



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

ADEWUSI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat
Marcus Joyce, ALS/OHRM, UN Secretariat

Introduction

1. On 30 December 2011, the Applicant filed an Application in which he contests:

- a. the termination of his provisional reassignment to the United Nations Mission in Côte d'Ivoire ("ONUCI") and separation from the Organization;
- b. the non-payment of his salary from 1 July 2011 to 6 December 2011 at the P5 step 8 level;
- c. the non-payment of his reassignment entitlements and the lump sum payment for the shipment of his personal effects from Ndjamena;
- d. the inaccurate payment he received for relocation grant from the United Nations Mission in the Central African Republic (MINURCAT) to ONUCI;
- e. disconnection from UN Webmail; and
- f. not having been sent certain written tests forming part of recruitment exercises.

2. In a Motion dated 25 May 2012 and in his closing submissions dated 29 August 2012, the Applicant seeks the following additional payments:

- a. A relocation grant of USD10,000 for his move from MINURCAT to ONUCI;
- b. A relocation grant of USD9,167 for his move from ONUCI to UNMIT;
- c. Education grant allowance for the academic years 2009-2010 and 2010-2011;

d. 1 day of Daily Subsistence Allowance (DSA) at the Abidjan rate in June 2011;

3. The Respondent filed a Reply on 3 February 2012. The Applicant filed additional comments to the Reply on 13 February and 24 March 2012.

4. The Tribunal heard the case on 31 August 2012. During the hearing, the Tribunal received evidence from the Applicant and from Mr. Leonard Otti, Human Resources Officer, Career Development Unit, Field Personnel Division, Department of Field Support.

Facts

5. On 11 November 2010, the Applicant was informed that his MINURCAT post was downsized due to the completion of MINURCAT's mission and was, either on 11 or 17 November 2010, offered a 90 day reassignment to ONUCI as a Senior Political Affairs Officer at the P-5 level. He also received a ticket to Abidjan.

6. The Applicant was placed on an ONUCI post effective 1 January 2011. It was intended that the Applicant would relocate to ONUCI. This was not immediately possible due to an outbreak of violence in the Côte d'Ivoire. The Applicant's assignment was renewed for a further 90 days, until 30 June 2011.

7. On 30 November 2010 the Applicant applied for two positions of Chief Civil Affairs Officer and for one position of Senior Civil Affairs Officer.

8. The Applicant could not report to Abidjan for his new assignment because of the crisis in Cote d'Ivoire so he travelled to his home country Lome, Togo. All his correspondence to the Chief Civilian Personnel Officer (CCPO) at the ONUCI mission as to when he could resume duties there went unanswered.

9. On 10 January 2011, the Applicant sent an email to Mr. Paulin Djomo, Mr. Otti and Mr. Akouete-Akue informing them of his difficulty in accessing his inbox on Webmail and requesting them to send emails directly to his personal email address.

10. In mid February 2011, the Applicant's colleagues informed him that his name had been removed from the UN directory.

11. In early April 2011, the Applicant received a notice from the staffing section informing him of his pre-selection for the three positions he had applied for on 30 November 2010. He was also informed that he would be required to take written tests.

12. On 21 April 2011, he sent another email to Mr. Djomo (then Officer-in-Charge of the Africa Division) explaining that he would not be able to take the written tests because of the difficulty in accessing his mail on the Webmail system. He also inquired about his administrative status. He did not receive a response to his email. He sent the same email to Mr. Otti, and to Mr. Akouete-Akue but received no response.

13. The Applicant thereupon travelled to Abidjan on 2 June 2011. On 3 June 2011, he went to the personnel section of ONUCI where Mr. Akouete-Akue informed him that he could not be taken onboard as he had not been cleared by the Field Central Review Board (FCRB).

14. On 5 June 2011, the Applicant informed Ms. Rima Salah, the Deputy Special Representative of the Secretary-General (DSRSG) of MINURCAT about the situation and requested a copy of a special report that had been submitted for her signature. She directed him to Ms. Gisela Huerta but received no response to date.

15. On 9 June 2011, the Applicant arrived in MINURCAT and was informed by his colleagues that the written tests had already been taken. He wrote to the staffing section to inquire about the possibility of taking new tests but received no response.

16. On 12 June 2011, the Applicant sent an email to the Ombudsman requesting assistance but the attempts at mediation were not successful.

17. On 17 June 2011, the Applicant received payment of Daily Subsistence Allowance (DSA) for 29 days in ONUCI. On 21 June 2011, ONUCI allowed him

to check in and issued him with a badge and a driving permit. On 23 June 2011, he received a letter dated 22 June 2011 informing him of the end of his temporary assignment in ONUCI and termination from FPD with effect from 1 July 2011. The Applicant, however, was not separated from the Organization but was instead placed on Special Leave Without Pay (SLWOP) until December 2011.

18. On 21 August 2011 the Applicant sought Management Evaluation of the decisions:

- a. not to extend his contract beyond 30 June 2011;
- b. to remove his name from the UN directory; and
- c. to disconnect his Webmail access while on assignment to ONUCI.

19. The Applicant further alleged that the decisions (b) and (c) resulted in him not being convoked for three posts of Civil Affairs Officer. The Applicant filed a supplemental submission to the MEU on 19 October 2011.

20. On 16 September 2011, the Applicant received an email from the staffing section informing him of the dates for taking his written tests for the three Civil Affairs positions he had applied for in November 2010. He sat the tests in October 2011. On 5 December 2011, he raised the issue of non-payment of his entitlements for his reassignment from MINURCAT to ONUCI with the CCPO of ONUCI. He sent a reminder on 14 December 2011 but received no response.

21. The Applicant was offered a P4 post in the United Nations Integrated Mission in Timor-Leste (UNMIT) on 20 September 2011 which he took up on 7 December 2011.

22. Mr. Otti informed the Applicant on 21 October 2011 that he had not been separated from ONUCI but had in fact been placed on SLWOP so that he would not lose out on his pension benefits since he had served for at least 36 months at the P5 level and therefore his pension benefits would be calculated at that level.

23. The MEU responded to the Applicant's request for a management evaluation on 21 November 2011 and concluded that the impugned decisions had

been rendered moot as a result of the subsequent decisions taken by the Administration to: (a) convoke him for a written assessment for the three Civil Affairs Officer Posts; and (b) to reassign him to UNMIT and place him on SLWOP in the interim. The MEU was of the view that the Applicant's request for compensation for regular payments of his salary from 1 July 2011 to be non-receivable because he did not establish an underlying staff right to the same.

24. The Tribunal heard the case on 21 August 2012. During the hearing, the Tribunal received live evidence from the Applicant for himself and from Mr. Otti for the Respondent.

The Applicant's case

25. The Applicant's case is summarized as follows:

26. There were wrong decisions taken in respect to his situation including his wrongful termination from ONUCI communicated to him in a letter dated 23 June 2011. A letter dated 22 June 2011 from Mr. Otti explained that he had neither been terminated from ONUCI nor separated from FPD contrary to the aforementioned letter dated 23 June 2011.

27. There was strong opposition to his reassignment to ONUCI.

28. He was never notified that he had been placed on Special Leave Without Pay and had never requested such an arrangement. He only became aware of it in October 2011 when Mr. Otti informed him. He was therefore denied an opportunity to contest the decision to place him on SLWOP.

29. ONUCI is yet to pay him the lump sum for the shipment of his personal effects and his relocation grant as he stayed in Abidjan for almost a year during which he was ready and willing to work.

30. The written tests that he was supposed to take in April 2011 were only sent to him in September 2011 meaning that to date he has no FCRB clearance for any of the P5 and D1 posts that he applied for therefore this issue cannot be considered moot.

The Respondent's case

31. The Respondent's case is summarized as follows:

32. The removal of the Applicant from the UN Webmail resulting in his not receiving the written tests does not constitute administrative decision under art. 2 of the Tribunal's Statute and therefore is not appealable before the Tribunal.

33. The Applicant's removal from UN Webmail is irrelevant because on 23 and 27 September 2011 the Field Personnel Division (FPD) recruitment unit sent him the written tests.

34. The Applicant was not paid a salary for the period June 2011 to January 2012 because he was placed on Special Leave Without Pay (SLWOP) and since he did not request for management evaluation of the said decision, his claim in this regard is not receivable.

35. The Applicant was placed on SLWOP to assist him. If the Applicant had been separated from service, the Administration could not have assigned him to another mission. Instead of being an internal candidate who could be reassigned, he would have been an external candidate who was not on the FCRB roster. The Administration, therefore, by placing the Applicant on SLWOP, facilitated his reassignment to UNMIT and ensured that he could remain in service until his retirement date which was due on 1 May 2012.

36. If the Applicant had not been placed on SLWOP he would have been separated from the Organization and thus lose continuity of service. He would have also lost continuity of entitlements and would not have been eligible for reassignment to UNMIT.

37. The Applicant reported to duty in Côte d'Ivoire without having been asked to do so. The Organization was ready to receive the Applicant in early 2011 but this was frustrated by the violence that broke out in Côte d'Ivoire requiring that assignments to ONUCI be put on hold and/or cancelled.

38. The Applicant's claim for reassignment entitlements was not raised in the Applicant's request for management evaluation and is accordingly not receivable.

Considerations

39. Having reviewed the entire case record, the Tribunal finds that the following legal issues arise for consideration in this case:

- a. Whether the Applicant was lawfully placed on SLWOP upon the expiry of his provisional reassignment to ONUCI?
- b. Whether the Applicant is entitled to a salary from 1 July 2011 to 6 December 2011 at the P5 step 8 level.
- c. Are the Applicant's claims to payments for education and relocation grants receivable?
- d. Is the Applicant entitled to a remedy for the delay in informing him that he had been placed on SLWOP?

Was the Applicant lawfully placed on SLWOP upon the expiry of his provisional reassignment to ONUCI?

40. It is the Applicant's position that he was never notified that he had been placed on Special Leave Without Pay and had never requested such an arrangement. He only became aware of it in October 2011 when Mr. Otti informed him. He was therefore denied an opportunity to contest the decision to place him on SLWOP.

41. In his testimony on behalf of the Respondent, Mr Otti stated that:

- a. He was involved in finding posts for staff members when MINURCAT closed.
- b. On 11 November 2010, the Applicant was offered a lateral reassignment to ONUCI. In early December 2010, violence broke out in Côte d'Ivoire. Only staff required in Côte d'Ivoire were sent to the country. Other staff including the Applicant were told to return to their

home country and wait for a call from ONUCI requesting them to report to duty.

c. If the Applicant had been separated from service, it would not have been possible to reassign him to a position in another mission. The Applicant was not on the FCRB roster and could not have been assigned to another mission from the roster. He could only be assigned to another mission as an internal candidate.

d. Efforts were made by the Administration to place the Applicant on alternative positions. Finally, the Administration made efforts to place the Applicant at UNMIT. These efforts were successful.

42. Staff regulation 5.2 provides that special leave may be authorized by the Secretary-General in exceptional cases. Staff rule 5.3 (ii) provides that special leave is normally without pay. In exceptional circumstances, special leave with full or partial pay may be granted. Staff rule 5.3 (c) provides as follows:

The Secretary-General may authorize special leave without pay for pension purposes to protect the pension benefits of staff who are within two years of achieving age 55 years and 25 years of contributory service, or who are over that age and within two years of 25 years of contributory service.

43. This case is essentially about whether there were special circumstances that would have justified placing the Applicant on special leave with full pay. The evidence before the Tribunal is that the Applicant received a letter dated 22 June 2011 informing him of the end of his temporary assignment in ONUCI and termination from FPD with effect from 1 July 2011. He was not notified, however, until 21 October 2011, that he had in fact not been terminated as advised but placed on SLWOP.

44. This delay must be weighed against the Administration's seemingly genuine efforts to protect the staff member's interests. It appears that the Administration applied the provisions of staff rule 5.3 (c) to protect the Applicant's pension entitlements and to ensure that he could be reassigned to another mission as an internal candidate as he later was.

45. The Applicant's reassignment to ONUCI was frustrated by *force majeure*, in the nature of an outbreak of violence in Côte d'Ivoire and this event was beyond the control of the Administration. Having taken all these factors into account, the Tribunal finds that there were no exceptional circumstances that would have justified placing the Applicant on special leave with full pay between 1 July 2011 and 6 December 2011.

46. The Tribunal holds that the Applicant was lawfully placed on SLWOP upon the expiry of his provisional reassignment to ONUCI and was therefore not entitled to a salary from 1 July 2011 to 6 December 2011 at the P5 step 8 level as per staff rule 5.3(c). The Applicant's other claims arising as a result of the decision to place him on SLWOP such as with respect to salaries and entitlements during this period must therefore fail.

Are the Applicant's claims to payments for education and relocation grants receivable?

47. The evidence shows that the Applicant was not paid a relocation grant to Timor-Leste and was not paid an education grant during the four month period. The Applicant failed to request for management evaluation in respect to these claims. These claims cannot therefore be entertained by the Tribunal at the present time.

48. In a Motion filed with the Tribunal on 25 May 2012, the Applicant contended that he was paid USD1, 200 by ONUCI as a relocation grant for his move from MINURCAT to ONUCI instead of a pro-rated amount of USD10, 000. The Applicant further claims that he should have received at least USD9, 167 as payment of relocation grant when he moved from ONUCI to UNMIT. The Tribunal holds that since these claims have also never been subjected to a management evaluation as required by the rules, they cannot be entertained.

Is the Applicant entitled to a remedy for the delay in informing him that he had been placed on SLWOP?

49. As earlier indicated, the evidence before the Tribunal is that the Applicant received a letter dated 22 June 2011 informing him of the end of his temporary assignment in ONUCI and termination from FPD with effect from 1 July 2011. He was not notified of his placement on SLWOP until 21 October 2011.

50. The Applicant was left to labour in uncertainty as to his employment status for four months when his queries remained unanswered. There is no doubt that the situation caused him much anxiety and distress as he testified. It is regrettable that the Administration would leave a staff member in such a state of legal limbo in respect to his employment status.

51. The Applicant was self-represented and was not always able to clearly articulate his claims.

Judgment

52. By reason of the distress suffered when he spent an idle 6 months in Côte d'Ivoire due to his contract being terminated and not being properly informed as to his employment status the Tribunal awards the Applicant USD 6000.

(Signed)

Judge Nkemdilim Izuako

Dated this 31st day of October 2012

Entered in the Register on this 31st day of October 2012

(Signed)

Jean-Pelé Fomété Registrar, Nairobi