
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2014/02

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Date: 22 A) *, 2016

Introduction

1. The Applicant filed on 22 'a" 2014(t)e A##&ant(

In the context and of the purposes of all the foregoing actions. The
reference to the 7) and 7e are only for the purpose of the 81 separate
statements of the court to the effect of the 7) and 7e.

11.

e. a situation. In said memorandum(s) the questioned the discontinuation of the
position and the subsequent decision to terminate the appointment effective
31 'a" 2014.

1F. In 7 'a" 2014 the Applicant alleged that the Tribunal's suspension of the
action of the decision to discontinue the position and of the
consequent termination of the indefinite appointment. The Applicant was
represented under Case No. UNDT/GVA/ / /

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add%t%ona\$ e.%den&e.

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to #*o.%de add%t%ona\$ e.%den&e 8" 19 ' a" 2015(and t)e A##\$%&ant 7as g%.en
a&&ess to a *eda&ted .e*s%on o t)e ex parte

a. The respondent's observations on the Applicant's 1 June 2015 submission of 3 July 2015:

8. The Applicant's comments on the respondent's 8 July 2015:

&. The parties' 8 July 2015 joint statement of facts and issues (a joint schedule of documents (a list of authorizations and an authorization) made on 7 July) in respect of the effect of the amendment to art. 10.5-81 of the Treaty's provisions adopted on the Geneva Assembly on 1 February 2015: and

d. The parties' 8 July 2015 respective submissions on the authorization of the agents to undertake the 3 February 2015.

39. On 3 July 2015 (the respondent's observations as ordered.

40. On 10 July 2015 (the Applicant's comments on the respondent's 3 July 2015 submission.

41. On 16 July 2015 (the Applicant's submission in response to the Treaty's provisions referred to in the 5 February 2015 (9.2092768(n)9.944(o)-0.960221(n)-0.960

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and t)e*e 7as an a8use o aut)o*%t":

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d.

e. Classification of posts and staff in the *uses 2.2.3.4) as not
seen & conducted according to the nature of the duties

11. In the number of National, local and international Professional Posts in the United Nations, the Secretary-General has assigned the Committee and not the 2AC (in accordance with article 114 of PPA):

12. The duty to respond to the request for management evaluation of the Secretary-General's mode of work constitutes a fundamental right:

I. In the case of the Applicant's request

13. The Commission on the contested decisions and the implementation of the Staff Rules and the Regulations (as well as the Administrative Instructions) duty to respond to the request:

14. The Tribunal to include in the request for the Regulations in the Staff Rules leading to the discontinuation of the Secretary-General and the consequent termination of the indefinite appointment (and that the Tribunal constituted an abuse of authority in the manner in which it has acted and employment conditions:

15. The Tribunal to allow the Secretary-General the duty to respond to the request for the decisions and to take remedial action of the cases referred to the Dispute Tribunal (and the Secretary-General's duty to respond to the requests made by the Applicant to the Staff Rules and the Regulations of the United Nations (04 3 6) 9. 2 2 1 6 6 4 - 2 2 9.) tot e 8 6 0 2 2 2 5 9 3 (t) 0. 8 7 4 3 4 7 (o)] T J 8 0 8 on

and the fact that the respondent's mind and
conducting on a judgment motivated by reasons of
and that the respondent's submissions.

3. Thus the authority to end a judgment gives the Judge an
authority to find the conduct and define the administrative
decision made under a "fact" and that the respondent's
contested and so the respondent to the respondent's
and to grant or not to grant the respondent's judgment.

46. The administrative decisions and the respondent's case are

a. The discontinuation of the respondent's case on 1 June 2014 (on the position of the
Administrative Tribunal No. 100111491) and

8.

51. Annex 1(Part 5 of the ; same 7 of E # of des of / Post C) and inter
alia of the of 7 % ng 6

53. The Tribunal finds that the evidence on record shows that the discontinuation of the host employment of the Applicant resulted from its refusal to accept a restructuring exercise.

54. The Tribunal notes that the Applicant was dismissed as a redundant employee. The Tribunal notes that the Applicant was dismissed as a redundant employee because of the restructuring of the host company. The Tribunal notes that the Applicant was dismissed as a redundant employee because of the restructuring of the host company.

55. The Tribunal notes that the Applicant was dismissed as a redundant employee because of the restructuring of the host company. The Tribunal notes that the Applicant was dismissed as a redundant employee because of the restructuring of the host company.

56. The Tribunal notes that the Applicant was dismissed as a redundant employee because of the restructuring of the host company. The Tribunal notes that the Applicant was dismissed as a redundant employee because of the restructuring of the host company.

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disadvantaging the individual's assets in a case where the
2009 organization and establishment of the 70% share should not be
used as a mechanism of getting rid of an employee from
management management as being troublesome of those continued
#*esen&e 7 as no longer deemed desirable.

5F.

Case No. UNDT/GVA/2014/027

Judgment No. UNDT/2016/035

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71. Bt %s u*t)e* noted t)at t)e &ons%de*at%ons *e e**ed to %n t)e memo*andum o 23 >e#tem8e* 2013 &annot 8e sa%d to)a.e 8een t)e *esu\$t o (o* %n an" 7a" &onne&t)ed to(t)e d%ss%on o t)e A##%&ant 7%t))e* su#e*.%so* on t)e same da". T)e memo*andum %s s%< #ages %n %engt)(and &ontains a deta%ed ana\$%s% o t)e *eDu%*ements o t)e UN5C2(as assessed 8" t)e !*usse\$s 3 4 2eg%ona\$ 2e#*esentat%.e. An" %n e*en&e to t)e e e&t t)at t)e a8o\$%t%on o t)e #ost en&um8e*ed 8" t)e A##%&ant 7as *e\$ated to t)e d%ss%on s)e)ad 7%t) t)e !*usse\$s 2e#*esentat%.e %s not su##o*ted 8" t)e e.%den&e. T)e A##%&ant)as not #*o.en t)at t)e %ssuan&e o t)e memo*andum on t)e same da" as t)e d%ss%on %s an"t)%ng e\$se t)an #u*e\$" &o%n&%denta\$.

72. Bn .%e7 o t)e o*ego%ng(t)e T*%8una\$ %nds t)at t)e #*o&ess \$eading to t)e a8o\$%t%on o t)e #ost en&um8e*ed 8" t)e A##%&ant *es#e&t)ed t)e a##%&a8se #*o&edu*es(and t)at t)e*e %s no e.%den&e o %t 8e%ng ta%nted 8" %m#*o#e* mot%.e.

Termination of the Applicant's indefinite appointment

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-el 4<&e#t as ot)e*7%se e<#*ess\$" #*o.%ded %n #a*ag*a#) - l 8e\$07 and sta *u\$e 13.1(% t)e ne&ess%t%es o se*.%&e *eDu%*e t)at a##o%ntments o sta mem8e*s 8e te*m%nated as a *esu\$t o t)e a8o\$%t%on o a #ost o* t)e *edu&t%on o sta (and su8%e&t to t)e a.%sa8%\$%t" o su%ta8se #osts %n 7)%&) t)e%* se*.%&es &an 8e e e&t%.e\$" ut%\$%ced(#*o.%ded t)at due *ega*d s)a\$\$ 8e g%.en %n a\$\$ &ases to *e\$at%.e &om#eten&e(%nteg%t" and %engt) o se*.%&e(sta mem8e*s s)a\$\$ 8e *eta%ned %n t)e o\$\$o7%ng o*de* o #*e e*en&e6

-%l >ta mem8e*s)o\$d%ng &ont%nu%ng a##o%ntments:

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- 1 T)e #*o.%s%ons o #a*ag*a#) -el a8o.e %nso a* as t)e" *e\$ate to sta mem8e*s %n t)e Gene*a\$ >e*. %&e and *e\$ated &atego%ies s)a\$ 8e deemed to)a.e 8een sat%is %ed % su&) sta mem8e*s)a.e *e&e%.ed &ons%de*ation o* su%ta8\$e #osts a.a%\$a8\$e 7)t)%n t)e% #a*ent o*gan%Cat%on at t)e% dut" stat%ons.

74. T)e Com#a*at%.e 2e.%e7 Po\$%&" /#*o.%des #*%n&%#ses and #*o&edu%es o* t)e &om#a*at%.e *e.%e7 to 8e o\$so7ed %n &ases o ant%&#ated te*m%nat%on o* a8o\$%t%on o #osts A #u*suant to >ta 2u\$es 9.6-e1 and - 1 %n t)e Gene*a\$ >e*. %&e and Nationa\$, %&e* &atego%ies0(and states t)at /?s@ta mem8e*s 7)ose #osts a*e d%is&ont%nued 7%\$\$ not automat%&a\$% " 8e se#a*ated0.

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- 5. A &om#a*at%.e *e.%e7 #*o&ess %s t)e means 8" 7)%&) sta mem8e*s en&um8e%ng #os%t%ons 7)%&) a*e to 8e a8o\$%sed(and 7)o)o\$d %nde %n%te o* %<ed=te*m a##o%ntments not e<#%*%ng on o* 8e o*e t)e e e&t%.e date o t)e a8o\$%t%on o t)e *e\$e.ant #os%t%on(7%\$\$ 8e mat&)ed aga%n%st su%ta8\$e #osts a&&o*d%ng to a set o %*%te*a *e\$at%ng to t)e sta mem8e*sH su%ta8\$%t" o* su&) #osts. T)e /su%ta8\$e #osts0 a*e %nte*#*eted(o* t)e #u*#ose o t)e &om#a*at%.e *e.%e7(as #osts at t)e sta mem8e*Hs dut" stat%on and at t)e sta mem8e*Hs g*ade \$e.e\$ and 7)t)%n t)e same un&t%ona\$ g*ou# as #e* t)e (o)-0.96022#9.e.

76. ;*om t)e a8o.e(%t %s &Sea* t)at %n t)e &ont<t o an e<e*&%se to a8o%\$%s) a #ost(t)e %ntent and #u*#ose o #a*ag*a#) 4 %s t)at t)e Adm%nst%at%on \$ooEs o* aSte*nat%.e em#\$o"ment o* %ts sta a e&tet %n a s%tuat%on o a8o%\$%t%on o #osts.

77. T)e A##\$%&ant a\$\$eges t)at s%n&e No.em8e* 2013(a sta mem8e* se*. %ng on a tem#o*a*" a##o%ntment at t)e G=6 \$e.e\$ -/G=6 TA01 g*adua\$\$" tooE o.e* t)e un&t%ons o t)e #os%t%on s)e en&um8e*ed and t)at(t)e%e o*e(%t s)ou\$d)a.e 8een dete*m%ned t)at t)%s #e*son%\$ &ont*a&t d%\$&ont%nuat%on 7ou\$d)a.e m%t%gated t)e need o* a &om#a*at%.e *e.%e7(%n a##\$%&at%on o #a*ag*a#) 4 o t)e Com#a*at%.e 2e.%e7 Po\$%&".

7F. T)e 2es#ondent noted t)at t)e G=6 TA 7as &)a*ged aga%nst a G=6 #os%t%on(7)%&) 7as t)*ee g*ades \$o7e* t)an t)at o t)e A##\$%&ant and #e* o*m%ng t)e

F0. The Tribunal disagrees with the respondent and is of the view that indeed (Article 4 of the Convention on the Elimination of All Forms of Discrimination Against Women) has been applied in the present case. Furthermore, it is noted that the respondent has not demonstrated the need for a remedy (as its application would be premature) and it is not necessary to consider the merits of the respondent's claim.

F1.

FF. Given the above findings (it is not necessary to proceed to further examine the application of article 5 of the Comptroller's Regulation (as amended) 40 which states as a condition for the awarding of the award to the respondent (in article 5).

F9. Article 10.5-a of the UNDT Statute provides that the Tribunal shall set an amount of compensation to the respondent in the event of a finding of a breach of the provisions of the contested administrative decision (as the decision to) as seen found to have breached the provisions of the contract of employment and its termination. In assessing the amount of compensation (the Tribunal) as stressed that its determination must be done on a case-by-case basis (and that it assesses a certain degree of responsibility - see Mwansa v UNDP (2014) 155 J.T.J.P. - 155 . ui

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