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Before

Case N

Date:

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JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2014/132, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 11 November 2014 in the case of *Matadi, Johnson, Gaye, Doe J. and Doe P. v. Secretary-General of the United Nations*. The Secretary-General appealed on 12 January 2015. On 11 March 2015, Mr. Marvin Matadi, Mr. Jackson Doe Jr., Mr. Prince Doe, Ms. Susannah Gaye and Mr. Philemon Johnson (*Matadi et al.*) filed a consolidated answer.

Facts and Procedure

2. The facts as found by the Dispute Tribunal read as follows:¹

... The Applicants were national staff who held fixed-term appointments with [the United Nations Mission in Liberia (UNMIL)] until 30 June 2013. Mr. Matadi was a Warehouse Assistant (GS-3); Mr. Johnson was an Engineering Technician (GS-4); Ms. Gaye, Mr. Doe. J. and Mr. Doe P. were Materials and Asset Management Assistants (GS-3).

... On 21 June 2012, the General Assembly adopted resolution 66/264, requesting the Secretary-General to comprehensively review the civilian staffing requirements in each peacekeeping mission, especially when there was a change to peacekeeping force levels, to ensure that it was appropriate to implement the current mission mandate.

... UNMIL, which had higher levels of support staff than other peacekeeping missions of similar size, approved a budgeting framework in August 2012 with the aim

General Assembly. [The Director of Mission Support (DMS)], UNMIL, said in evidence that the managers made the decision about how many staff members were to be retrenched. This was not discussed with the staff unions.

... On 16 October 2012, the Special Representative of the Secretary-General, UNMIL (“SRSG”), issued a memorandum to all civilian UNMIL staff, announcing a comprehensive civilian staff review in line with Security Council resolution 2066 (2012) and General Assembly resolution 66/264.

...

... [The DMS] told the Tribunal that by the end of October 2012, UNMIL had decided on the posts to be abolished in each section. These posts included all those of Warehouse Assistants (GS-3), encumbered by Ms. Gaye, Mr. Doe J. and Mr. Doe P. Since this entire occupational group was slated for abolition, their positions were treated like “unique posts”. As no comparators existed within the same unit/section, no comparative review was deemed needed.

... In December 2012, the SRSG and the DMS, UNMIL, held two Town Hall meetings at which they announced a reduction of approximately 100 national posts in UNMIL. [The President of UNMIL’s National Staff Association (NASA)] told the Tribunal that NASA was not consulted about the number of posts to be abolished or on staffing matters during 2012.

... In early 2013, three *ad hoc* bodies were created to conduct the UNMIL retrenchment exercise:

- a. a Steering Committee (“SC”), chaired by the Deputy SRSG, Recovery and Governance (“D/SRSG”), to give overall oversight and high level review of the entire staff retrenchment process;
- b. a Working Group (“WG”), chaired by the DMS, to ensure that the individual work stream activities related to the implementation of the staff retrenchment process were implemented within deadlines; and
- c. a Comparative Review Panel (“CRP”), chaired by the Chief of Administrative Services, to review the master lists of posts to be abolished based on agreed modalities, criteria and a point scoring mechanism, and to compile score sheets for each of the staff members who were to be comparatively reviewed. The continuing employment of these staff members with UNMIL was to be determined on the basis of their ranking under this scoring system.

... In January 2013, NASA and the Field Staff Union (“FSU”), which represented international staff, were requested to appoint representatives to participate in each of the three *ad hoc* bodies. NASA appointed [an UNMIL staff member and the President of NASA].

... Draft guidelines to be used by the CRP were issued on 20 January 2013. The criteria to be taken into account in the scoring exercise included “relevant experience in a given field”.

... At the first meeting of the SC, on 29 January 2013, all SC members were requested to sign a confidentiality agreement requiring them to refrain from any unauthorized use of information to which they had access in the course of their assignment with the SC, or any related groups. The NASA representatives objected to signing this undertaking because they believed that it would compromise their ability to meet their responsibility to represent their constituents and other staff members.

... In spite of this objection, all members, including NASA representatives, participated in the first meeting of the SC. Among other items, a score sheet template for the comparative review of staff members to be retrenched was distributed and agreed on by the participants. This score sheet included a column to rate the relevant experience of the staff members under review.

... The second meeting of the SC was convened on 31 January 2013. The NASA representatives were presented with a re-drafted confidentiality undertaking. They felt this wording did not tackle their concerns and stated that they were not ready to sign it. They were asked to leave the meeting and, after that, NASA did not participate in any further meetings of the *ad hoc* bodies.

... On 6 February 2013, following advice from [the Field Personnel Division (FPD)], DFS, in [the United Nations Headquarters], the final version of the Guidelines c.2558 Tw[(n)-1.8f522 Tw

...

... At para. 7, the [Information] Circular referred to further circulars which were to be issued as and when required “in order to inform staff on a more formal basis of updates or announcements pertaining to the process”. It stated that this might include an announcement of the principles of the staff retrenchment process, the membership and terms of reference of constituted UNMIL committees and when they would meet.

... On 22 February 2013, the Secretary General submitted a proposal to the General Assembly for UNMIL budget for the

... The D/SRSG addressed a memorandum dated 5 April 2013 to the NASA President, communicated by email, to inform the latter about the new CRP. [...]

...

... The Chair of the new CRP [...] told the Tribunal that when he and the other two members of the new CRP arrived in Monrovia, they first met with the President of NASA and other staff representatives. [...]

... The new CRP met from 11 to 13 April 2013. [...]

... [The Chair of the new CRP] described the comparative review process for locally recruited posts as a sterile and mathematical process. The panel members knew none of the staff members being considered. Out of the 110 posts identified for abolition as of 30 June 2013, 23 were vacant and 21 were assessed to be unique posts for which no comparative review was to be conducted. The 66 staff members on the remaining posts were assessed by the CRP against the score sheets to identify those who were to be retrenched.

...

... Mr. Matadi's and Mr. Johnson's scores were below the cut-off point in their respective occupational groups. The DMS sent the record of the comparative review of the 110 national posts scheduled for abolition to the Officer-in-Charge, FPD, on 29 April 2013. The contracts of those staff members who were directly affected, including the five Applicants, were recommended for non-extension beyond 30 June 2013.

... On 30 April 2013, the Advisory Committee on Administrative and Budgetary Questions recommended approval of the Secretary-General's proposal to decrease 111 national staff posts and positions (110 posts and one position funded under general temporary assistance) at UNMIL, and FPD approved UNMIL['s] recommendation to abolish the proposed 110 posts, resulting in the retrenchment of 87 national staff members.

... The DMS notified each of the Applicants by memorandum dated 6 May 2013 that, as UNMIL was downsizing and the mission's budget was being cut, their respective posts were being abolished after 30 June 2013 and their contracts, which expired on that same date, would not be renewed.

... During the months of May and June 2013, UNMIL organised a number of work fairs and seminars intended to assist the staff whose appointments were not going to be renewed to find alternative employment outside the Organization. Once separated, former staff members were still able to take part in subsequent work fairs. The Applicants all attended at least one of these events but none found employment after their separation.

3. In Judgment No. UNDT/2014/132 now under appeal, the Dispute Tribunal concluded that the downsizing exercise was not prompted, or influenced, by any motive other than following the General Assembly's instructions, and found that there was no evidence that it was designed to remove specific staff members. However, it also concluded that the decision taken by the end of October 2012 on the overall number of posts and which of them were to be abolished "involved major organizational changes and decisions on matters that affected the entire department or office or at least a significant number of UNMIL staff",² such that the staff representative bodies were entitled to effective consultation. The UNDT found that the Administration had failed to consult the staff or staff representative bodies before it had taken the decision about the posts to be abolished in breach of the Staff Rules and the relevant Secretary-General's Bulletins. In the view of the UNDT, the decision directly affected Ms. Gaye, Mr. Doe J. and Mr. Doe P. as their posts, deemed unique, were abolished without comparative review. It also found that the UNMIL Administration had acted in breach of Information Circular No. 2013/005 as it had failed to inform the staff of the proposed new legal framework before the composition of the CRP had been fundamentally changed.

4. The UNDT ordered rescission of the decisions not to renew Matadi *et al.*'s appointments, or, in the alternative, payment of two months' net base salary to Ms. Gaye, Mr. Doe J. and Mr. Doe P., and payment of one month's net base salary to Mr. Matadi and Mr. Johnson. Additionally, it ordered payment of one month's net base salary to each of the Matadi *et al.* group as moral damages.

Submissions

The Secretary-General's Appeal

5. The Dispute Tribunal erred in law and in fact in finding that the UNMIL Administration was required to consult with staff or staff representative bodies before making its proposal on the UNMIL budget, organization of work and allocation of resources. The UNDT did not cite any jurisprudence or other authority in support of that finding. The UNMIL Administration did not have the authority to make a decision on how many posts and which posts were to be abolished; only the General Assembly had the power to make

staff members or staff associations. Consultation was required, and did take place, in the implementation of UNMIL's downsizing, but it was not required in the formulation of the recommendation for the posts to be abolished.

6. The UNDT erred in fact and in law in finding that staff had no opportunity to provide their views on the proposed retrenchment exercise. The UNMIL Administration gave the staff members the opportunities to comment on the proposed restructuring from the beginning of the process, in the form of an informational memorandum of 16 October 2012 and two subsequent town hall meetings.

7. The UNDT erred in law in finding that inadequate consultation took place in the implementation of the comparative review for national staff members. The NASA representatives participated in the first meeting of the SC and a separate meeting with officials from FPD, DFS and UNMIL; they thus had an opportunity to present their views on all aspects of the comparative review. An information circular was issued for that purpose. Though a new information circular was not issued after the UNMIL Administration had been forced to change the composition of the CRP, NASA was notified of the intention to convene a new CRP and was thus aware that a new CRP would be convened without its participation. The new CRP members first met with the President of NASA. Those interactions constituted adequate consultation on the retrenchment exercise.

8. The UNDT erred in awarding remedies based on inadequate staff consultation, since there was no requirement to hold staff consultations before UNMIL formulated its budgetary proposals and adequate consultations were held to implement the General Assembly's budget decisions. Even if the Appeals Tribunal were to find that the UNMIL Administration should have issued a new information circular to announce the composition of the new CRP, there were no material repercussions from such an omission. Moreover, the UNDT cited no evidence to support its award of moral damages, and the evidence on record does not support such an award.

9. The Secretary-General requests that the Appeals Tribunal vacate the impugned Judgment, except to the extent it held that the comparative review process was fair, objective and reliable.

Matadi *et al.*'s Answer

10. The Administration had closed off the possibility of any consultation by October/November 2012. Without staff association consultation, a decision was taken to

be granted if it would “assist in the expeditious and fair disposal of the case”. We do not find that an oral hearing would be of assistance and therefore deny the request.

Merits of the appeal

16. Both the Appeals Tribunal and the Administrative Tribunal of the International Labour Organization (ILOAT) have held that it is well settled jurisprudence that “an international organization necessarily has power to restructure some or all of its departments or units,

specific staff members.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Chapman

(Signed)

Judge Lussick

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar