Case No.: UNDT/NY/2009/016/
JAB/2008/018

Judgment No.: UNDT/2010/004

Date: 13 January 2010

Introduction

1. The applicant contests a decision to separate her from service upon abolition of her post. She claims that the respondent created another post with a different job title which was essentially the same as her post in order to employ another staff member on a fixed-term appointment whom the Administration wished to retain. She further claims that the respondent then abolished the applicant's post as a means by which to unfairly separate her from the Organization. The respondent initially contended, when the matter was pending before the Joint Appeals Board, that the application was time-barred. However, this matter was not indicated as an issue at

rule that justice must not only be done, it must be seen to be done, is particularly apt. Although a great deal can be done on documents without undermining this principle, at some stage or other of the proceedings there should be a public hearing at least sufficient to demonstrate the workings of the Tribunal and the way in which the issues in any particular case are being approached (and see art 16.6 of the Rules of Procedure of the Dispute Tribunal). Applying this principle to this case, I decided that there should be a public hearing on the merits and, accordingly, the parties attended the Tribunal to make submissions on 27 August 2009.

Facts

5. The applicant joined the Organization in 1986 as a Bilingual Secretary at the G-3 level on a short-term appointment. On 19 December 1986, she was promoted to

the Tribunal should apply this law in this case. However, it seems to me that, as the following shows, the evidence is sufficiently clear to make this course inappropriate.

22. Although it may well be that the applicant believed the agreement was temporary in nature, in the sense that the previous situation could be restored if she wished, the question is whether there is evidence that supports the correctness of such a belief. The applicant relies on a letter of 26 February 1999 written by her to the then Deputy Director of the Division of Human Resources, which states—

> I currently hold the title of Principal Secretary in the Programme Funding Office. From January 1997, after a number of discussions between [the then Director, the Human Resources Officer] and myself, a verbal decision was taken in March 1997 that I would temporarily report to the Deputy Director [illegible]

> I hope you will have some sympathetic understanding for this decision and I trust I can count on you to provide the best possible support to the Deputy Director in carrying out her responsibilities.

23. Although the applicant's letter was written some two years after the event, it provides some evidence that it was agreed that the change of reporting line was to be temporary. However, even if this arrangement was to be "temporary", the response to the applicant's letter made it clear that any return to the former arrangement required the agreement of all affected parties and could not be done simply at the behest of the applicant. In light of the terms of this letter, it is scarcely surprising that the reply of the incoming Director is cast as a refusal to agree to the returns sought by the applicant. The mere fact that there was a direct contradiction of the applicant's claim that the changed arrangement was temporary does not imply an acceptance of this description. The correct inference to draw from this correspondence is that, if the position were temporary this was only in the sense that it could be changed by agreement of all the relevant parties. By parity of reasoning, it could correctly be stated that the arrangement was permanent until it was changed by such agreement. Indeed, it seems to me, that this is the more appropriate description, especially because the applicant's return to her former role would require displacement of the person then performing that function and it was clearly envisaged that this person could not be removed by such rearrangement without her consent. The applicant did not respond to either of the letters dealing with her request and it should be inferred that this was because she accepted they correctly stated the situation.

24. The evidence discloses that the applicant did not again raise the matter until being informed on 15 August 2007 that the position of Secretary to the Deputy Director was to be abolished. The applicant claimed that she only "temporarily" encumbered that post and that her permanent post was Principal Secretary (Executive Assistant) to the Director, despite her absence from that post for well over ten years. Management was entitled to act on the basis that she accepted the position as permanent rather than temporary.

25. Accordingly, the arrangement was permanent either in the sense that it required the agreement of all relevant parties for the applicant to resume her earlier position or in the sense that she acquiesced in the implicit assertion of management that she did not have the option to return at her behest alone. It follows that the applicant was, in the relevant sense, the occupant of the post that was to be abolished.

Was the abolition of the post ***bona fide***?

26. Following an Organizational Review exercise and budget review, two GS-5 posts in the same section, including the post then encumbered by the applicant, were abolished. The Deputy Director had no use for secretarial support, as he administered his correspondence himself. The "new" post was, according to the respondent, created to support a newly created "Strategic Unit" in the division, of which the most significant change was that it was intended to support multiple staff rather than provide a secretary to a senior manager. The new post reported to a Senior Adviser whose line manager was the Deputy Director. Thus, whilst both posts were similar, the old post emphasized the need for significant secretarial experience, whilst the new post emphasized working experience in the administrative field. I have carefully examined the descriptions of both the old and new jobs and, considering them as a whole, am left with a strong overall impression that the applicant's old job involved considerably greater personal responsibility than the new job and that the context for the exercise and attributes of that responsibility are substantially different.

27. Both positions involve administrative tasks such as making travel arrangements, dealing with correspondence, contributing to daily office management, scheduling and arranging meetings, minute-taking and filing and external relations. However, the old job required the incu Tc 0 he [travel

work but its complexity. As to IT skills required for the new job, one of the basic education requirements of the new job description is familiarity with Microsoft Office, Lotus Notes and two other electronic database software systems. This was not a specific requirement of the old job, although I do not doubt that the applicant has some familiarity with the first two programs. She did not claim familiarity with the other systems, which were concerned with budget and finance. Although the new job description does not dedicate any specific percentage of time to this duty, and hence it ought not to be regarded as a major attribute of the position, the fact that the old job did not specify any such requirement or make references to the additional software systems is not insignificant and does suggest a genuine, as distinct from artificial, change in job requirements. Whilst it is true that these detailed requirements do not themselves demonstrate markedly different job responsibilities, nevertheless, they do significantly support my overall impression of substantial difference. It is necessary, of course, to examine the detail of the job descriptions, but it is important in my view to consider these details as a whole. When this is done it appears to me that the two jobs are very different. I repeat that the job occupied by the applicant certainly seems to have carried the heavier responsibilities but the new job not only differed in degree; it differed also in substance and because of the way in which its particular attributes are described and the different structure of which it is a part.

28. Whether a new post is sufficiently different from another post in the same section as to require the abolition of one and the advertisement of the other is obviously a question of fact and degree, requiring the exercise of careful managerial judgment. The ways in which one post relates to the others with which it is connected are rarely simple and opinions about what adjustments are desirable when reorganization occurs can quite reasonably differ and suggest different reasonable outcomes. Having regard especially to the length of time for which the applicant had occupied her position, I do not think that the decision not to retrain her, but rather to

29. Overall, it seems to me that the preponderance of evidence favours the conclusion that the impugned changes were motivated by genuine organizational readjustments and were not influenced by any improper considerations.

Did the respondent meet its obligation to the applicant as a permanent staff member on an abolished post?

30. The documents which have been tendered as to the recruitment process for the new post show that the panel in question considered the applicant not to have equal qualifications to the individual who was successful. A memorandum of 9 December 2007 dealing with the recommendation for the position contains a detailed description of the skills and experience demonstrated by the applicant in the assessment process and entirely justifies, in my opinion, the conclusion of the panel that the recommended candidate was manifestly the best candidate out of the four who were shortlisted. On 11 December 2007, a Human Resources Officer raised the question why two out of the three candidates who were staff on abolished posts were not found suitable for the new position mentioning, in particular, the applicant and the Officer's understanding that the applicant was currently performing administrative assistant work of a type similar to that required by the post under recruitment. The Deputy

Conclusion

35. The application is dismissed.

(*Signed*)

Judge Michael Adams

Dated this 13th day of January 2010

Entered in the Register on this 13th day of January 2010

(*Signed*)

Hafida Lahiouel, Registrar, New York