

Introduction

1. The Applicant is a former staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO). He served at the GS-4 level.
2. On 11 November 2015, he filed an Application contesting the decision not to renew his fixed-term appointment and to separate him from service on the grounds of abolition of his post.
3. The Respondent filed a Reply to the Application on 14 December 2015.
4. The Tribunal, with the consent of the Parties decided, in accordance with art. 16.1 of the Tribunal's Rules of Procedure, that an oral hearing is not required in determining this case and that it will rely on the Parties' pleadings and written submissions.

Facts

5. The Applicant had served in Bukavu within MONUSCO as a Language Assistant (LA) until his fixed term appointment which ended on 30 June 2015 was not renewed on grounds of abolition of post.
6. Before the said abolition, the United Nations Security Council in its Resolution 2147 (2014)¹, had called on MONUSCO to enhance the flexibility, effectiveness and capacity of the operations of the military force in the implementation of the Mission's mandate. It also pointed to the need for a clear exit strategy.
7. Thereafter, on 26 February 2015, the Secretary-General proposed a budget for MONUSCO for the period from 1 July 2015 to 30 June 2016². The said budget, among other things, proposed the abolition of 80 General Service (GS) LA posts.

¹ (Democratic Republic of Congo), adopted on 28 March 2014.

² Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo submitted pursuant to paragraph 39 of Security Council resolution 2147 (2014).

8. Following the Secretary-General's budget proposal to the General Assembly, MONUSCO issued Information Circulars to its entire staff on 6 and 9 March 2015, 14 April 2015, and 20 April 2015, with regard to the proposed budget, the establishment of a Comparative Review Panel (CRP), and the review criteria.

9. Under the proposed new structure for the Mission, which was approved by the General Assembly, the military force in Bukavu was to be reduced by one battalion and Kinshasa would no longer be an operational base. As a result, LA posts in Kinshasa and Bukavu were abolished. This meant that a budgetary reduction of 80 LA posts in the 2015/2016 budget cycle for M149(inhn4 180.i(t)v83)6(s)

15. Shortly thereafter, the Applicant was offered an Individual Contractor (IC) contract by the United Nations Office for Project Services (UNOPS) for the position of LA within MONUSCO. This IC contract was for a period of one-month effective 1 July 2015 but was subsequently extended.

Applicant's case

16. The Applicant's case may be summarized as follows:

The recommendation of the Secretary-General to the General Assembly that led to the abolition of the Applicant's post was in violation of the United Nations statutory framework.

a. The Secretary-General's report of 26 February 2015 to the General Assembly regarding the proposed financing arrangements for MONUSCO for the period from 1 July 2015 to 30 June 2016 recommended the abolition of 80 LA posts in MONUSCO for the 2015/2016 budget cycle. The said report did not make any reference to reengaging these LAs as ICs.

b. That report was in turn considered by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) which then issued a report to the General Assembly on 1 May 2015 approving the Secretary-General's recommendation for the abolishment of 80 LA posts. As with the report of the Secretary-General, no reference was made to the fact that these 80 LAs would be reengaged as ICs.

c. On the basis of the General Assembly's endorsement, MONUSCO then proceeded to inform the Applicant of the non-renewal of his fixed-term appointment and separation after 30 June 2015. Shortly thereafter, the Applicant was then offered an IC contract.

d. The mere fact that MONUSCO decided to engage the LAs under agreements administered by UNOPS, a United Nations Common System entity, as opposed to directly engaging the individual contractors

improper purposes. The Applicant bears the burden of proving that the

representatives had an opportunity to respond by engaging in discussions with the National Staff Union representatives under the UNOPS contractual modality.

The Respondent did not violate any provisions of ST/AI/2013/4.

n. The Applicant's claim that the Organization violated section 3.7(b) of ST/AI/2013/4 is inapposite. Section 1.1 of that Administrative Instruction sets out the scope and procedure under which the United Nations Secretariat may directly engage individual consultants and individual contractors for temporary assistance in order to respond quickly, flexibly and effectively to organizational priorities.

o. MONUSCO did not engage LAs under the framework of ST/AI/2013/4. Rather, the Mission decided to engage individual contractors under agreements administered by UNOPS which are governed by the UNOPS Financial Regulations and Rules.

p.

Case No. UNDT/NBI/2015/159

Judgment No. UNDT/2016/166

(Signed)

Judge Nkemdilim Izuako

Dated this 23rd day of September 2016

Entered in the Register on this 23rd day of September 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi