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Introduction

1. On Friday, 29 September 2017, the Applicant, an Administrative Assistant at the FS-5 level, step 11, in the United Nations Stabilization Mission in Haiti (“MINUSTAH”), filed an application under art. 2.2 of the Dispute Tribunal’s Statute as read with art. 13 of the Rules of Procedure, for the suspension pending management evaluation, of the decision “not to grant one year fixed-term appointment on recruitment and decision to separate by non-renewal”.

2. The same date (29 September 2017), the Registry acknowledged receipt and, at the instruction of the undersigned Judge requested the Respondent to file a reply by 9:00 a.m., on Wednesday, 4 October 2017.

3. The Respondent filed his reply, shortly before close of business day on 3 October 2017, submitting that the application is not receivable *ratione temporis* and that, in any event, it is without merit.

Background

4. In the application, the Applicant presents the facts as follows, as reflected also by the documentation on record:

... The Applicant is a UN staff member who has been in continuous UN employment since 2009. The Applicant held a fixed term appointment with [United Nations Integrated Peacebuilding Office in Guinea-Bissau, “UNIOGBIS”] which was due to expire on 30 June 2017 [reference to annex omitted].

... From 3 September 2016 to 9 September 2016 MINUSTAH advertised a vacancy announcement for recruitment from roster of an FS5 Administrative Assistant at the FS 5 level on fixed term appointment [Job Opening No. “16-ADM-MINUSTAH-66317-F-PORT-AU-PRINCE (M)”], [reference to annex omitted].

... The Applicant applied for the post and on 3 November 2017 [sic] the Applicant was informed that she had been selected for

5. While not appearing to contest the Applicant's presentation of the factual background (see more below), the Respondent adds that:

- ... The Applicant held a fixed-term appointment with [UNIOGBIS], which expired on 30 June 2017.
- ... The Applicant applied for, was selected, and began a new assignment with MINUSTAH on 6 December 2016.
- ... On 13 April 2017, by Security Council Resolution 2350 (2017), MINUSTAH's mandate was extended until 15 October 2017 [reference to annex omitted].
- ... On 1 August 2017, the Applicant was notified that her new fixed term letter of appointment ["LOA"] would run concurrent with MINUSTAH's mandate and end of 15 October 2017.
- ... On 19 August 2017, the Applicant signed the LOA, dated from 1 July 2017 to 15 October 2017, coinciding with MINUSTAH's mandate.
- ... On 14 September 2017, the Applicant sought management evaluation of the decision to not grant her a one year appointment upon her assignment to MINUSTAH. [footnote omitted]
- ... On 29 September 2017, the Applicant filed supplementary submissions to [the MEU], requesting management evaluation of the decision not to renew her appointment beyond 15 October 2017. [footnote omitted]

Applicant's submissions

6. The Applicant's principal contentions may be summarized as follows:

Prima facie unlawfulness

- a. Referring to staff rules 4.1, 4.2, 4.13 and ST/AI/2010/3 (Staff selection system and ST/AI/2010/4/Rev.1 (Administration of temporary appointments), the Applicant's move to MINUSTAH required the grant of a new appointment from 6 December 2016 and, following staff rule 4.13(a), a new appointment is for a minimum of one year;

b. Duty station and employing entity are crucial contractual terms. These changed on moving to MINUSTAH requiring grant of a new letter of appointment, and the Administration cannot argue that the Applicant continued to be appointed on the letter of appointment issued by UNIOGBIS after her move to MINUSTAH. The two entities are entirely separate, have different budgets and locations;

c. Date of appointment is calculated from the date of entering into official travel and/or assumption of duties. The Applicant's travel to Haiti and assumption of different functions ar

t. Because the Applicant's separation is currently by non-renewal important protections that might secure her ongoing employment have not been applied;

u. It is of note that while MINUSTAH is closing as of 15 October 2017, a new mission will then open containing a post that corresponds to that currently occupied by the Applicant;

v. It has been established in *Kasmani* 2009-UNDT-017, *Osman* 2009-UNDT-008, *Rasul*

g. There is no grant of new fixed-term with administrative reassignment. Staff rule 4.13(a) requires that a fixed-term appointee receive an appointment of a minimum of one year on initial appointment. A staff member receives a letter of appointment, appointing them to the Secretariat, not to a particular mission or office. Once a staff member has been appointed, they remain appointed until separated;

h. Staff rule 4.13(b) provides that a fixed-term appointment can be renewed for any period up to five years. However, a staff member is not granted a new appointment. The Organization does not issue new letters of appointment when a staff member is transferred or assigned. The Applicant has not identified any rule that requires it to do so. The Applicant's assertion that a new letter of appointment is required when a staff member moves to a new duty station is incorrect. If that were the case, whenever a staff member moves to a new duty station, even within the same mission, a new letter of appointment with a duration of one year would be required. That is incorrect;

i. Contrary to the Applicant's claim, her reassignment to MINUSTAH did not require the Organization to grant her a new one year appointment. If the Applicant's move to MINUSTAH was a new appointment, then logically she must have been separated from her previous appointment. That would have entailed, *inter alia*, the payout of her annual leave entitlement. Additionally, pursuant to staff rule 3.4(a), the Applicant would not have retained her step in grade. Instead, the Applicant was reassigned to MINUSTAH on the terms of her subsisting appointment;

j. There is no expectancy of renewal of a fixed-term appointment. In accordance with staff rule 4.13(c) and sec. 4.2 of the ST/AI/2013/1, the Applicant has no right to renewal of appointment beyond 15 October 2017. The Administration created no legitimate expectancy of renewal beyond that date. An expectation of renewal requires an express promise that the appointment will be renewed. No such promise was made. On

the contrary, since at least 13 April 2017, the Applicant has known or should have known that MINUSTAH's mandate, and her appointment, would end on 15 October 2017;

k. The decision not to renew an appointment may be challenged on the grounds that the staff member had a legitimate expectancy of renewal, procedural irregularity, or the decision was arbitrary or motivated by improper purposes. The Applicant has provided no evidence for such a challenge.

Urgency

l. The Applicant has known or should have known since at least 13 April 2017 that her fixed-term appointment would not be extended beyond 15 October 2017, as MINUSTAH's mandate was only extended until 15 October 2017. Additionally, at that time, the Applicant had an appointment expiring on 30 June 2017. The Organization's needs for service and commitment to her employment was completed on that date. There was no further obligation created at the time of her reassignment. Further, the Applicant executed her MINUSTAH LOA on 19 August 2017, which stated a contract expiry date of 15 October 2017. Each of these dates were well within the requirement of filing a request for management evaluation and receiving a response within 45 days from the MEU before the end of the Applicant's contract. Yet, the Applicant waited until 14 September 2017 (initial request) and 29 September 2017 (revised supplemental request) to seek management evaluation and suspension of the implementation of

Irreparable damage

m. The Applicant has not established irreparable harm. A fixed-term appointment carries no expectancy of renewal. The Applicant's separation presents no more harm to her than the eventual separation of any MINUSTAH staff member whose fixed-term appointment is due to expire. In addition, any harm the Applicant might suffer can be adequately compensated through a monetary award.

(emphasis added), “[o]n 1 August 2017, the Applicant was *notified* that her new fixed term letter of appointment would run concurrent with MINUSTAH’s mandate and end of 15 October 2017”.

16.

have reasonably been known” (Krioutchkov *vs.* UNAT, para. 2 . In
- *UNAT - 2*, e Appeals Tribunal also (reference o
omitted):

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short-term contract of three months and 15 days) on 1 August 2017. From the context of the present case (the Applicant, having moved to MINUSTAH in December 2016, apparently saw no contractual documentation until August 2017), it is abundantly clear that not a

are separate with different budgets and locations and, particularly, the job opening against which the Applicant was recruited was not a temporary one but was a recruitment from the roster which is possible only pursuant to ST/AI/2010/3. The job opening expressly refers to a “position” which is defined in the Administrative Instruction as an “established post” with “funding for at least one year”. If MINUSTAH required a new staff member for less than a year, they were required to recruit against a temporary job opening. The Applicant further submits that she would not have taken a temporary position for less than a year and certainly would have been constrained to request a lien on her former post. Furthermore, the Applicant was provided with a security pass with an expiry date consistent with a year’s appointment and all benefits and entitlements consistent with such appointment. The Respondent, on the other hand, contends that the Applicant was reassigned to MINUSTAH on the terms of her then subsisting fixed-term appointment under the letter of appointment provided to her by UNOGBIS.

21. ST/AI/2010/3, as revised by subsequent administrative issuances, in sec. 9.5 under the heading “Selection decision”—described as part of the regular process for a competitive selection—sets out the process and criteria for recommending a roster candidate for selection for a given job opening, as apparently occurred in the present case, as follows in relevant part:

9.5 Qualified candidates for generic job openings are placed on the relevant occupational roster after review by a central review body and may be selected for job openings in entities with approval for roster-based recruitment [...] Should an eligible roster candidate be suitable for the job opening, the hiring manager may recommend his/her immediate selection to the head of department/office/mission without reference to the central review body.]

22. The staff selection system of ST/AI/2010/3 solely applies to “all staff members to whom the Organization has granted or proposes to grant an appointment of one year or longer”. In line herewith, ST/AI/2013/1 (Administration of fixed-term appointments) sets out the condition upon which a staff member is to be appointed following a competitive selection process as follows:

the FS-5 level with MINUSTAH against Job Opening No. “16-ADM-MINUSTAH-66317-F-PORT-AU-PRINCE (M)”. In ST/AI/2010/3, a vacant position is defined as a “position approved for one year or longer” (sec. 1(z)); whilst a roster is defined as the “pool of assessed candidates who are available for selection against a vacant position” (sec. 1(w)).

28. It would therefore appear that, as a roster candidate, the Applicant was selected through a competitive examination under sec. 3.3 of ST/AI/2013/1 and that she was entitled to a fixed-term appointment for a period of, at minimum, one year. In accordance with staff

August 2017. The Applicant was not given the required notice if indeed her fixed-term contract was expiring on 30 June 2017, only an attempt to retroactively notify her of her alleged new fixed term on 1 August 2017. It may even be argued that there was a tacit renewal of her fixed term contract post 30 June 2017, if indeed she had been reassigned for the remainder of her term.

31. In all the above circumstances, the contested decisions were apparently defective and, consequently, on a *prima facie* basis, the Tribunal therefore finds that the contested decisions are unlawful.

Urgency

32. According to art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure, a suspension of action application is only to be granted in cases of particular urgency.

33. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to

37. It is established law that loss of a career opportunity with the United Nations may constitute irreparable harm for the affected individual (see, for instance, *Saffir* Order No. 49 (NY/2013) and *Finniss* Order No. 116 (GVA/2016)).

38. The Applicant submits that she has been employed with the Organization