

Introduction

1. The Applicant, a staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), contests the decision to discontinue her position of Principal Secretary at level G-6 in the UNHCR office in Sarajevo, Bosnia and Herzegovina.

2. She seeks reinstatement to a post commensurate with her qualifications or, in the alternative, compensation for financial loss and emotional distress.

Facts

3. The Applicant joined UNHCR in Bosnia and Herzegovina in April 1996 as a Secretary at level G-3. At the time of the contested decision, she held the post of Principal Secretary at level G-6, in Sarajevo, under an indefinite appointment.

4. On 16 April 2010, the UNHCR Representative in Sarajevo submitted to UNHCR headquarters the 2011 Comprehensive Needs Assessment, which included the Prioritization Preview of the Initial Budget Target for the year 2011. The positions that were later to be discontinued, including that of the Applicant, were included in this submission.

5. On 2 August 2010, the Representative was informed by headquarters that UNHCR Sarajevo would be facing important financial constraints, in particular a decrease of USD922,646 of the Initial Budget Target for 2011.

6. On 25 August 2010, the Representative, together with the Administrative and Finance Officer in Sarajevo, verbally explained to the Applicant and three other affected staff members the situation regarding the proposed budget cuts in 2011.

7. By letter dated 26 August 2010, the Representative formally notified the Applicant that her position of Principal Secretary

8. By email dated 15 October 2010, the Applicant requested management evaluation of the decision to discontinue her post.

9. On 22 November 2010, the Comparative Review Panel met to review the situation of three G-6 staff members, including the Applicant, who would be affected by the discontinuation of their positions effective 28 February 2011 and

14. The Applicant filed the present application on 12 April 2011. The Respondent submitted his reply on 18 May 2011 and on 17 June 2011, the Applicant filed observations.

15. By Order No. 37 (GVA/2012) of 15 February 2012, the Respondent was ordered to file observations within 15 days of the date of the Order. The Respondent failed to file observations within the prescribed time limit.

d. She was deliberately excluded from further employment within UNHCR.

18. The Respondent's principal contentions are:

a. The Representative had no intention to discontinue the position prior to being advised by headquarters that budgetary constraints would require cost-cutting efforts. Due to the unexpected decrease of the operation's budget, it was decided that one post at level G-6 would be identified for discontinuation in each department (Administration, Operations, Protection and the Office of the Representative). The decision to discontinue the Applicant's position was therefore the result of operational needs alone;

b. It was within the discretion of the Representative to identify the appropriate measures to take to meet the budget targets. It is not for the Tribunal to substitute its views to that of the Administration in such matters;

c. The failure to provide a written notification of the intention to discontinue the Applicant's position, in accordance with paragraph 1 of IOM/FOM No. 027/2009 (Procedural guidelines for changes in status of positions), was addressed in the management evaluation with the award of compensation in the amount of one month's net base salary;

d. The Applicant was duly notified in writing of the discontinuation of her post on 26 August 2010 and provided with the requisite six months' notice as required in IOM/51/2007-FOM/54/2007 (Revised framework for resource allocation and management) and IOM/FOM No. 027/2009;

e. UNHCR was not in a position to offer the Applicant positions with its implementing partners. The new P-4 position was not created by the Representative but moved from Belgrade to Sarajevo by the Europe Bureau. A G-5 post of Senior Administrative/Programme Clerk was created to provide support to the P-4 post but it was not considered as a

suitable alternative post for the Applicant as the functions of this position are fundamentally different from those of the Applicant. The two international consultants and their locally recruited assistants were not UNHCR staff members but outside consultants hired to provide technical expertise in the field of housing and for development of a Centre for Refugees and Internally Displaced Persons Studies;

f. The Applicant agreed to assume additional duties re

22. The relevant provisions in this respect are contained in IOM/FOM No. 027/2009 (Procedural guidelines for changes in status of positions), which provides:

1. When a manager intends to seek a reclassification or review, including discontinuation or redeployment, of a position encumbered by a staff member who was appointed to the position through the APPC ... process, the manager must inform the staff member in writing that a reclassification/review of the position is being sought ...

2. ... [T]he effective date of discontinuation ... of all positions that are encumbered will be no less than six months after the approval of the request by the Budget Committee ...

3. The six month period of notification starts from the date of the staff member being informed by his/her manager of the relevant decision on the change in the status of the position ...

23. It is not contested by the Applicant that these procedures were complied with and the Tribunal notes that the Respondent compensated her for a minor flaw in the notification process by awarding her one month's net base salary.

24. The onus is on the Applicant to provide sufficient evidence that the contested decision was tainted by improper motives (see Parker 2010-UNAT-012, Asaad 2010-UNAT-021, Hepworth

Conclusion

27. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 30th day of March 2012

Entered in the Register on this 30th day of March 2012

(Signed)

René M. Vargas M., Geneva