reason given was based on a mistake of fact with respect to the functions of the GIS Assistant post.

19. There is a possibility that the exercise of abolishing his post was a camouflage to replace him with SB in the context of nationalization of UNIFIL posts or the movement of posts to Brindisi, Italy. The Applicant further submitted that SB, an international staff member, had been brought in to perform the functions for the post he previously encumbered and which had been nationalized.

20. The functions of JGIS remain the same. The question has to be asked whether going forward someone other than an internationally recruited UNIFIL civilian staff member will perform the GIS Assistant functions. It has also not been explained what

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Tribunal (UNAT) held that a decision by the General Assembly to abolish a post is not a contestable administrative decision, but a staff member may contest a subsequent administrative decision which follows from the General Assembly's actions. Accordingly, the Applicant may not challenge the decision to nationalize the Post.

26. The Applicant's challenge to the decision to reassign him to the position of Administrative Assistant within the Public Information Section is not receivable. The Applicant applied for and was selected for this position. It is not a decision adverse to the Applicant's terms and conditions of employment, and may not be challenged before the Dispute Tribunal.

Prima facie unlawfulness

27. The Applicant has not provided any evidence that the alleged decisions are unlawful.

28. The Applicant previously encumbered post number 64621, as a GIS Assistant at the FS-4 level. On 1 July 2015, following a Civilian Staff Review (CSR), and the submission of the Secretary-General's Report on UNIFIL's budget from 2015-2016, this post was converted to a national post by the General Assembly.

29. In the 2014-2015 budget, the entire GIS Unit consisting of 1 P-4, 1 P-3, 1 P-2, 3 FS and 3 NGS posts, was redeployed from the Engineering Section to the Regional Information and Communications Technology Service (RICTS). An FS-5 staff member who was on temporary assignment to the United Nations Multidimensional Integrated Stabilization Mission in Mali

of this conversion and since that date, there have been no functions for the Applicant to perform.

30. No other position has been moved into GIS Unit after the original redeployment of the entire GIS Unit (nine posts in total) from ESS to RICTS effective 1 July 2014.

31. Since that date, the Applicant has applied for and been selected for two TJOs. These job openings were initiated by UNIFIL to enable staff members affected by the CSR an opportunity to remain employed in the mission, while seeking more long-term opportunities within the Organization.

32. Of the 14 staff members who were directly impacted by the CSR, 11 had found alternative options by or before 30 September 2015. Three staff members, including the Applicant, had not. On instructions from the Head of Mission to allow these staff members a further extension, another TJO was initiated on an administrative assistant post, which was vacant and required its functions to be carried out. The position was advertised as a ring-fenced recruitment to allow the impacted staff members to apply. All those remaining from the impacted group applied. The Applicant was selected for this position.

33. Furthermore, it is not possible to simply reassign the Applicant to another position because he has not been cleared by a Field Central Review Body. He must apply and be selected following a competitive selection process in accordance with ST/AI/2010/3 (Staff Selection System). Additionally, due to the implementation of the Umoja system on 9 November 2015, it is not possible to administratively 'place' staff members against posts for which they have not been properly selected.

34. Contrary to the Applicant's assertions, there is no convention or rule that the functions of the Post cannot be performed by national staff and therefore cannot be nationalized. UNIFIL is carrying out an ongoing project to demarcate the boundary between Israel and Lebanon ("the blue line marking project"). This project involves field and office work. The field work directly along the blue line is performed by five

international civilian and military and four GIS staff. The mission has requested additional military personnel for several areas of the mission since those personnel are not covered by the UNIFIL Staffing Budget and are instrumental to integrated mission activities. However, this has no bearing on the reduction or nationalization of civilian posts.

35. Accordingly, contrary to the Applicant's assertion, there is no mistake in the reason for the Administration's decision. The post used to finance the Applicant's appointment is no longer available due to the General Assembly's decision. The Applicant has provided no evidence to suggest that the decision was discriminatory.

36. The alleged decision to move the Applicant to other functions is in fact UNIFIL's offer made to the Applicant following his selection for the TJO to which he physically applied. As the selected candidate, the Applicant cannot challenge the outcome of the recruitment exercise, which was ultimately in his favor. Accordingly, there is no unlawfulness in offering the Applicant an appointment to that position.

Urgency

37. The Applicant has provided no evidence of urgency. He has the option of accepting the offer of appointment to the post which he applied and was selected, and continuing to serve with UNIFIL until 31 January 2016. That period is well outside the 45-day period for management evaluation.

Irreparable harm

38. The Applicant has provided no evidence of irreparable harm. He has been offered an appointment that will enable him to continue in service until 31 January 2016. This will give him more time to find a more long-term position and possibly be placed on the roster by the Field Central Review Body. The Applicant's claim that accepting the offer will "spell an end" to his career has no merit. In fact, it will prolong it. The fact that the Applicant's previous functions are continuing is irrelevant – they are being performed by a national staff member in accordance with

the General Assembly's decision. The Applicant, as an international staff member, cannot perform those functions or encumber that post without violating the General Assembly's resolution.

Considerations

Receivability

39. The Respondent submitted that the Applicant's challenge to the decision to nationalize the Post is not receivable because, on 23 May 2015, the Applicant requested management evaluJ ET Q q BT /F2 12 Tf 044-31 12 Tf 0 T Q q BT /F210.08 Tf

The MEU made a finding that the request before it was time-

that decision cannot be the subject of an application before it as held by UNAT in *Lee*.

Conclusion

46. This Application for suspension of action fails because it is not receivable.

(Signed)

Judge Vinod Boolell

Dated this 24th day of November 2015

Entered in the Register on this 24th day of November 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi