



Before: Judge Coral Shaw
Registry: Nairobi
Registrar: Abena Kwakye-Berko

NJOE

v.

SECRETARY-GENERAL
0772.56 Tm [(O)-2(772.56 Tm [(O)-2(772.56 Tm [(O)-2(772.566 Tm [(O)-2(7

Introduction

1. The Applicant has challenged a decision dated 12 November 2014 to “laterally reassign” him from the United Nations Economic Commission for Africa (ECA) in Addis Ababa, Ethiopia, to the African Institute for Economic Development and Planning (IDEP)¹ in Dakar, Senegal, effective 1 January 2015.

Procedural history

2. The Applicant filed this application with the United Nations Dispute Tribunal on 6 April 2015. The Respondent filed a reply on 8 May 2015. Pursuant

the ECA Division of Administration and, since 1 March 2013, under the Public Information and Knowledge Management Division at ECA headquarters in Addis Ababa.

8. The ECA ICT strategy was concluded

transfer of a P-5 plus additional resources to boost e-learning. He said he had had a chat with the Director/IDEP urging him to quickly move on e-learning. The ECA PIK Director was asked to proceed as soon as possible.

18. On 22 June 2014, t

The Executive Secretary has taken the above decision in the context of the recently developed ICT Strategy and his continued efforts to strengthen the implementation of the reformed agenda of the Commission and exercised his authority on lateral transfers as provided in ST/AI/2010/3 on Staff Selection System.

You will be charged against a regular budget post and you will maintain your permanent appointment. Your entitlements will be administered by ECA HQs. Should you require further information, please contact HRSS.

In light of the above, I request you to conclude your TDY at the end of the currently approved period of 30 November 2014 and return to Addis Ababa. HRSS will support you with the administrative aspects of your movement to Daramt. ~~re: (s) 17(E)-7(S) BT /F1 11.28 T~~

I wish you success in your new functions with IDEP.

27. The TOR for the new post stated inter alia that an Adviser/Senior IT Specialist was required to lead the design work for the new e-learning business. The summary of duties included conceptualizing and developing the initial business plan for establishing the e-learning Business line; overseeing and managing the implementation of the project, providing authoritative technical advice roll out and testing of initial courses; scaling up, continuing to operate and grow the e-learning business line; managing the operation and representing ECA as spokesperson for e-learning at regional and international events.

28. The Applicant stated that from the 12 November 2014 letter, which said ~~in his assignment (was 19(Sar) 01 22 (to) 03 (y) 5c a few 24 (2) 18 (E) 17 (o) 15~~ decide on his assignment, “[he] ~~He said that this (S) 7 (S) 1 (a) 1 (r) 8 (r) - 8 (r) - f 0 0 0 (s) 26 (s) - 8~~

including transferring to other units in different locations without advertising for a job opening or the need for further review by a central review body.

50. The principles and methodology for reviewing a decision to laterally transfer a staff member were stated in Rees2012-UNAT-266:

It is for the Administration to determine whether a measure of such a nature is in its interest or not. However, the decision must be properly motivated, and not tainted by improper motive, or taken in violation of mandatory procedures. An accepted method for determining whether the reassignment of a staff member to another position was proper is to assess whether the new post was at the staff member's grade; whether the responsibilities involved corresponded to his or her level; whether the functions to be performed were commensurate with the staff member's competence and skills; and, whether he or she had substantial experience in the field.²

Was the 12 November 2014 decision to laterally assign the Applicant a lawful exercise of the discretion conferred by staff regulation 1.2 and ST/AI/2010/3?

51. The Tribunal makes the following findings of fact:

a. The transfer of the Applicant was internal as the IDEP is the Training arm of ECA. The functions of the post of Senior Information Technology Officer at the P-5 level did not appear in the IDEP staffing table for the 2014-2015 Programme budget and needed to be formally established through the classification process.

b. The post to which the Applicant was being moved and its related functions were "classifiable against the job description of a Senior Information Technology Officer, P-5".

c. ECA temporarily assigned a budget post at the P-5 level from the Office of the Executive Secretary to IDEP pending the provision of a P-5 post in the budget proposal for the 2016/2017 biennium.

52. In light of these facts, the Tribunal finds] TJ ET1(d)- 1 2fA81 0

57. As to the Applicant's allegation that the decision was ill motivated, the United Nations Appeals Tribunal (the Appeals Tribunal) stated in Asaad2010-UNAT-021 that:

The burden of proving improper motivation lies with the staff member contesting the decision. The Administration must act in good faith and respect procedural rules. Its decisions must not be arbitrary or motivated by factors inconsistent with proper administration...its decisions must not be based on erroneous, fallacious or improper motivation.

58. The Applicant has not met this burden. He has adduced no factual basis for this serious allegation and has failed to show by clear and convincing evidence that the decision was tainted by bias or discrimination against him or that it was motivated by any reason other than what was in the best interests of the organization.

59. The Applicant's complaints about the lack of or the adequacy of reasons for the decision are similarly unsubstantiated. He was given reasons in the decision letter. They were based on the policy of the ECA to move IDEP in the direction of a virtual e-learning institution. The Applicant may not have agreed with the policy that underpinned the decision but as a staff member acting professionally it was a policy decision that he was bound by.

Was the Applicant treated with due care and good faith in the process of the adoption and implementation of the decision?

60. The Applicant alleged that he was not treated with due care and good faith by reason of two factors, failure to properly consult and urgency of implementation.

Consultation

61. In ReesUNDT/2011/156⁷ this Tribunal stated that:

Consultation does not necessarily include negotiation and certainly does not guarantee agreement, but it must be carried out in good faith.

⁷ See also Rees2012-UNAT-266.

Consultation should occur before a final decision has been made so that the staff member has a proper opportunity to be heard without the matter having been pre-determined.

62. As noted in Pérez-Soto/UNDT/2012/078⁸ there is no requirement in the relevant legal instruments for the Administration to consult with a staff member about a proposed reassignment and a failure to consult on such a matter does not of itself render the decision unlawful.

63. In fact, from 25 April 2014, the Applicant was consulted about the lateral transfer. The final decision to laterally reassign him was dated 12 November 2014. Between those dates the Applicant had discussions about the administrative arrangements for the temporary transfer as well as discussions about the implications for his career arising from the proposed lateral assignment. His summary of the understandings reached about those matters in his letter of 11 July

TDY which were extended at his request. Although the initial decision was that he would take up his new post on 1 January 2015, again at his request, the commencement date was postponed to March 2015.

Conclusion

68. The decision dated 12 November 2014 to laterally assign the Applicant to the P-5 post in IDEP was a lawful, properly motivated