



Case No.: UNDT/NBI/2020/091

Judgment No.: UNDT/2021/140

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

KHAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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decided to uphold the contested decision.¹⁷

16. The Respondent emphasizes that the Applicant had been performing Vehicle Mechanic functions while he was placed against a supply chain management post. It was lawful and reasonable for UNISFA to redeploy the post to perform the supply chain management functions for which the General Assembly had budgeted it. The Applicant did not have the skills or the experience to perform the functions of the Property Management Assistant FS-5.

17. Regarding the Applicant's second and third arguments, the Respondent submits that the Applicant has produced no evidence to support his allegation that the contested decision was motivated by his "underlying medical conditions due to Covid-19 impact". The Applicant has also not shown that he was treated differently than any similarly situated UNISFA staff member.

18. In view of the foregoing, the Respondent requests the Tribunal to reject the application. The Applicant has not demonstrated any procedural or substantive breach of his rights nor has he presented any evidence of harm as required by article 10.5(b) of the Dispute Tribunal Statute.

Considerations

Standard of review

19. Pursuant to staff regulation 4.5(c), a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service. The Administration is, nevertheless, required to provide a reason for such a non-renewal upon the affected staff member's request or the Tribunal's order, and, as held by the Appeals Tribunal, "when a justification is given by the Administration for the exercise of its discretion, it must be supported by the facts."¹⁸

¹⁸ *Islam* 2011-UNAT-115, paras. 29-32, *Obdeijn* 2012-UNAT-201 paras. 33-39; *Pirnea* 2013-UNAT-311 paras. 33- 34; *Ahmed* 2011-UNAT-153, para. 45.

20. In *Islam*, the Appeals Tribunal affirmed, specifically, that abolishment of a post as a result of reorganization constitutes a valid reason for not renewing the contract of a concerned staff member.¹⁹

21. Further, it is 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.²⁰ In line with this principle, the UNAT has affirmed the authority of the Secretary-General to engage in such restructuring, “including the abolition of posts, the creation of new posts and the redeployment of staff.”²¹ In such decisions, the Administration has broad discretion to reorganize its operations and departments to adapt to economic vagaries and challenges.²² 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.²³

22. It follows that in restructuring, the Respondent exercises wide discretion. This discretion is not unfettered and is subject to review pursuant to the general *Sanwidi* test²⁴, i.e., whether an exercise of discretion is legal, rational, procedurally correct and proportional.

¹⁹ *Islam, op.cit.*

²⁰ *Gehr* 2012-UNAT-236, citing to ILOAT Judgment No. 3638(o)22()-12(IL)1 1.27dme-9 No.

Whether the decision was based on improper motives or discriminatory

23.

Assembly.

32. Subsequently, the Applicant continued to be placed against borrowed posts in order to allow him to reach the retirement age. Most recently, he was placed against an FS-5 post of Property Management Assistant, while he, in fact, served as an FS-4, Vehicle Technician.

33. The Officer-in-Charge of the Supply Chain Performance Management Unit asked for the return of the loaned post to its proper section due to Organizational needs. Based on the foregoing legal framework, the Administration could lawfully decide not to extend the appointment in line with its priorities for staffing.

34. However, the Applicant contends that the decision was unlawful and discriminatory because other staff members in other sections were moved to the Supply Chain Section while he was not, although the Applicant was informed that the post he encumbered belonged to the Supply Chain Section. In this regard, following the abolishment of six Field Service positions in the Engineering Unit in 2016, including the Applicant's, UNISFA accommodated him on more than one occasion by retaining him on different posts to allow him to reach his retirement age in July 2018.

35. UNISFA accommodated him on a position in the Supply, Centralized Warehouse and Property Management Section, even though he did not perform the functions of this specific post. After the United Nations-wide retirement age was revised to 65, UNISFA showed the Applicant further leniency by extending his appointment further on a borrowed post from a different section.

36. The post that the Applicant was encumbering was reclassified upwards of the Applicant's level to FS-5. Accordingly, the Applicant was placed against a post not compatible with his level of FS-4, nor compatible with his skills and terms of reference of the job opening for which he had been recruited.

37. In addition, the Applicant failed to substantiate claims of discrimination against him. The fact that some staff members, whose personal level and functions corresponded to their posts, were redeployed to the Centralized Warehouse Unit in

order to perform the specific functions covered by their terms of reference, does not mean that the Applicant had the same right to be reassigned when he did not have the skills or the experience required to perform the functions in the new unit. As such, the contested decision was taken in compliance with the relevant rules and regulations.

JUDGMENT

38. The application is rejected.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 29th day of November 2021

Entered in the Register on this 29th day of November 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi