



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/58

Judgment No.: UNDT/2010/014

Date: 27 January 2010

English

Original: French

**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

UMPLEBY

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Bernadette Tro

**Counsel for Respondent:**

Shelly Pitterman, DHRM/UNHCR

## **Application**

1. On 3 September 2009, the applicant filed an appeal before the United Nations Dispute Tribunal (UNDT) against the decision of 29 February 2008 whereby the Deputy High Commissioner for Refugees assigned 12 staff members to vacant posts following the first stage of a comparative review process.
2. She requests:
  - a. Assignment to a G-7 post for which she was eligible in 2007 and for which she had applied;
  - b. Compensation for moral damage suffered;
  - c. Recovery of sick leave and annual leave.

## **Facts**

3. The applicant states that on 30 April 2007 she was informed by the Director of the Division of External Relations of the Office of the United Nations High Commissioner for Refugees (UNHCR) that her post would be eliminated on 31 December 2007 following the relocation of some of the administrative services from Geneva to Budapest.
4. On 12 June 2007, all UNHCR headquarters and field staff were informed of the decision to relocate some of the administrative services from Geneva to Budapest.
5. Several vacant General Service posts in Geneva were advertised in August 2007. In September 2007, the Appointments, Postings and Promotions Committee (APPC) issued an announcement on the placement of candidates and on 8 October 2007, the applicant was assigned to a G-6 post as an internal communication assistant in the Media Relations and Public Information Service at headquarters in Geneva.
6. On 22 October 2007, at the behest of the Joint Advisory Committee, the High Commissioner adopted the guidelines for the comparative review

process for General Service staff at headquarters, and on 23 November 2007, the staff were informed accordingly.

7. On 1 January 2008, the UNHCR Office in Budapest was opened.

8. On 15 January 2008, the Comparative Review Panel (CRP) met to consider the situation of persons without posts, namely, 12 staff members and 12 vacant posts.

9. On 29 February 2008, the Deputy High Commissioner filled the aforementioned posts.

10. On 28 April 2008, the applicant requested that the Secretary-General review the Deputy High Commissioner's decision of 29 February 2008. That request was denied on 8 July 2008.

11. On 30 July 2008, she filed an appeal against this decision before the Joint Appeals Board, which concluded that her appeal was inadmissible *ratione materiae*.

12. By a letter dated 3 June 2009, she was informed of the decision of the Deputy Secretary-General to abide by the recommendation of the Joint Appeals Board.

### **Contentions of the parties**

13. The applicant's principal contentions are:

- a. Given that the number of staff members to be placed equalled the number of vacant posts, there was no need to undertake a comparative review process. The normal rules of staff placement should have been followed;
- b. The available posts should have been advertised and filled following consultations with APPC, not CRP. Thus, article IV of the Staff Regulations in effect at that time was violated;
- c. The composition of CRP at the meeting on 15 January 2008 was irregular, as only the representatives of the administration were present;

- d. Another staff member in the same situation was assigned to a higher-level post in October 2007 by CRP. That staff member was able to turn down one post and choose another. The applicant was unable to do so which constitutes unequal treatment;
  - e. In late September 2008, she had to leave her post owing to moral harassment, and in September 2009 she ended up without a specific post;
  - f. Contrary to what the respondent maintains, the contested decision affected the applicant's rights owing to the irregularity of the comparative review and the unequal treatment to which she was subjected.
14. The respondent's principal contentions are:
- a. The application is inadmissible because the contested decision is not an administrative decision within the meaning of staff regulation 11.1 and the case law of the United Nations Dispute Tribunal;
  - b. The applicant could not be included in the list of staff members considered by CRP, because she was occupying a post when the Panel was established and remained in her post throughout the Panel's mandate;
  - c. The applicant was selected by APPC in September 2007, with effect from 8 October 2007, and paragraph 19 of the APPC Procedural Regulations of June 2006, which provides that only staff members who have served for a minimum of one year in their present post will be eligible to apply for vacancies, applied to her;
  - d. Thus, the contested decision has not affected the applicant's rights and terms of employment, nor has it caused her any harm.

### **Judgment**

15. The applicant, who is at the G-6 level, is contesting the decision of 29 February 2008 whereby the Deputy High Commissioner for Refugees

appointed 12 staff members to vacant posts after the first stage of the comparative review process established following the transfer from Geneva to Budapest of some of the General Service posts.

16. Article 2 of the Statute of the United Nations Dispute Tribunal provides that:

“The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations: (a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance...”

17. In response, it is maintained that, pursuant to the provisions above, the application is inadmissible since the applicant’s rights and terms of employment are not affected by the contested decision.

18. The applicant maintains that she was informed on 30 April 2007 by the Director of the Division of External Relations of UNHCR that her post would be eliminated as of 31 December 2007 following the relocation of part of the headquarters of UNHCR to Budapest. She applied for several posts in Geneva and Budapest and in September 2007, following consultations with APPC, she was assigned to the post she had put last on her list of preferences, as internal communication assistant in the Media Relations and Public Information Service at headquarters in Geneva.

19. Paragraph 19 of the APPC Procedural Regulations of June 2006 provides that only staff members who have served for a minimum of one year in their present post will be eligible to apply for vacancies.

20. Therefore, while the applicant maintains that the contested decision of 29 February 2008 to assign 12 staff members to vacant posts is prejudicial to her rights because the vacant posts were not advertised, it follows from the text cited above that, at all events, on the date when the 12 staff

members were assigned, she could not have aspired to be assigned to one of the posts in question, owing to her assignment in September 2007.

21. It follows that the decision contested by the applicant could not have been prejudicial to the rights arising from her contract or to her terms of appointment and that the application must be declared non receivable.

### **Conclusion**

22. For these reasons, the Tribunal DECIDES:

The application is rejected.

*(signed)*

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Judge Jean-François Cousin

Dated this 27th day of January 2010

Entered in the Register on this 27th day of January 2010

*(signed)*

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V́ctor Rodŕguez, Registrar, UNDT, Geneva