

Judgment No. 2017-UNAT-766



JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The Appeals Tribunal has before it an appeal of Judgment No. UNDT/2016/191, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 14 October 2016, in the case of

... At para. I.107, the report recorded the ACABQ's enquiry as to the potential impact of post abolition on staff in the Publishing Section who might lose employment if the budget was approved. The report noted that the Department was "actively engaged" with OHRM and other offices to "address the matter proactively":

Abolishments

I.106 A total of 99 posts are proposed for abolishment, including 4 General Service (Principal level), 56 General Service (Other level) and 39 Trades and Crafts posts, at Headquarters under subprogrammes 3 and 4, as follows:

...

(c) The abolishment of 39 Trades and Crafts posts and 22 General Service (Other level) posts in the Reproduction Unit and the Distribution Unit, reflecting the completion of the shift to an entirely digital printing operation ... ;

...

I.107 The Advisory Committee enquired as to the potential impact of post abolishment on staff and was informed that the staff in the Publishing Section who might lose employment would be affected if the proposed budget were approved. In anticipation of this possibility, the Department had been actively engaged, together with the Office of Human Resources Management and other relevant offices, to address the matter proactively. ...

I.108 The Advisory Committee recommends the approval of the proposed abolishment of 99

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24 February 2014 email

... On 24 February 2014, the Executive Officer of DGACM sent an email to the affected staff members, including the Applicant, stating (emphasis in original):

Colleagues,

Mr. Gettu [Under-Secretary-General, DGACM] expresses his gratitude to all who attended the meeting held last Wednesday on the 19th, and has asked that we reiterate two important points which were shared at the meeting for the benefit of colleagues who might not have attended:

First, that in light of the fact that the termination notices were given out over a period of several weeks in January, that the decision has been taken to separate all permanent staff as of 90 days from the date of the latest letter delivered which was 20 January. For all staff with permanent contracts who do not have an appointment, their separation date will be 20 April. Because that day falls on a Sunday, and the preceding Friday is the Good Friday holiday, any staff separating as of that date will be cleared by the Executive Office on Thursday, 17 April (last work day).

Second, that the deadline for the application to the temporary digitization posts has been extended, once again, until 28 February. Staff need to apply to a job opening in order to be considered for posts.

26 February 2014 contract extension

3. Mr. Alsado brought an application before the UNDT challenging “[t]he decision to abolish Applicant’s post, effective January 2014, and as a result to terminate Applicant’s permanent appointment”. Mr. Alsado “seeks the immediate rescission of the 31 December 2013 decision to terminate his appointment”; and “enforcement of the Administration’s duties to search out and find an alternative suitable post to Applicant within the General Service in its duty station (New York Headquarters) [and] to retain Applicant in preference on all other types of appointments”.

4. On 19 October 2016, the UNDT issued Judgment No. UNDT/2016/191. Initially, the Dispute Tribunal found that Mr. Alsado’s application was not moot and was receivable although his “termination never took effect as he was retained against a different post”.³ On the merits, the UNDT found: (i) “General Assembly resolutions 54/249 and 68/246 did not have the effect of taking away the authority of the Secretary-General to terminate permanent appointments based on approved abolition of posts”⁴ and “there was no breach of General Assembly resolution 54/249”;⁵ (ii) “the Secretary-General had the legal authority to terminate the Applicant’s permanent appointment”;⁶ (iii) “the Organization commi

Submissions

7. The UNDT erred in law and exceeded its competence by finding that the application was receivable for several reasons. First, the contested decision was superseded by subsequent actions by the Administration which rendered the application moot and, therefore, not receivable. Mr. Alsado's permanent appointment was never actually terminated; thus, the impugned decision was rendered moot. Second, the decision to abolish Mr. Alsado's post was the consequence of the General Assembly's decision to abolish 59 posts, including Mr. Alsado's. The decisions of the General Assembly are binding on the Secretary-General and, consequently, the General Assembly's decision to abolish the post

11. Given that the Administration fully complied with its obligations as set forth in the Staff Rules, the contested decision was lawful. Since there was no appealable administrative decision on which the UNDT was competent to pass judgment, the UNDT further erred by awarding compensation on the merits.

12. The Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment. In the alternative, the Secretary-General requests that the Appeals Tribunal vacate the award of compensation ordered by the UNDT.

Considerations

13. Article 8(1)(a)

Judgment

19. The appeal is granted; Judgment No. UNDT/2016/191 is vacated.

Original and Authoritative Version: English

Dated this 14th day of July 2017 in Vienna, Austria.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Knierim

Entered in the Register on this 5th day of September 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar