
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/050

Judgment No.: UNDT/2023/144

Date: 28 December 2023

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: New York

Registrar: Isaac Endeley

TADIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Martine Lamothe, OSLA

Counsel for Respondent:
Kong Leong Toh, UNOPS

9. On 3 August 2022, the Applicant received a response to her management evaluation request upholding the contested decision.

10. On 17 November 2022, the Applicant filed her application with the Dispute Tribunal.

11. On 4 November 2023, at the CMD, the parties, *inter alia*, agreed that the case may be adjudicated on the papers.

12. Following the CMD, the parties filed their closing submissions on 28 November 2023.

13. On 18 December 2023, the Applicant filed a motion for anonymity. She cited *inter alia* experience of stress, reputational harm and impact on her family's well-being as the reasons for the request.

14. On 26 December 2023, the Respondent filed a response to the Applicant's motion for anonymity submitting that the motion be rejected because the grounds for seeking anonymity are not valid.

Consideration

Preliminary motion on anonymity

The Appeals Tribunal has held that:

Absent any order directing otherwise, the usual or standard position has been that the names of the parties are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and accountability and that names of the parties should be included in judgments of the Appeals Tribunal (AAE 2023-UNAT-1332, para. 155).

15. Consistent with the above Appeals Tribunal jurisprudence, this Tribunal may grant a moti

22. Secondly, the Applicant submits that the Organization made no effort to identify suitable posts to place the Applicant upon the decision to abolish her post despite her being an FTA holder and having a record of satisfactory performance since 2005 with the United Nations.

23. Finally, the Applicant alleges that the contested decision was motivated by improper motive. The Applicant submits that a series of incidents between the Applicant and senior management, taken in totality, suggest that the Administration harbored a desire to terminate the Applicant's employment, and that the abolition of her position served as a ruse to effect her departure. Crucially, the absence of any discernible effort to locate a replacement position for the Applicant points to the fact that the management saw her removal as a permanent one.

24. In response, the Respondent states that the contested decision was lawful as the record clearly shows that there was a genuine restructuring. Thus, the Respondent argues that the presumption of regularity stands satisfied, and therefore the burden of proof shifts to the Applicant who must show through clear and convincing evidence that the contested decision was unlawful, procedurally flawed or improperly motivated. The Respondent submits that the Applicant has not met her burden of proving that such was the case.

25. The Applicant's claim is that the abolition of her post was not a result of genuine organizational restructuring and that the Administration failed to demonstrate any significant effort in carrying out its responsibility to find a replacement position for the Applicant. The Tribunal will examine each of these claims in turn.

Was the restructuring genuine?

Changes to positions

26. The Applicant claims that the restructuring process was not genuine and that the new post created to replace her post was effectively conducting the same duties as her position. The Respondent denies and outlines through evidence the steps taken in the restructuring process and the eventual non-tgpgy cr'qh'yj g'Cr r kcpw'FTA.

27. In terms of the steps taken, the Tribunal notes that from April 2021 to June 2022, NYSC carried out a review of the business needs and financial support services provided by two finance teams within NYSC, namely the SDC finance team (where the Applicant served) and the Peace and Security Cluster *öRUEö+finance team.

28. The record, which includes the detailed terms of reference for the SDC-Hkpcpeg"Vgco "cv'cppgz"7"qh'yj g'Tgur qpf gpw'gr n{, shows that following a review of the finance functions needed by NYSC, significant changes were proposed to the finance team structure. For instance, that the two prior separate PSC and SDC finance teams be merged to create a single NYSC finance team.

29. The merging of the finance teams necessitated the abolition of three redundant positions including the öHkpcpeg" Cuuqekvgö" (G-6) post that the Applicant encumbered, and the creation of three new positions, including a

31. The Applicant claims that she should have been retained by the Organization despite this restructuring process as one of the three new posts titled "Human Resources Officer" (P-5) International Civil Service (ICS) created during the restructuring is substantial.

37. The record indicates that NYSC Management informed affected team members, including the Applicant, that the teams would be undergoing a restructuring exercise. For example, on 9 August 2021, the Applicant commented on a document that described the plan for the Finance Team's future arrangement which was used during the restructuring process. The Applicant was therefore aware that her team would be affected by the restructuring.

38. The Tribunal finds that the Applicant was made aware of the restructuring exercise. She has not alleged that she was prevented from making any observations on the processes; on the contrary, she contributed her comments toward future arrangements of the Finance Team. The Applicant has not cited any staff regulation or rule that entitled her to be consulted on the abolition of her post. The legal obligation on the Respondent under the rules was to give her notice of non-renewal of her appointment due to the abolition of her post.

Improper motives- Disagreements with senior management

39. The Applicant alleges that the contested decision was motivated by improper motives. In this regard, the Applicant submits that a series of incidents between the Applicant and senior management, taken in totality, suggests that the Administration harbored a desire to terminate her employment. In particular, the Applicant states that on 1 March 2021, she received negative comments about her professionalism, politeness, and impact on team morale as a result of proposing a rescheduling of an upcoming meeting. The Applicant states that she did not have any prior knowledge regarding the meeting, but her suggestion alone resulted in negative feedback. During the Mid-Year Performance Review meeting on 20 September 2021, the Applicant submits that she received feedback from her Secondary Supervisor regarding her performance. She was advised to improve her communication skills and be more engaging with UNOPS NYSC Senior Management. Specifically, her supervisor recommended that she be "sweeter" or "more entertaining" in her approach. Additionally, the Applicant was informed that her overall performance might not be

deemed satisfactory by the end of the year. The Applicant claims that in November and December 2021, her request for telecommuting/flexible working arrangements was denied without any justification.

40. The Respondent avers that the actions of the Applicant's supervisors of improper motive have no merit. The Respondent states that a plain reading of the annexes to the Applicant's application show that the Applicant's supervisors were professional in their dealings with the Applicant. However, when they had to deal with the above mentioned situations: the Applicant (i) failed to respond to the Secondary Supervisor's messages, (ii) turned down a meeting requested by colleagues at UNOPS

Conclusion

46. The Tribunal finds that the Applicant has not met the requisite standard to rebut the presumption that the restructuring was genuine and therefore a valid reason for not renewing her FTA.

47. The Tribunal decides to reject the application.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 28th day of December 2023

Entered in the Register on this 28th day of December 2023

(Signed)

Isaac Endeley, Registrar, New York