



UNITED NATIONS DISPUTE TRIBUNAL

## **Introduction**

1. The Applicant has challenged the decision by the United Nations Assistance Mission for Iraq (UNAMI) dated 27 October 2013 and communicated to him on 5 November 2013 not to renew his fixed-term appointment beyond 31 December 2013 (Contested Decision).

## **Procedural history**

2. Following case management orders the parties advised the Tribunal that they did not request a hearing of the case and that it could be decided on the papers.

3. The parties were unable to produce a statement of agreed facts and issues and submitted separate statements instead. The Respondent sought leave to make submissions on the statement of facts submitted by the Applicant. The Applicant made comments and submissions of facts on matters raised in the Respondent's reply.

4. Having considered both statements of facts, the Tribunal finds that such facts as are in dispute between the parties are not material to the issues before the Tribunal and therefore further submissions on the facts were not required.

## **Facts**

5. The Applicant was locally recruited to the Kirkuk duty station of UNAMI in 2009, to serve as an Associate Political Affairs Officer (APAO) in the Office of Political Affairs (OPA) based in Kirkuk. He was recruited against a post that was transferred on a temporary basis from Baghdad to Kirkuk although he states that he was never informed that he was temporarily on loan to Kirkuk.

6. On 22 March 2012, UNAMI was directed by the Department of Political Affairs (DPA) and the Department for Field Services (DFS) to: review the Mission's posture and activities in Iraq; rationalize staffing; and realign functions, while reducing the budget by 15 percent. At this time, the political

situation in Iraq required OPA to engage in mediation efforts in western Iraq and UNAMI to assist the Iraqi government in dealing with the outstanding issue of missing Kuwait and third country nationals and property. Accordingly, the workload of OPA increased.

Baghdad, the posts will be advertised for Baghdad duty location on 1 February 2013 and suitable candidates willing to work in Baghdad will be selected.

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that the Applicant asked for, as he promised. He told the Director that he had reason to believe that the decision was not r

16. On 24 February 2013, the Applicant sent the UNAMI Chief of Staff an email explaining the issue following their meeting with him a few days earlier during his visit to Kirkuk. The Applicant forwarded all the emails he exchanged with UNAMI in Baghdad.

17. On 25 February 2013, the Applicant received an email from the Chief of Staff, informing him that he had discussed the issue with the Chief of Mission Support (CMS) and the Director and that he would be informed of the outcome of this meeting within a fortnight.

18. On 13 March 2013, Mr. Daniel Augstburger, Head of Office, Kirkuk, wrote to the Applicant to confirm in writing a discussion in which he had informed the Applicant that the Mission must relocate his post, lent to Kirkuk in



27. On 10 November 2013, the Head of Office sent an email to the Director, copied to the Applicant and the other affected staff members, reminding him that the program manager not the Head of Office should inform staff members about the status of their contracts. He informed him that the three staff members were waiting for his message to clarify their status beyond 31 December 2013.

28. On 12 November 2013, the Applicant submitted a request for management



**Issues:**

34. Was the Applicant adequately consulted prior to the contested decision being taken?

35. Did the Applicant have a legitimate expectation that his appointment would be renewed?

36. Was the decision of the Administration ill-motivated or made in bad faith?

37. If the decision not to renew the Applicant's appointment was unlawful, what remedy is the Applicant entitled to?

**Applicant's submissions**

38. The decision of non-renewal triggers the application of ST/SGB/274 (Procedures and terms of reference of the staff management consultation machinery at the departmental or office level). UNAMI management had the obligation to inform the affected staff members in advance, consult with them and give them an opportunity to provide their views prior to issuing the decisions. The Applicant was kept in the dark with regard to his employment status.

39. UNAMI has never communicated with him to explain the Office's operational necessities requiring his post to be based in Baghdad. He submitted that: "The first time [he] heard about a 'redeployment' was in [the Director's] email on 07/01/13 [...] which instruct us to be deployed to Baghdad or quit".

40. He had a legitimate expectancy of renewal of his fixed-term contract. The DSRG's narrative in the 2014 budget proposal sent to the ACABQ and 5<sup>th</sup> Committee in New York and forwarded to him gave a clear explicit promise for renewal.

41. The decision not to extend his contract is the latest in a series of decisions which demonstrates a campaign against him and an attempt to end his employment with the Organization. His repeated attempts to question and

challenge the decision leading up to the non-renewal decision have either been met with a lack of response or produced further actions in retaliation against him.

42. In support of his allegations of ill motivation the Applicant referred to the following events at paragraphs 19 to 24 of his application:

- a. Being interviewed by investigators without notice in January 2011. The allegations were unsubstantiated and no actions were taken against him on that investigation.
- b. The failure by the previous SRSG to investigate his complaint against the Head of Office and his supervisor.
- c. The non-completion of his 2011 ePAS because of a disagreement about midpoint comments made by his supervisor.
- d. A proposal in July 2011 by the then Head of Office to introduce grading of NPO's which the Applicant and others objected to. The proposal was not implemented.
- e. Six days after the first reply by affected staff members to the redeployment decision he received a call from an unidentified number at 3am. Nobody spoke on the line. He reported this call.
- f. The Applicant raised concerns about the exam offered by the Director of OPA and did not participate in it because of concerns about its legality. He questions the timing of the offer as it came after UNAMI already decided not to renew his contract and after he filed a complaint to MEU.

43. The Applicant further submitted that the improper motivation can be clearly noticed in the state of confusion the UNAMI administration demonstrated dealing with his case. Through the course of 2013 they issued four different decisions, each decision followed a contradicting expectation:

- a. The redeployment email on 7 January 2013 followed the discussions on 2013 budget in which senior managers of UNAMI underscored that there will be no changes in the Kirkuk political section.
- b. The six month extension on May 8 2013 followed a request from the Kirkuk Head of Office for an extension for all four APAOs in Kirkuk.
- c. The non-renewal decision on 27 October 2013 followed the 2014 UNAMI budget proposal sent to the ACABQ and the 5<sup>th</sup> Committee in NY.
- d. The written assessment offer on 14 November 2013 came up two days after he and a colleague filed an application to MEU requesting management evaluation.

#### **Respondent's Submissions**

44. The Applicant was consulted prior to the deployment of the post. The

not his employment relationship with the Organization expired at the end of the term stipulated in his letter of appointment.

48. The Applicant has failed to prove that the contested decision was motivated by an improper purpose.

### **Considerations**

49. In *Simmons* (2014-UNAT-425), UNAT held that: “The Organization has the power to restructure some or all of its units which include cancellation or abolition of posts or reassignment due to organizational or budgetary reasons”.

50. The Administrative Tribunal of the International Labour Organisation (ILOAT) has held that it is well settled jurisprudence that “an international organisation necessarily has power to restructure some or al

53. The Tribunal finds that the Applicant was made aware on 28 January 2013 that the post he encumbered was on loan from Baghdad.

54. On 8 May 2013, he was advised that his contract, which was due to expire

59. However in certain circumstances this presumption of non-renewal can be rebutted. One such circumstance is when the staff member has acted in reliance on an express promise that his or her contract will be renewed.<sup>3</sup>

60. The Applicant's claim to a legitimate expectation of renewal is based on the DSRSG's narrative in the 2014 budget proposal sent to the ACABQ and the 5<sup>th</sup> Committee in New York and forwarded to him. In his mind that amounted to a clear and explicit promise for renewal.

61. The correspondence shows that the Head of Office was supportive of the need for the NPO posts in Kirkuk to be continued in view of the workload and that he communicated this to the Applicant.

62. While these factors may have given the Applicant some cause for hope that the status quo would be maintained in Kirkuk, neither the budget proposal nor any views expressed by the Head of Office can be interpreted as an express promise that his contract would be renewed.

63. The Tribunal holds that the Applicant had no legitimate expectation of renewal.

### **Issue 3**

Was the decision of the Administration ill-motivated or made in bad faith?

64. In *Rdland 2011-UNAT-122*, UNAT held that there is a presumption of regularity of administrative decisions: This presumption may be displaced. The person alleging ill-motivation bears the burden of proving it.

65. Such proof should include a demonstrable causal nexus between the proffered evidence of ill-motivation and the contested decision. Any evidence of ill-motivation must logically pre-date the decision. Events which occurred after the decision are generally irrelevant to the issue of the motivation of the decision maker.

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<sup>3</sup> *Hepworth 2015-UNAT-503*.

66. The official reason given by the Administration for the non-renewal of the Applicant's fixed-term contract was that the post he encumbered had been redeployed to Baghdad. This reason was first communicated to the Applicant and his colleagu

73. In 2013 the Applicant reported a silent phone call six days after he responded to the redeployment decision.

74. The Tribunal finds that there is no link between any of these events relied on by the Applicant as evidence of ill-motivation for the decision of 27 October 2013 sufficient to displace the presumption of regularity of the reason for the non-renewal.

75. The Tribunal finds that the Applicant has not discharged he burden of showing that the decision was not properly motivated or that it was made in bad faith.

### **Conclusion**

76. The Application is dismissed in its entirety

(Signed)

Judge Coral Shaw

Dated this 31<sup>st</sup> day of December 2015

Entered in the Register on this 31<sup>st</sup> day of December 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi