

Introduction

1. The Applicant is a former staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). She served at the GS-4 level.

2. On 11 November 2015, she filed an Application contesting the decision

2015-01-31-50058015100445004500B689-96 To Separate From Service on the grounds of abolition of her post.

3. The Respondent filed a Reply to the Application on 14 December 2015.

4. The Tribunal, with the consent of the Parties decided, in accordance with art. 16.1 of the Tribunal's Rules of Procedure, that an oral hearing is not required in determining this case and that it will rely on the Parties' pleadings and written submissions.

8. Following the Secretary-General's budget proposal to the General Assembly, MONUSCO issued Information Circulars to its entire staff on 6 and 9 March 2015, 14 April 2015, and 20 April 2015, with regard to the proposed budget, the establishment of a Comparative Review Panel (CRP), and the review criteria.

9. Under the proposed new structure for the Mission, which was approved by the General Assembly, the military force in Bukavu was to be reduced by one battalion and Kinshasa would no longer be an operational base. As a result, LA posts in Kinshasa and Bukavu were abolished. This meant that a budgetary reduction of 80 LA posts in the 2015/2016 budget cycle for MONUSCO was done.

10. The Applicant, who was an LA in Bukavu, was affected by the abolition. A memorandum from the MONUSCO Director of Mission Support (DMS) informed her of this development. She was also informed through a memorandum from the Chief Civilian Personnel Officer (CCPO), Ms. Xaba-Motsa.

11. As at 16 June 2015, the Applicant, along with the other LAs at the Mission whose posts were at the time proposed for abolishment sent a letter to the Special Representative of the Secretary-General (SRSG) for MONUSCO contesting the non-renewal of their fixed-term appointments by reason of abolition of post.

12. On 8 June 2015, Mr. Eric Blanchard Jibikila, who was a member of the Executive Committee of the National Staff Union, sent a request for management evaluation to the Management Evaluation Unit (MEU) in respect of the then impending abolishment of the 80 LA posts, including the Applicant's post.

13. MEU replied to the designated focal point for the affected LAs on 2 July 2015 and promised to send its decision by 13 August 2015.

14. Meanwhile, on 24 June 2015 the Applicant received a memorandum from MONUSCO's CCPO stating that her fixed-term appointment would not be renewed beyond 30 June 2015 and that accordingly, her separation from the Organization would take effect at the close of business on that same date.

15. Shortly thereafter, the Applicant was offered an Individual Contractor (IC) contract by the United Nations Office for Project Services (UNOPS) for the

themselves does not alter the Organization's obligations under paragraph 3.7 of ST/AI/2013/4.

e. Moreover, the decision to essentially convert the Applicant's fixed-term appointment to an IC contract, administered by UNOPS, was taken while the Applicant was still a staff member of the United Nations Secretariat and thus ST/AI/2013/4 applies to the Applicant.

The non-renewal of the Applicant's fixed-term appointment and her attendant separation were unlawful because no comparative review was conducted.

f. MONUSCO's approved budget for the period of 1 July 2015 to 30 June 2016 was that 80 LAs in MONUSCO's Field Administrative Offices be abolished and the remaining 92 LA posts be reassigned to different offices within the Mission.

g. Although the CCPO's memorandum of 22 May 2015 to the Applicant stated that she had been the subject of a comparative review process in which she was not successful, no comparative review was actually undertaken with cf1 1180.05 17.52 reW*(T1 n n)Te1 135.38 389.69 Tm(a)4.6-111JE

20. By the same token, a decision of the General Assembly is binding on the Secretary-General who has a duty to implement it. The Applicant lacks the capacity to challenge the non-renewal of her appointment in so far as it is properly

(Signed)

Judge Nkemdilim Izuako

Dated this 23rd day of September 2016

Entered in the Register on this 23rd day of September 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi