

UNITED NATIONS DISPUTE TRIBUNAL

Introduction

1. On 8 May 2019, the Applicant, a former Programme Analyst, at the National Officer-B

abolition of his post. The non-renewal and abolition decisions are two distinct administrative decisions, and to form part of an application to this Tribunal, each needed to be first contested through a request for management evaluation.

Applicant's submissions

5. The Applicant avers that it is settled law that abolition of a post may not be challenged separately from the non-renewal decision. The Applicant seeks to rely on the UNAT Judgment in *Lee*,³ where it was held that “although Ms. Lee cannot challenge the discretionary authority of the Secretary-General to restructure the Organization or to abolish her post, she may l

of the CO programme”.⁹ The TOR did not include any thematic specialization, but rather reflected that the Applicant would work in all areas of the Programme.¹⁰ The lack of thematic specialization of the position was the result of the Programme Unit’s structure at the time of the Applicant’s recruitment by UNDP Iraq, that is, when the CO had a general Programme Unit, without any separate or substantively distinct thematic pillars.

11. During the period 2017-2018, the UNDP Iraq CO underwent a structural alignment process. The restructuring was in response to the

its findings as to the entire Office and made recommendations for the changes to its structure needed to address identified issues.¹⁵ While pointing out to structural needs, MCT did not engage in deciding abolition of individual posts;¹⁶ rather, proposals in the draft Transformation Plan were to “*be further elaborated upon and finalized by the Country Office senior management before it is submitted to the Directors of RBAS [Regional Bureau for Arab States] for clearance*”.¹⁷ On the practical level, in the period of finalization of the Transformation Plan, MCT and UNDP Iraq CO worked in parallel on the alignment of the structure in terms of human resources.¹⁸ Undisputedly, the UNDP Iraq CO senior management were not required to accept all MCT recommendations, as it is illustrated by a subsequent rejection of the proposal to

would have a small support team “for example, a NO-A and 1-2 GS staff.”²⁰

Facts surrounding the impugned decision

15. Subsequent to the issuance of the Draft Transformation Plan, the UNDP Iraq CO senior management considered the recommendations made by MCT and presented to the Regional Bureau for Arab States (“RBAS”) a document titled “The UNDP Iraq Country Office Transition Process, Next Steps”, commonly called “Final Transition Plan”.²¹ RBAS approved the transition process on 5 December 2018, including a new organigram.²²

16. In particular, to the Programme Unit, in which the Applicant’s position was located, the Final Transition Plan as approved by the UNDP senior management, was restructured to include three programme pillars, namely: Economic team-to be headed by a National Officer-D level (“NO-D”); Governance and Environment teams - each to be headed by a National Officer-C level (“NO-C”). A G-6 level programme associate

acting Resident Representative until March 2019, when he also left Iraq and went to Libya.²⁶ During the period 2017-2018, Mr. Thair Shraideh served as acting Country

27. On 20 December 2018, the Applicant replied seeking more clarifications, especially with regard to the logic, wisdom and effectiveness behind the abolishment of some positions and creating more others, and whether abolition of the NO-B posts was intended to increase effectiveness or a result of ineffectiveness due to the lack of skills; he specifically questioned parallel retention of a NO-B position in Ebril.⁴⁷

28. On 4 January 2019, the Applicant requested management evaluation of the contested decision and he received the response on 8 February 2019.⁴⁸

Submissions

Applicant's submissions

29.

needed”.

the Applicant by the UNDP Iraq CO leadership to explain the reasons for the abolition of his post. He, nevertheless, maintains that the Administration had provided the Applicant with sufficient reasons for it, this being the Country Office restructuring and realignment of the office structure with the MCT recommendations. The Respondent's main contention appears to lie in invoking the presumption of regularity of the abolition decision, which the Applicant failed to rebut. Complaining about being ordered to state "against his will" the material reasons specific to the abolition Applicant's post, the Respondent eventually expressed them as set out below.

33. Given that the new structure had both eliminated the function of general programme positions, in favor of only specialized programme posts, and included positions at the NO-D/NO-C and G-6, the Applicant's general Programme Analyst NO-B level position did not have a place in the new structure and was accordingly abolished. The other general Programme Analyst NO-B position (position 00094690) was also abolished. The decision itself to structure the Programme Unit with three thematic pillars, each with one NO-C level position and G-6 level position, was reasonable.

34. The three-pillar structure was fit to address the problems identified by the MCT because it provided a clear division of labor within the designated themes and organization, which would allow for greater clarity and efficiency in the programme development and implementation in UNDP Iraq. Further, it was reasonable for UNDP to consider that the creation of NO-D or NO-C level positions, which would be specialized in each thematic area, to lead each pillar would further the goal of greater clarity and efficiency in programme development and implementation because NO-D and NO-C level positions are at a senior level and can take on the responsibilities of organizing, directing and coordinating the work of each thematic pillar. It was also reasonable for UNDP to conclude that each thematic pillar would have only two positions – the NO-C and the G-6 – and not additional NO-B level positions, as the expertise and management of the pillar would be provided entirely by the NO-C and the support for the pillar would be entirely handled by the G-6 level position, making any additional NO-B level position redundant and not cost efficient.

35. Although the two NO-B level Programme Analyst positions were abolished, between the three thematic Programme pillars and the Programme Support Unit, the new UNDP Iraq structure included additional positions at the NO-C level – going from zero NO-D positions under the old structure to one NO-D; and from four NO-C level positions to six at the NO-C level.⁵¹ As a result, the abolition of the NO-B level positions may not have resulted in an overall reduction in the UNDP Iraq budget, since new higher level positions were created. Still it was considered a more cost-effective way to allot the budget because the higher-level positions provided the expertise and management skills required to address the issues highlighted by the MCT review.

36. Further, regarding the rationale for UNDP Iraq creating a Programme Analyst NO-B level position in the Erbil duty station (“Erbil NO-B”), while abolishing the Applicant’s Programme Analyst, NO-B level position in Baghdad, the Respondent explains that the Erbil NO-B, while containing the same general title as the Applicant’s former position, is a completely different position, in a different duty station and with different functions, than the position formerly held by the Applicant. Based on an MCT recommendation and as adopted by the Final Transition Process Plan, a decision was taken to have a senior international staff member at the P-5 level to head the Erbil Office.⁵² As the P-5 level position would manage the office, an NO-B level position was considered the appropriate level of expertise to provide support to the head of office in implementing programmes in the Kurdistan region. Further, as the P-5 was an international professional position who may not have had knowledge of the local region, it was determined that qualifications for the Erbil NO-B position must include local knowledge and expertise in the Kurdistan region. The intended responsibilities of the Erbil NO-B position are in contrast to the Applicant’s inbid site TJ ET Q q BT /F1 12.0 Tf 0.0

not include any specialized knowledge of the Kurdistan Region or functions related to implementation of programmes in that region.⁵³

37. The Respondent further advises

especially where a decision is lacking reasoning, or the reasoning offered is *prima facie* inadequate. Jurisprudence on point confirms that the Tribunals undertook inquiry into the merits of abolition of posts, and that the depth of the review turned on the coherence of reasons provided for it.⁵⁶

40. It is a well settled that an international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff.⁵⁷ In such decisions, the Administration has broad discretion to reorganize its operations and departments to adapt to economic vagaries and challenges.⁵⁸ The Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, even in a restructuring exercise, like any other administrative decision, the Administration has the duty to act fairly, justly and transparently in dealing with staff members.⁵⁹

41. It follows that, albeit in restructuring the Respondent exercises a wide discretion, this discretion is not unfettered and is subject to review pursuant to the general *Sanwidi* test⁶⁰, i.e., if an exercise of discretion is legal, rational, procedurally correct and proportional. The postulates expressed specifically in the context of abolition of post: “genuine” restructuring, fairness and justness, taken together, largely overlap with the *Sanwidi* test. The postulate of transparency concerns the process in which the decision is taken, as well as its result, that is, a reasoned decision. The reasoning must necessarily address the rationale.

⁵⁶ Messinger 2011-UNAT-123; Toure 2016-UNAT-660; Zamel 2015-UNAT-602; De Aguirre 2016-UNAT-705; Abu Ata et al 2020-UNAT-1016; Liu 2016-UNAT-659; Smith 2017-UNAT-768; Salem 2018-UNAT-855; Collins 2020-UNAT-1021.

⁵⁷ Gehr 2012-UNAT-236, citing to ILOAT Judgment No. 2967, quoting ILOAT Judgment Nos. 2510 and 2856.

⁵⁸ Afeworki 2019-UNAT-903.

⁵⁹ Hersh 2014-UNAT-433, Bali 2014-UNAT-450, Matadi et al. 2015- UNAT-592; Loeber 2018-UNAT-844.

⁶⁰ *Sanwidi* 2010-UNAT-084.

42.

a decision was t on

of the restructuring on the RBAS level. In conclusion, improper motives were not made out.

47. As to the rationale for the Applicant's post, the Tribunal stresses that the undisputed fact of rapidly evolving security, humanitarian and development landscape in which the UNDP Iraq CO found itself; the fact of hiring a specialized team to design the restructuring; its conclusion that the Unit was "*understaffed, poorly organized and dysfunctional with an ad-hoc division of labor*" and that "[s]taff is unclear about the terms of reference"; and eventually the fact that the project was approved on a high level - all lend credence to the need for transformation, albeit may not *per se* suffice as a reason for abolition of a specific post.⁶⁴ In the latter respect, however, the Tribunal is satisfied with the reasons stated by the Respondent in his Additional brief on reasons for abolition decision of 25 November 2020 (summarized at para. 34-36 *supra*). The decision to abolish both general programmatic NO-B posts and in their stead to introduce new functionalities on different level does not disclose irrationality or arbitrariness, let alone a manifest one. That the Applicant seems to suggest that the specialized tasks could have been carried out by the team in its unchanged shape, does not invalidate this conclusion.

48. The Tribunal is satisfied with the Respondent's explanation regarding the NO-B post in Ebril. As for the claim that there should have been a comparative review, it is important to note that a comparative review process is carried out where the existing number of staff members performing the same function at the same level exceeds the number of authorized posts for those specific functions in the proposed budget or structure. As the post in Ebril was created pursuant to the Transformation Plan with a different functionality, there was no basis for conducting a comparative review.

Whether the administration acted fairly and transparently

⁶⁴ See *Toure*, *ibid*, para. 34 (*Although not necessary for our holding, we note that this restructuring was effectively approved by the COM in March 2013 and, ultimately, by the General Assembly by way of its approval of the RPTC 2014-2015 biennium...*)

49. Whereas there is no claim of violation of any formal procedure in the present case, a large part of the Applicant's grievance is based on the fact that he had not been offered explanations that he had requested, and that the Respondent provided fallacious information about individual meetings allegedly held on the issue. On this point, the Tribunal recalls its finding in para. 45 *supra*, on the loss of institutional memory. The Tribunal, however, also recalls that the UNDP had created for the Applicant a contemporaneous opportunity to seek explanations.

50. The first concrete opportunity was readily during the staff retreat, which the Applicant chose

JUDGMENT

54. The application is dismissed.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 24th day of May 2021

Entered in the Register on this 24th day of May 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi