



UNITED NATIONS DISPUTE

Case No. UNDT/NBI/2011/091

Judgment No. UNDT/2012/202

13. On 21 August 2011, the Applicant requested a management evaluation of the decision to terminate his appointment. On 23 August 2011, the Officer-in-Charge of the Management Evaluation Unit informed the Applicant that the Secretary-General had decided to suspend the implementation of the decision to terminate his appointment.

14. On 6 October 2011, the Applicant received a memorandum in which the Assistant Secretary-General (“ASG”) for Management informed him that the Secretary-General had decided to uphold the decision to terminate his appointment and the Applicant subsequently separated from service effective 10 October 2011.

15. The Applicant filed the present Application on 30 December 2011. The Respondent filed a Reply on 3 February 2012. The Tribunal heard the case on 27
a

27.

UNMIS did not, in and of itself, require the termination of any contract of employment.

35. The competitive review process was either not followed with respect to the Applicant or was flawed. There is no evidence that the Organisation rejected the findings of the CRP

40. The CCPO's evidence that a second P-3 PIO post was created months after the conclusion of the competitive review process cannot be correct. The Applicant submits that if it did not exist at the time of the competitive review process then it must have been created days, or possibly weeks after the conclusion of the process. Otherwise, once UNMIS ceased to exist such a post must have been open either to competitive recruitment or the recommendations of the competitive review panel would have been accepted.

41. The Organisation was aware of two facts in September 2011. These were that Ms. Miday was leaving UNMISS for UNFIL having only been appointed a month beforehand pursuant to the CRP. Also, that the Applicant was still a UN employee and was without a post having left the mission on 5 August 2011. There were no on-going efforts to find him a new post in the autumn of 2011.

42. The Applicant submitted that had he been afforded fair and full consideration by the CRP he would have expected to be awarded a two-year, fixed-term contract and he therefore requested the Tribunal to award him compensation of two years' net base salary.

Respondent's case

43. The Respondent's case is summarized below.

44. The Secretary-General has a broad discretion in determining the operational needs of a new field mission based on its mandate. This discretion includes staffing levels and the functions of posts. The Secretary-General's discretion extends to formulating a transition process under which peacekeeping mission staff members whose appointments are terminated may be reassigned to a new mission.

45. It is not for the Dispute Tribunal to substitute its views for those of the Secretary-General with regard to the transition process, or the staffing

46. All posts within UNMIS were abolished as a consequence of the Security Council's decisions to extend the mandate of UNMIS for a final tiBT /FS feay3(x)ty

termination of their appointments was mandatory. There was no scope for renewal of their appointments.

58. The Secretary-General was intimately involved in the process. He provided the report to the Security Council on 17 May 2011 upon which the Security Council's decision to liquidate UNMIS was based. On 27 July 2011, the Secretary-General notified the Security Council that UNMIS had started its liquidation process. Furthermore, the Decision was taken in circumstances where rapid action was required.

59. Following this resolution, it was anticipated that the Sudanese Government would not extend visas beyond 31 July 2011, except for staff members in the UNMIS liquidation team.

60. The Applicant's appointment with UNMIS was completed under his terms of appointment. Once his post at UNMIS was abolished, his services ended. By extending the Applicant's appointment beyond 30 June 2011 in accordance with the Information Circulars, the Administration created a situation where the abolition of the Applicant's post was processed as a termination under staff rule 9.6. As a consequence, the Applicant has been paid a termination indemnity of USD33,745.83.

61. The Applicant's argument that the personal involvement of the Secretary-General was required in the notification provided to the 08.64 Tm [(6)] TJ ET Q q BT /(a)-3(n)9(t')-2

Considerations

64.

UNMISS or selected for another post within the Organization, the termination of their appointments was mandatory and there was no scope for renewal of their appointments.

67. Having reviewed the parties' submissions, the Tribunal finds that the termination decision was taken without the requisite delegated authority notwithstanding the fact that all posts within UNMIS were necessarily to be abolished as a result of Security Council Resolution 1977 (2011). Paragraph one of the said resolution called upon the Secretary-General to complete the withdrawal of all uniformed and civilian UNMIS personnel other than those required for the mission's liquidation by 31 August 2011. The Applicant argued that the resolution called for a withdrawal and not a termination of posts but paragraph two of the same Resolution requested the Secretary-General to transfer appropriate staff, equipment, supplies and other assets from UNMIS to UNMISS and UNISFA together with appropriate staff and logistics necessary for achieving the new scope of functions to be performed.

68. In *Antaki 2010-UNAT-095*, a case relied upon by the Respondent in his arguments, it was held that where the Dispute Tribunal finds no shortcomings in procedural processes, it should not award damages where the subject decision was valid and lawful. Awarding compensation could be characterized as punitive damages. Further, art. 10(7) of the Statute of the Tribunal states that the Dispute Tribunal shall not award exemplary or punitive damages. The Tribunal, therefore, rejects the Applicant's claims under this head.

Was the competitive review process followed in respect to the Applicant?

69. The Applicant's submission on this score is that the competitive review process was either not properly followed in his own review, or that it was flawed and that there is no evidence that the Organisation rejected the findings of the CRP in any case other than his.

70. The Respondent submitted that the Applicant and the two other P-3 Public Information Officers were subject to an objective and impartial comparative review process and that to avoid any potential conflict of interest; the Panel

agreed that no Panel member would review a staff member in their occupational

75. It was also his submission that if the said post did not exist at the time of the competitive review process then it must have been created days, or possibly weeks after the conclusion of the process. Otherwise, once UNMIS ceased to exist, such a post should have been open either to competitive recruitment or the recommendations of the CRP would have been accepted. Neither of this had

80. This submission is misguided as the Tribunal finds that the Applicant's request for

(Signed)

Judge Nkemdilim Izuako

Dated this 21st day of December 2012

Entered in the Register on this 21st day of December 2012

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi