

Case No. 2011-241



Counsel for Appellant: Winston Sims

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2012-UNAT-226

JUDGE INÉS WEINBERG DE ROCA, Presiding.

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6. In January 2009, a vacancy announcement was issued for the L-5 position of Representative of UNODC in the Sub-Regional Office in Abu Dhabi. The Appellant applied for that post in February 2009 and was one of the three short-listed candidates. After consideration of the candidates, it was decided that none of them met all the necessary requirements of an L-5 post.

7. The Executive Director decided that rather than re-advertising the vacancy, the post would be reclassified at the J.7377 level at the J.7D.

12. Notwithstanding that the project document had not yet been completed, on 11 November 2009, the Appellant's supervisor informed the Appellant that he would be required to take up his reassignment by 23 November 2009, and that he would be officially released of his duties with UNODC in Vienna as of that date. The Appellant responded that he was ready to travel on 23 November 2009, but continued to raise concerns preventing him from travelling.

13. In a meeting held on 1 December 2009, the Appellant's supervisor and the Chief of the Recruitment and Placement Unit, HRMS, informed the Appellant that, in view of the delays in the opening of the Sub-Regional Office in Abu Dhabi, the Executive Director had decided to no longer reassign him. He was also informed that he would remain the Regional Programme Coordinator for the GCC countries in Vienna until a new head of the Sub-Regional Office was appointed; and that subsequently, he would revert to his permanent appointment status, and be assigned to a P-3 post, yet to be determined.

14. On 21 December 2009, the Appellant requested management evaluation of the decision to no longer reassign him to Abu Dhabi. On 23 December 2009, the Appellant filed an application requesting that the Dispute Tribunal suspend the contested decision. The Dispute Tribunal dismissed that request. On 4 May 2010, the Appellant filed an application with the UNDT, challenging the decision to no longer reassign him laterally to the UNODC Sub-Regional Office in Abu Dhabi.

15. The UNDT issued Judgment No. UNDT/2011/105 on 22 June 2011. It found that, contrary to the Appellant's assertion, he was not prevented from taking up the post because the

chief of office should be at the L-5 level. The creation of an L-5 post was not a binding condition, and the discretion to classify posts lies with the Administration which is responsible for the administration of the projects established under the Host Country Agreement.

17. Finally, the UNDT found that the Secretary-General did not breach ST/AI/2006/3 in relation to the withdrawal of the Appellant's lateral reassignment. The UNDT dismissed Mr. Al-Mulla's application in its entirety.

Submissions

Mr. Al-Mulla's Appeal

18. Mr. Al-Mulla appeals the UNDT Judgment on the grounds that the UNDT erred in law and fact in examining the legality of the decision to withdraw the lateral reassignment offer. Mr. Al-Mulla seeks the rescission of the contested decision, one year's net base salary as compensation for "emotional and actual" damages, as well as the nominal sum of one US Dollar for "injustices suffered".

19. Mr. Al-Mulla submits that the UNDT erred in finding that his reassignment to the Abu Dhabi office was not contingent on the completion of the project document. He submits that the UNDT erred in law in finding that he was responsible for the preparation and completion of the project document, when the final approval and signing of the final document was the responsibility of the Field Representative. He further (sum of os8)-9.1(e)l-M25a-(e fin1 Tw [(d Repr)]TJ Tw [(es

Secretary-General's Answer

22. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Al-Mulla's appeal in its entirety.

23. The Secretary-General requests the Appeals Tribunal to find that the UNDT correctly found that the reassignment of Mr. Al-Mulla to the Abu Dhabi Office was not contingent on the completion of the project document; that the UNDT correctly found that the reclassification of the UNODC Representative post did not breach the Host Country Agreement; and that the UNDT correctly found that there was no improper motive in the decisions to laterally reassign the Appellant and to subsequently withdraw the lateral reassignment offer.

Considerations

24. The UNDT Judge found that the Appellant had not been prevented from taking up the post in Abu Dhabi and did not accept the reasons the Appellant had given throughout 2009 for not relocating as agreed.

25. The Appellant submits that he could not take up the post before the project had been finalized and signed by his supervisor. He adds that the reclassification of his post in Abu Dhabi was a binding condition of the Host Country Agreement.

26. Although the Appellant indicated that he was ready to travel on 23 November 2009, he actually continued to raise concerns preventing him from travelling. The Appellant acknowledged that the project document had been approved on 21 December 2009². But he did not relocate to take up his post and insisted on a reclassification. He considered a lateral reassignment a demotion and that the downgrading of the post was contrary to the requirements of the Host Country Agreement.

27. On the standard of judicial review of classification decisions, this Court has held in *Fuentes* that it endorses, in principle, the jurisprudence of the Administrative Tribunal of the International Labour Organization (ILOAT), which repeatedly held:

It will not undertake an exercise to classify or reclassify posts in an organisation's structure ..., since decisions in this sphere lie within the discretion of the organisation and may be

² Appeal Brief, p. 4.

set aside only on limited grounds. Such is the case, for example, if the competent bodies breached procedural rules, or if they acted on some wrong principle, overlooked some material fact or reached a clearly wrong conclusion In the absence of such grounds, the Tribunal will not remit the case to the organisation, nor will it substitute its own post evaluation for that of the competent bodies...³

28. The UNDT found that the Organization made good faith efforts to accommodate the Appellant's numerous requests in connection with his reassignment, which was dictated entirely by operational requirements. It held that the delays in finalizing the project document were largely attributable to the Appellant, and not an obstacle to the lateral reassignment and that there was no breach of the Host Country Agreement as alleged by the Appellant.

29. Heads of departments/offices retain the authority to transfer staff members within their departments or offices to vacant posts at the same level (para. 2.4 of ST/AI/2006/3 applicable at the time), and the UNDT held that the decision to reassign the Appellant was not tainted by improper motives, bias or bad faith.

30. This Court has previously held that an appellant has to prove an error of law or fact and should not repeat arguments already considered and rejected by the UNDT⁴. The Appellant does not demonstrate that the UNDT erred in finding that his reassignment was not contingent on the signature of the Host Country Agreement or that the failure to create an L-5 position breached the Host Country Agreement.

31. The Appellant merely voices his disagreement with the UNDT's conclusions and resubmits the arguments made before the UNDT. He has not met the burden of demonstrating how the UNDT erred in making the impugned findings.

Judgment

32. The appeal is dismissed.

³ *Fuentes v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-105, para. 26, quoting ILOAT Judgment No. 2807, 4 February 2009, "Consideration 5".

⁴ *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123, para. 36.

Original and Authoritative Version: English

Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Weinberg de Roca, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Faherty

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)