



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2019/020

Judgment No.: UNDT/2021/050

Date: 3 May 2021

Original: English

Before: Judge Francesco Buffa

Registry: Geneva

Registrar: René Vargas M.

AMOUSSOUGA-GÉRO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Setondji Roland Adjovi

Counsel for Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Nusrat Chagtai, AAS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 8 January 2019, the Applicant, a former D-1 Head of Integrated Office, Political Affairs, in the Office of the Deputy Special Representative to the Secretary-General/Resident Coordinator (“DSRSG/RC”) in the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”), contested the non-renewal of his fixed-term appointment.

Facts and procedural background

2. The Applicant held a fixed-term appointment with MINUSCA.

3. The Applicant joined MINUSCA on 19 March 2016 on a one-year fixed-term appointment expiring on 18 March 2017. On 19 March 2017, MINUSCA renewed the Applicant’s appointment until 18 March 2018.

4. On 15 November 2017, the Security Council extended MINUSCA’s activity to 15 November 2018 with a new mandate and identified priority areas of focus.

5. On 19 December 2017, MINUSCA sent a broadcast to all staff members informing them of an anticipated reduction in posts in the 2018-2019 budget to align staffing with the new mandate. MINUSCA also sent Mission broadcasts on 26 January 2018 and 15 February 2018 updating all staff members on the restructuring process.

6. On 24 February 2018, following a recommendation by the Section Chief, the MINUSCA’s Director of Mission Support (“DMS”) approved the Applicant’s request for renewal of his fixed-term appointment until 18 March 2019.

7. On 7 March 2018, the Secretary-General’s proposed 2018-2019 budget recommended the abolition of 223 posts, including the post encumbered by the Applicant.

8. On 7 April 2018, the Applicant was notified that his post was among those marked for downsizing in the 2018-2019 budget proposal by the Secretary-General. The Applicant was also informed that the process for termination of his appointment effective 1 July 2018 would be initiated.

9. By email of 11 April 2018, MINUSCA's Human Resources Section informed the Applicant that his contract would only be extended up to 31 May 2018 pending completion of his performance appraisal. The Applicant's contract was extended further until 31 July 2018.

10. The Applicant's performance appraisal was completed on 28 May 2018 with an overall rating of "successfully meets expectation".

11. On 5 July 2018, by resolution 72/290, the General Assembly approved the budget for MINUSCA. The approved budget included, among others, the abolition of the post encumbered by the Applicant.

12. On 18 July 2018, the Officer-in-Charge of Human Resources notified the Applicant that his contract would not be renewed beyond its expiration on 31 July 2018 following the abolition of his post ("the contested decision").

13. On 24 July 2018, the Applicant filed a request for management evaluation of the contested decision.

14. By application filed on 30 July 2018, the Applicant requested suspension of action, pending management evaluation, of the contested decision.

15. By Order No. 114 (NBI/2018) of 30 July 2018, the Tribunal found that, "unlike the other three D-1 staff members affected by the abolishment of their posts, the Applicant was not given full and fair consideration for placement on any of the reclassified P-5 posts"; the Tribunal believed that the failure of the Administration to conduct a proper comparative review process ("CRP") constituted an irregularity that vitiated the legality of the decision not to renew the Applicant's appointment, which

was consequently *prima facie* unlawful; accordingly, the Tribunal suspended the implementation of the contested decision pending management evaluation.

16. On 17 October 2018, at the outcome of the management evaluation, the Tribunal's Order No. 114 (NBI/2018) ceased its legal effects and on 27 October 2018 the Applicant was separated from service.

17. On 8 January 2019, the Applicant lodged with this Tribunal the application mentioned in para. 1 above.

18. On 11 February 2019, the Respondent filed his reply stating that the application was without merit.

19. On 26 January 2021, the case was assigned to the undersigned Judge.

20. By Order No. 42 (GVA/2021) of 15 February 2021, the Tribunal informed the parties of its finding that the matter could be adjudicated on the papers without holding a hearing. The Tribunal found it appropriate to grant the Applicant's request to submit observations to the reply, which the Applicant did on 5 March 2021.

21. On 10 March 2021, the Respondent filed a motion moving the Tribunal to request the Applicant to produce evidence with respect to his request for damages. The Applicant responded to this motion by filings made on 15 and 18 March 2021.

Consideration

22. The post of Head of Integrated Office, Political Affairs within the Office of the DSRSR/RC at the D-1 level, encumbered by the Applicant, was abolished by the General Assembly's resolution 72/290 on 5 July 2018.

23. According to the Respondent, the decision to abolish the Applicant's post followed a "legitimate" restructuring of the mission aligned with its new mandate; the D-1 post encumbered by the Applicant was abolished because the role of the office it belonged to was anticipated to abate as the mission transitioned out of the lead role in supporting the Host Government to develop strategies for tackling illicit exploitation of natural resources.

24. The Tribunal recalls that the 2018-2019 budget identified several posts for retrenchment and that the one that the Applicant encumbered was the only such post at the D-1 level in his office and was specifically identified for abolition. It further stresses that, once the General Assembly abolished the post, MINUSCA was required to implement that decision, and that the Dispute Tribunal cannot substitute its own views for those of the Organization, who solely has the power to restructure some or all of its departments or units.

25. The Applicant contests the decision not to extend his fixed-term appointment alleging his legitimate expectation that his contract would be extended; in particular, he contends that the recommendation of the extension of his appointment until March 2019 generated a clear expectation of renewal expressed in writing, which was binding on the Organization.

26. The Respondent responds that the Applicant had no expectation of renewal of his appointment because once the Secretary-General submitted the 2018-2019 budget on 7 March 2018, MINUSCA kept the Applicant informed regarding the proposed abolition of his post. Moreover, the DMS' approval of the request for extension of the Applicant's appointment did not constitute, in the Respondent's view, *an express* promise in writing, but merely a recommendation. Nor did the renewal of the Applicant's ground pass for a year constitute such a promise.

27. The Tribunal recalls that staff regulation 4.5(c) and staff rule 4.13(c) both provide that a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal.

28. Moreover, the Appeals Tribunal's well-established jurisprudence provides that a legitimate expectation of the renewal of an appointment of limited duration must be based on a firm commitment, expressed in writing (see *Abdalla* 2011-UNAT-138, para. 24, citing *Ahmed* 2011-UNAT-153; *Kule Kongba* 2018-UNAT-849, para. 25, citing *Igbinedion* 2014-UNAT-411, para. 26).

29. In the present case, given that the authority to renew the Applicant's appointment rested with the Human Resources Section and not the DMS, the mere recommendation by the latter of extension of the contract did not constitute a firm commitment for the Organization under the applicable jurisprudence, nor did the extension of his ground pass, which is a mere organizational permission.

30. The Tribunal is aware, in any case, that both the recommendation for extension and issuance of the ground pass occurred before the Secretary-General proposed, and the General Assembly approved, the abolition of the post that the Applicant encumbered.

31. The Tribunal further notes that by letter of 7 April 2018 the Officer-in-Charge ("OIC") of the Human Resources Section informed the Applicant that his contract would possibly be terminated following the proposed abolition of his post under the proposed 2018-2019 budget.

32. In the present circumstances, where the Applicant was aware of the general situation of MINUSCA (recalled in paras. 5 and 7), that his post had been scheduled for abolishment and that the Human Resources Section didn't follow-up on the DMS' recommendation for extension of his contract, no expectation of renewal of contract could have reasonably arisen.

33. Therefore, the Tribunal finds that the Applicant did not have a legitimate expectation of renewal of his fixed-term appointment.

34. The Applicant argues that the decision to abolish his post was designed to “get him out of the Mission” despite the need to retain his functions and that he should have been included in a comparative review process along with other D-1 level posts to rank which of these posts should be abolished. He further complains that no efforts were made by the Organization to place him in any available post even at the lower level. He finally states that all the posts abolished were encumbered by persons of African descent which shows further bias and racial discrimination.

35. It results from the file that the Office of the DSRSR/RC was a “section” within the mission structure, and that the Applicant was the only staff member in his section performing his functions. As the Respondent highlighted, under the terms of reference for the staff retrenchment in the mission, the Applicant’s post was among those whose unique function was to be abolished in the affected unit and therefore, deemed to be a “dry cut”. As the Applicant was the only D-1 in the concerned office, there was no requirement for the Administration to conduct a comparative review.

36. The Tribunal is also of the view that, notwithstanding the content of the 2018 suspension of action Order, the consideration of the Applicant for placement on any of the reclassified P-5 posts is not a matter relevant in this case, whose subject is only the non-renewal of the contract held against the D-1 position. Nor in the case—concerning a non-renewal of contract and not a dismissal or termination—it may be envisaged the obligation upon the Administration to facilitate the placement of the Applicant against vacant posts. The Tribunal is persuaded that the abolishment of the Applicant’s post was part of the wider restructuring in MINUSCA and sees no indication of bias against the Applicant in such restructuring. Having reviewed the evidence on file, the Tribunal appreciates indeed no evidence of discrimination or bias. To the contrary, the reasons provided by the Administration in support of its decision to abolish the Applicant’s post appear to be supported by the facts on record.

37. Therefore, the Tribunal finds no reason to rescind the contested decision.

38. The Tribunal eventually notes that on 10 March 2021, the Respondent filed a motion moving the Tribunal to request the Applicant to produce evidence with respect to the Applicant's request for damages on his employment status after his separation from MINUSCA. The Tribunal also noted that the Applicant responded to this motion. However, given that the Tribunal rejects the application, no further evidence on damages is required and the Respondent's motion is thus moot.

Conclusion

39. For the reasons stated above, the Tribunal DECIDES:

- a. The application is dismissed; and
- b. The Respondent's 10 March 2021 motion for production of documents is rejected.

(Signed)

Judge Francesco Buffa

Dated this 3rd day of May 2021

Entered in the Register on this 3rd day of May 2021

(Signed)

René M. Vargas M., Registrar, Geneva