Background

1. The Applicant is a former FS-5 Administrative Assistant with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).

2. On 16 February 2018, she filed an application with the United Nations Dispute Tribunal contesting the decision to terminate her fixed-term appointment.

3. The Respondent filed a rep nBT2 0 612 792 rW3.

was to exclude staff members who would be subject to a dry cut.[8]

13. On 22 August 2017, the Chief of Staff provided the Mission leadership with an approved list of staff reductions.[9] On the same day, the Applicant received a letter from the MONUSCO Chief Human Resources Officer (CHRO) notifying her that a number of posts in her section would have to be reduced and consequently, MONUSCO would undertake a comparative review of staff in her section with similar functional titles and levels.[10]

Rationale for not retaining the Applicant in service

14. On 23 August 2017, the SRSG informed all MONUSCO staff that the Mission had determined which functions would be reduced in light of the budget cuts, while continuing to identified in Security Council resolution 2348 (2017). The SRSG also announced a comparative review process, which would determine which staff would be retained.[11]

15. On 25 August 2017, the MONUSCO CHRO informed the Applicant that MONUSCO would be seeking the approval of the Department of Management to terminate her appointment effective 30 September 2017. The CHRO explained that the rationale for this decision was because there were no other posts in her section with the same functional title in the same category, at the same grade encumbered by another staff member with a contractual modality that could take precedence over the

12

16. On 5 September 2017, the CRP Panel submitted its report to the Compliance Review Committee (CRC) which was responsible for reviewing the

[8] Reply, annex 8.
[9] Reply, annex 4.
[10] Application, para. 3 and annex 5.
[11] Reply, annex 5.
[12] Application, annex 6.

recommendations of the CRP Panel.[13]

*Vetting by Compliance Rev7 10.08 Tf..wtttee(13)]TJETQ0.00000912 0 612 792 reW*nBT/F5 12 Tf1 0 0 1 114*

c. Evidence that the decision to terminate her appointment was improperly motivated

33. The universal obligation of both employee and employer to act in good faith towards each other includes acting rationally, fairly, honestly and in accordance with the obligation of due. That obligation has not been met in this case.

34. In the event of retrenchment, the Administration is bound to demonstrate that all reasonable efforts have been made to consider the staff member concerned for available suitable posts. Where there is doubt that a staff member has been afforded reasonable consideration, it is incumbent on the Administration to prove that such consideration was given. Nevertheless, while efforts to find a suitable post for the displaced staff member rest with the Administration, the person concerned is required to cooperate fully in these efforts.

35. The particular circumstances of this case have to be considered. Staff are generally not considered for new assignments involving relocation within six months of their reaching the age of retirement. The time frame for the usual selection processes would have precluded this avenue of reassignment as an immediate solution. But the Applicant was already rostered for FS-5 positions in administration and did not have to go through

contract was about to be converted to continuing employment therefore she could have had priority of retention over fixed-term appointees; (c) that her active membership (vocal) in the staff union was used against her in deciding to abolish her post; (d) that there was a history of trying to prematurely separate her from service as far back as 2016; and (e) that she qualified for priority selection to be retained in service as stipulated in staff rule 9.6.

62.

It is the view of this Tribunal that the above reasoning though in reference to permanent staff member holds good even for fixed-term staff members such as the Applicant. Therefore, the onus was on the Applicant to show an interest and apply for a position for which she was suited
The Respondent did not violate staff rule 9.6 as alleged by the Applicant.

(b) That her fixed-term contract was about to be converted to a continuing employment therefore she could have had priority of retention over fixed-term appointees.

70. The fact that the ement were never considered does not constitute a violation of her rights since the factors that the Administration was mandated to consider are clearly outlined in staff rule 9.6 and those were considered.

71. The Applicant has not shown how she met all the requirements for conversion to a continuing appointment. The legal position on the status of tenure of contracts is well established by UNAT which in reference to staff rules 4.12 and 4.13 has held that;

> temporary and fixed- term appointments do not carry any expectancy, legal or otherwise, of renewal. That there is no such expectancy of renewal or conversion, irrespective of the length of service.[24]

In view of these statutory provisions
basis. This applies to her assertions that she would have benefitted from an extension of retirement age to 65.

72. The Applicant has not provided any evidence to show that her EOD was changed without her knowledge and why she did not raise this fact with Administration when she became aware of it.

(c) Her active(vocal)

against her in deciding to abolish her post.

73. It is not enough to just allege that the Applicant was victimised because she was an outspoken staff representative. The fact that her colleagues in the FSU voiced concerns that this may have unduly influenced MONUSCO
lack of action is mere speculation without any factual basis whatsoever.