



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

LEE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. By application filed on 10 February 2014, the Applicant, a G-5 Programme Management Assistant in the Department of Management (“DM”) in New York, contests the decision to abolish her post with the Management Support Service (“MSS”), Office of the Under-Secretary-General for Management (“OUSG/DM”), the decisions to separate her from the Organization as of 31 December 2013 and not to renew her fixed-term appointment, as well as the “decision not to assist in the exceptional placement against a post, decision on the conditions of [her] release on temporary assignment to [Office of Information and Communication Technology], and the decision to withhold information regarding accountability for MSS posts and resources”.

Facts

2. The Applicant joined the Organization on 21 July 2004 as an Administrative Assistant at the G-3 level, and was granted a fixed-term contract as of 21 January 2005. Effective 17 February 2009, she was promoted from the G-4 to the G-5 level, with a functional title of Management Analysis Assistant, in the MSS, OUSG/DM. This position was being financed through post No. 6003 in the regular budget of MSS, OUSG/DM. Along with other staff members in DM, the Applicant was assigned to work on the Enterprise Resource Planning project (“ERP” or “Umoja”). Umoja is a project designed to facilitate and streamline information between all business functions within the United Nations Secretariat, and will be, according to the Respondent, the Organization’s new central administrative system.

3. By a “note” dated 17 September 2009, the Director, Umoja, requested approval from the USG/DM to integrate MSS and the Change Management Team (“CMT”, within the Umoja project) “into a single entity by assigning MSS to Umoja for the duration of the project”. The USG/DM approved the request by a “note” of 25 September 2009, and the integration of several MSS posts—1 D-1, 1 P-5, 1 P-2 and 1 GS (OL) from the regular budget and 2 P-4s from the support

account—into Umoja became effective on 1 October 2009. The GS (OL) post was post No. 6003, *i.e.* the G-5 position of Management Analysis Assistant referred to above and encumbered by the Applicant. In her note, the USG/DM also stated that “[s]ince the integration of the MSS is temporary for the duration of the ERP Project, it will not be reflected in the current or future budget fascicles. Upon liquidation of the ERP Project, the post and non-post resources of MSS will return to the front office of OUSG/DM”.

4. On 6 December 2010, the Secretary-General’s Bulletin on the Organization of the Department of Management (ST/SGB/2010/9) entered into force, abolishing previous ST/SGB/2005/8 on the same subject. Under its sec. 8, it described the functions of MSS, and stated, in footnote No. 3, that:

Effective 1 October 2009, the [MSS] was integrated with the Office of Enterprise Resource Planning — Umoja until the duration of the project to consolidate the Secretariat’s business process-re-engineering and change management efforts. During this period, the Service will continue to fulfil its mandate of providing advice and assistance to various offices within the Secretariat.

5. As of 22 November 2010 and until 31 January 2012, the Applicant was temporarily assigned, at the G-6 level, to the Policy, Evaluation and Training Division in the Department of Peacekeeping Operations, and, according to the Applicant, upon her return to Umoja on 1 February 2012 she performed the functions of Administrative Assistant in the Office of the Director, Umoja.

6. Following the extension of the assignment of the Chief, MSS, to the Global Field Support Services (“GFSS”) project, the Applicant was temporarily assigned to work in the GFSS team, as of 15 October 2012 and until 8 May 2013.

7. On 1 February 2013, during a meeting with the Executive Officer, DM, the Chief, MSS, OUSG/DM, and the Director, Umoja, the Applicant was informed that the OUSG/DM would propose to the General Assembly (“GA”) the abolishment of post No. 6003 that she encumbered as well as of a P-2 post of MSS, and that the GA would consider and decide on such proposal in December 2013. During the meeting, the Applicant was informed that since business process

improvement was incorporated into Umoja, the functions of those posts were no longer needed.

8. On 18 April 2013, the Proposed Programme Budget for the OUSG/DM for the biennium 2014-2015 was published (A/68/6). It included, in its sec. 29A, the proposal to abolish two posts within MSS, namely the post encumbered by the Applicant and a P-2 post.

9. On 1 May 2013, the Applicant's fixed-term appointment as Management Analysis Assistant within "DM/Umoja" was renewed until 31 December 2013, and as of 9 May 2013, she was temporarily assigned to the Office of the Administration of Justice, where she stayed until 4 October 2013.

10. On 15 August 2013, the First report of the Advisory Committee on Administrative and Budgetary Questions ("ACABQ") on the proposed programme budget for the biennium 2014-2015 was issued (A/68/7). In its sec. 29A pertaining to the OUSG/DM, it recommended to the GA the approval of the Secretary-General's proposal to abolish four posts, including two posts in MSS described as follows:

VIII.7 The four posts proposed for abolishment comprise the following: (a) two posts in the [MSS], of Associate Programme Management Officer (P-2) and Management Analysis Assistant (General Service (Other level)), owing to increased synergies between Umoja and the [MSS], which have many complementary activities that can be aligned by, inter alia, re-engineering business processes, improving management practices and leading change management activities (...)

11. By email of 28 August 2013 entitled "abolishment of your post", the Administrative Officer, Executive Office ("EO"), DM, referred to the discussion held on 14 August 2013 with the Applicant, and encouraged her to apply to temporary vacancies as well as to openings in Inspira.

12. By email of 24 September 2013 from the Administrative Officer, EO/DM, the Applicant was informed of her selection for a temporary job opening as Administrative Assistant in the Office of Information and Communication Technology ("OICT"). The email also stated the following:

[P]lease note that Umoja has agreed to your release on temporary assignment to OICT/PMD/KMS effective 5 October 2013 through 31 December 2013. As advised by Umoja, since your post in that office will be abolished effective 1 January 2014, they are not in a position to reabsorb you beyond 31 December 2013. As advised in my email to you of 28 August 2013, you are encouraged to apply to positions both within and outside of Inspira.

13. By email of 10 October 2013, the Applicant received a copy of a Personnel Action (“PA”) issued to record her new assignment to OICT. On 11 October 2013, she sought clarifications from the Executive Office, DM, with respect to the sentence “S/M has no lien against Umoja post” that figured on the PA.

14. Also on 11 October 2013, the Applicant submitted a request for management evaluation (“ME request No. 1”) of the “decision to abolish two posts in [MSS], OUSG/DM”, which included the one she was encumbering.

15. By email of 14 October 2013, the Administrative Officer, EO/DM, responded to the Applicant’s query reminding her of her previous meeting with the EO, as well as of previous email communications regarding the “abolishment of [her] post effective 1 January 2014”, and confirmed that the Applicant did “not have a lien on [her] post in Umoja beyond that date”. The Applicant replied on 16 October 2013, asking for further clarifications regarding her situation.

16. On 19 November 2013, the Applicant received a reply to her ME request No. 1, advising her that the Secretary-General had decided “to uphold the decision not to renew [her] fixed-term appointment”.

17. On 22 November 2013, the Applicant requested management evaluation (ME request No. 2) of the decisions “1. (...) to abolish [her] post effective 1 January 2014. 2. (...) not to reabsorb [her] beyond 31 December 2013. 3. (...) not to provide [her] information about the reasons for the post abolishment. 4. (...) to include the statement “S/M has no lien against Umoja post” in [her] [PA] form. 5. (...) not to provide a response to [her] emails and address [her] questions/concerns. 6. (...) not to inform [her] who is accountable for MSS resources so that [she] know[s] who [she] can speak to about [her] post. 7. (...)

not to consult/discuss/communicate such decisions with the Chief, [MSS]. 8. (...) to create a new Umoja business re-engineering group”.

18. By a reply to her ME request No. 2 dated 29 November 2013, the Management Evaluation Unit (“MEU”) advised the Applicant that her ME request No. 2 was not receivable as it contested the same matters and repeated arguments set out in her ME request No.1. Furthermore, the MEU informed the Applicant that it considered her ME request No. 2 as duplicative of her ME request No. 1.

19. In a letter dated 27 November 2013 from the Executive Officer, DM, to the Applicant, which was handed to her during a meeting held on the same day, the Executive Officer, DM, reiterated the content of the meeting of 1 February 2013 in which the Applicant had been informed of the proposal to abolish her post, subject to the approval of the GA. The letter further stated that:

This letter thus serves as advance notice that your fixed-term appointment may not be extended beyond 31 December 2013 pending the decision by the [GA] on the proposed Programme Budget of 2014-2015, which is expected during the month of December 2013.

[...]

In the event that the [GA] decides not to abolish your post, we will inform you on your contractual status with the Organization.

20. On 24 December 2013, the Applicant received a document entitled “Note for the File” of the same day, in which the Executive Officer, DM, recalled the two prior meetings held with the Applicant on 1 February 2013 and 27 November 2013. From the note, it transpires that the Applicant was informed that pending the decision of the GA on the proposed programme budget 2014-2015, she had a lien on her post until 31 December 2013. The note further provided the Applicant with various eventualities and hypothetical situations as to her contractual situation beyond 31 December 2013.

21. On 25 December 2013, the Applicant requested management evaluation (ME request No. 3) of the decisions “1. (...) to abolish [her] post effective 1 January 2014. 2. (...) not to extend [her] beyond 31 December 2013. 3. (...) not

to reabsorb [her] beyond 31 December 2013. 4. (...) to separate [her] on 31 December 2013, pending [the] GA decision. 5. (...) that [she] [would] have no lien on a post while on temporary assignment with OICT. 6. (...) to include the statement “S/M has no lien against Umoja post” in [her] [PA] form. 7. (...) not to inform [her] who is accountable for MSS resources so that [she] know[s] who [she] can speak to about [her] post”.

22. By email of 26 December 2013, the Applicant provided comments to the “Note for the file” of 24 December 2013, stating, *inter alia*, that “separation” was not mentioned at the meeting. She also asked for further clarifications concerning the decisions taken regarding her post.

23. By email of the same day, the Administrative Officer, EO/DM, informed the Applicant that OICT had requested the extension of her temporary assignment for an additional period of three months through 31 March 2014. Said email further stated the following (emphasis in the original):

In this regard, please note that to date the [GA] has not made a decision regarding the proposed abolishment of your post.

In light of the above and while we await the GA’s decision regarding your post, the three-month extension of the assignment would be based on one of the following conditions:

1) If the [GA] **approves the abolishment of your post**, your [FTA] would be extended through 31 March 2014 to coincide with the duration of the Temporary Assignment and you will be on assignment with **no lien on a post in MSS or any other post in the Department of Management**

OR

2) If the GA **does not approve the abolishment of your post**, your [FTA] would be extended based on the recommendation from MSS and subject to satisfactory performance. In this case, you will maintain a lien on your post in MSS for the duration of your assignment in OICT with return rights to MSS.

We will inform you as soon as we receive the GA’s decision on your post and provide an update to this message.

24. By email of 27 December 2013, the Applicant expressed her worries about her being on a temporary assignment with OICT without having a lien against any post as of 1 January 2014, noting that had she known that she would not have a post while on a temporary assignment, she would have focused more on applying for Inspira job openings rather than for temporary job openings. In her email, the Applicant also requested some assistance for an “exceptional” placement against another post, should her post be abolished. In the email she received in reply on the same day, the Administrative Officer, EO/DM, proposed to meet with her on 30 December 2013, but the Applicant replied that before having such a meeting, she would like to receive clarification about who made the decision to abolish MSS posts to ensure that the decision-maker(s) participate at the meeting.

25. On the same day, *i.e.* 27 December 2013, the GA endorsed the ACABQ recommendations on the proposed programme budget for the biennium 2014-2015 (A/68/7) (see para. 18 of GA resolution 68/246 adopted on 27 December 2013 and published on 17 January 2014).

26. By email of 31 December 2013, the Administrative Officer, EO/DM, informed the Applicant that the GA had endorsed the proposal for abolishment of posts within DM effective 1 January 2014, and that, consequently, her post number 6003 in MSS/OUSG would be abolished effective that date. The Applicant was also informed that given OICT’s request to extend her assignment there until 31 March 2014, her FTA—expiring 31 December 2013—would be extended through that date, but that this would be “without a lien on a post in MSS or any other post in the [DM]”.

27. By memorandum dated 13 January 2014, the Applicant was informed that her ME request No. 3 was also considered not receivable by the MEU, as it was deemed duplicative of her ME requests Nos.1 and 2, for it contested the same matters which, additionally, were now time-barred.

28. On the same day, *i.e.* on 13 January 2014, the Applicant was offered a fixed-term appointment of three months starting 1 January 2014, as Administrative Assistant within KMS/OICT/DM, which she signed on 23 January 2014.

29. On 15 January 2014, she again filed a request for management evaluation (ME request No. 4) of the decisions “1. (...) that [she] [would] have no lien on a post while on temporary assignment with OICT beyond 31 December 2013. 2. (...) not to assist [her] in exceptional placement against a post. 3. (...) not to inform [her] who is accountable for MSS resources (...)”. She received a reply dated 16 January 2014, in which the MEU concluded that her ME request No. 4 was not receivable.

30. By application filed on 10 February 2014, the Applicant contested the decision to abolish her post with MSS, the decisions to separate her from the Organization as of 31 December 2013 and not to renew her fixed-term appointment, as well as the “decision not to assist in the exceptional placement against a post, decision on the conditions of [her] release on temporary assignment to OICT and the decision to withhold information regarding accountability for MSS posts and resources”.

31. On 12 February 2014, the application was served on the Respondent, who filed his reply on 14 March 2014.

32. On 4 March 2014, the Applicant was informed by email from the Administrative Officer, EO/DM, that OICT had requested the extension of her temporary assignment for an additional period of three months through 30 June 2014. The email specifically mentioned that “this extension [would] be under the same terms and conditions as [her] current assignment, i.e. there [would] be no lien on a post in MSS or any other post in [DM] since [her] post in MSS was abolished effective 1 January 2014”.

33. By Order No. 108 (GVA/2014) of 16 July 2014, the Tribunal convoked the parties to an oral hearing, which was held on 4 September 2014 by videoconference. The Applicant indicated at the hearing that in the meantime her contract had been extended until 31 December 2014 on her current temporary position within OICT.

Parties' submissions

34. The Applicant's principal contentions are:

On receivability

a. Her application is receivable as a final decision regarding the abolition of her post was already made by the Secretary-General when he decided on the programme content and resources allocation and submitted his proposed programme budget to the GA. It is not the GA that selects which posts are to be abolished, but the Secretary-General as Chief Administrative Officer; indeed, the GA has only to approve budget increases or reductions, and delegated to the Secretary-General the authority to make decisions on how the budget is going to be increased or reduced;

b. If one accepts the Respondent's argument that the decision of abolishment is made only by the GA, she would be left with no recourse at all, and the Administration would have misled the ACABQ and the Fifth Committee in the process leading to the identification of the posts to abolish with no possibility of rectification whatsoever;

c. The breach of her terms of appointment was not hypothetical anymore once the ACABQ approved the abolishment of her post in its 15 August 2013 report; indeed, as a matter of longstanding practice, once a budget proposal has been approved by the ACABQ it is always endorsed by the Fifth Committee and adopted by the GA without a vote. Moreover, she had been explicitly informed already on 24 September 2013 that her post "will be abolished effective 1 January 2014", and it was only after the issuance of Judgment *Lee* UNDT/2013/147 that the Administration started to use a hypothetical language and to communicate hypothetical decisions in order to claim that a final decision had not yet been made by the GA;

d. On the same line, it was already stated in her PA of 5 October 2013 that she had no lien against an Umoja post, which was well before any GA decision was made; the absence of lien statement was certainly made in

order to present her post as vacant before the ACABQ and Fifth Committee as part of the 38 percent of the vacant posts as at 1 January 2014 in order to justify abolishment of those posts;

On the merits

e. She had reasonable expectation to believe, based on the lengthy correspondence between the USG/DM and the Director, Umoja, that MSS posts would return to the Office of the USG/DM following the completion of Umoja;

f. The reason given by the Executive Officer, DM, that her post would no longer be necessary given that Umoja was already doing business process improvement is not supported by the facts;

g. In A/68/375, which was the Fifth progress report prepared on Umoja since 2009, there was no mention of the temporary integration of MSS staff into Umoja anymore, even though MSS staff were still integrated within Umoja, while the intention to create a business re-engineering group was already stated; this indicates that the intent was to replace MSS with a new team performing the same functions; furthermore, no consideration was given to actual vacancies and projected retirements when identifying posts to be abolished. The fact that several vacancy announcements had been published in 2013 to recruit three GS staff with Umoja, though there seemed to be no funding to continue her post, shows that the whole procedure leading to the abolishment of the MSS posts was tainted by an inherent conflict of interest and, hence, was flawed;

h. The Chief, MSS, was not consulted throughout the decision-making process. The Administration has been intentionally evasive throughout the entire process towards the Applicant, and despite her numerous requests, it did not inform her as to who was accountable for the MSS resources;

i. She was not given sufficient notice of termination of her contract, which resulted in causing her an extreme stress, especially in December

2013 when she was faced with the uncertainty surrounding her contractual situation;

j. The Administration treated her without due consideration, in particular when she did not get the assistance she had requested based on sec.11 of ST/AI/2010/3 (Staff selection system), which deals with "placement authority outside the normal process";

k. The series of events she contests, namely the denial of a lien against a post in DM, the decision not to reabsorb her following the end of her temporary assignment, and the decision not to inform her as to who is accountable for MSS resources so that she could explore exceptional placement against a post, demonstrates that the decision to abolish the post she was encumbering was intended to deny her the opportunity for continued employment with the UN for which she was eligible; she also was not able to apply for the Young Professionals Programme, since to be eligible for it staff members must hold an appointment valid for a minimum of six months, which was not clear in her case due to her uncertain contractual situation;

l. She requests the rescission of the impugned decisions and compensation for the distress, the harm and damage caused, including the loss of job security, the loss of chance for conversion to a continuing appointment, and the loss of career opportunities within the UN. Finally, she requests that the Tribunal orders a referral of the matter to the Secretary-General for accountability purposes.

35. The Respondent's principal contentions are:

On receivability

a. The application is not receivable *ratione materiae* since the Applicant does not contest administrative decisions under art. 2(1)(a) of the Tribunal's Statute;

b. Indeed, the Tribunal does not have jurisdiction to review the GA's decision to abolish the post encumbered by the Applicant; moreover, such a decision had no effect on the Applicant's terms of appointment as her contract had been further renewed; further, a staff member does not have a right to have his or her position financed by a particular post;

c. The GA has the exclusive authority to consider and approve the Organization's budget, under art. 17(1) of the United Nations Charter, and under art. 2.1 of its Statute, the Dispute Tribunal has only competence to review decisions of the Secretary-General as the Chief Administrative Officer of the Organization. As emphasized by the GA in its resolution 68/254, its decisions related to administrative and budgetary matters are subject to review by it alone;

d. In view of judgment *Lee* UNDT/2013/148, the principle of *res judicata* precludes the Applicant from contesting again the Secretary-General's recommendation to abolish the post she encumbered;

e. The Applicant's contention with regard to the non-renewal of her fixed-term appointment is moot, in view of the fact that notwithstanding the abolition of the post, her appointment had been renewed;

f. The Applicant's request for a meeting to discuss about an exceptional placement against a post has not given rise to an administrative decision having a direct legal effect on her terms of appointment; same as for the communication to her that she would not have a lien against "a post" in DM after 31 December 2013 and that Umoja would not "reabsorb" her upon the conclusion of her temporary assignment to another position; this is indeed the natural and predictable consequence of the GA decision to abolish the post and does not constitute an independent decision, in line with the Appeals Tribunal's jurisprudence that the predictable and logical outcome of an earlier decision does not constitute a separate administrative decision (*Zhang* 2010-UNAT-078). Moreover, the Applicant cannot be considered for placement outside the normal selection process under sec. 11.1 of ST/AI/2010/3 (Staff selection system) as she does not meet the

pre-conditions for consideration for placement and has no expectancy of renewal of her appointment, under staff rule 4.17(c);

g. Finally, the alleged failure to provide the Applicant with information regarding accountability for MSS resources has no direct legal effect on the terms of her appointment, and she has not identified any right under her terms of appointment to be provided with information relating to the Organization's accountability mechanisms for the management of posts and resources;

On the merits

h. In case the Tribunal finds the application receivable, the Respondent considers that it should be rejected on the merits, since the decision whether a post should be abolished is a matter that falls within the prerogative of the GA, not of the staff of the Organization;

i. Further, the Applicant was given notice of the possible non-renewal of her appointment, and not of its "termination"; hence, staff rule 9.7(b) does not apply to her;

j. She cannot be considered for placement outside the normal selection process as she does not fall within the three categories of staff members who may be considered for placement by the ASG/OHRM, in accordance with sec. 11.1 of ST/AI/2010/3;

k. She has no right to serve in a vacant position at the G-6 level in DM when her temporary assignment comes to an end, as the lien she had to the position of Management Analysis Assistant in MSS, OUSG/DM, extinguished once the position ceased to exist upon the abolition of the post used to finance the position; hence, she was repeatedly encouraged throughout 2013 to apply for other positions;

l. The Applicant's functions do not include any responsibilities for the management of the resources of MSS, and she has no right to be provided with the information she seeks regarding accountability for MSS resources.

Consideration

36. At the outset, and in view of the numerous requests for management evaluation filed by the Applicant prior to the filing of her present application, the Tribunal needs to determine of which decisions it has been duly seized. Indeed, pursuant to the jurisprudence of the Appeals Tribunal in *Massabni* 2012-UNAT-238:

2. The duties of a Judge prior to taking a decision include the adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content they assign to them, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.

3. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review which could lead to grant or not to grant the requested judgment

37. As highlighted in the chronology of facts of the instant case, as from 11 October 2013 the Applicant successively filed four requests for management evaluation, each one referring to a series of alleged decisions, sometimes repetitive, that she wished to contest. She had received replies to all of her requests for management evaluation prior to her filing of the present application before the Tribunal on 10 February 2014.

38. In her application to the Tribunal, the Applicant identified the contested decisions as:

(..) [T]he administrative decision to abolish [her] post with [MSS], decision to separate [her] from the UN effective 31 December 2013 and non-renewal of [her] fixed-term appointment, decision not to assist in the exceptional placement against a post, decision on the conditions of [her] release on temporary assignment to OICT, and the decision to withhold information regarding accountability for MSS posts and resources.

39. Since the Applicant expressly confirmed at the hearing that those were the decisions she wished to challenge, the Tribunal considers that it is duly seized only of the five decisions as listed above. In view of the fact that the Respondent raised receivability issues, the Tribunal will first examine this question for each of the five contested decisions successively. Indeed, the Tribunal recalls that art. 2.1(a) of its Statute reads:

1. 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;

(...)

40. It results from art. 2.1(a) of the Tribunal’s Statute, applicable to the present case, that for an application to be receivable, the contested decisions have to be “administrative decisions” under the provisions of the Tribunal’s Statute. It is well-established jurisprudence that the Appeals Tribunal adopted the following definition of an administrative decision of the former Administrative Tribunal (see for instance *Wasserstrom* 2014-UNAT-457, *Al Surkhi et al.* 2013-UNAT-304, quoting *Andronov* (Judgment No. 1157 (2003)):

[...] a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. [...] Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

Decision to abolish the Applicant’s post with MSS

41. The Tribunal notes that in the present case, the decision to abolish the position encumbered by the Applicant was taken by the GA itself, although such a

proposal had been prepared by the Administration. As explained in Judgment *Lee* UNDT/2013/147, the proposal submitted by the Secretary-General to the GA-despite the impression it gave to the Applicant that it was already final and that her post “will” be abolished as of 1 January 2014-was nothing more than a preparatory step of the final decision that fell under the GA’s authority. Indeed, pursuant to art. 17.1 of the Charter of the United Nations, “[t]he [GA] shall consider and approve the budget of the Organization”. This is also reflected in the Financial Regulations and Rules of the United Nations, pursuant to which the Secretary-General’s role in the budgetary process is restricted to the preparation of the proposed programme budget (see Regulation 2.1 of ST/SGB/2013/4).

42. The GA throughout its history repeatedly insisted that it did not wish to delegate to the Secretary-General decisions pertaining to budgetary matters such as post creation or abolishment. Also, it reminded the Judiciary of its limited mandate. For instance, in its recent resolution 68/254 on the administration of justice at the United Nations of 27 December 2013, it:

3. *Reaffirm[ed]* that the resolutions of the [GA] are binding on the Secretary-General and on the Organization;

4. *Stresse[d]* that all elements of the system of administration of justice must work in accordance with the Charter of the United Nations and the legal and regulatory framework approved by the [GA], and emphasize[d] that the decisions of the Assembly related to administrative and budgetary matters are subject to review by the Assembly alone;

5. *Reiterate[d]* that decisions taken by the Dispute Tribunal and the Appeals Tribunal shall conform with the provisions of [GA] resolutions on issues related to human resources management.

43. Against this background, it is not for the Tribunal to extend its powers by “bridging the gap” that may exist regarding the scope of judicial review of preparatory steps and the respective GA decision to abolish specific posts.

44. In view of the foregoing, the abolishment of the Applicant’s post has to be construed as a decision of the GA and not of the Secretary-General of the United Nations as Chief Administrative Officer of the Organization. The Tribunal cannot

but conclude that it has no judicial powers with respect to matters falling within the GA's exclusive realm . Since it is not within its jurisdiction, this Tribunal has no authority to review the decision in question (for a similar approach, see recent Judgments *Smith* UNDT/2014/099, *Keegan* UNDT/2014/100, and *Dagadu* UNDT/2014/101).

Decision to separate the Applicant effective 31 December 2013 and non-renewal of her fixed-term appointment

45. The Tribunal notes that at the date of this judgement, the Applicant is still in the employment of the Organization. Her fixed-term appointment has been extended from 1 January 2014 until 31 December 2014 and she has not been separated from the Organization at any point in time. Therefore, these contentions of the Applicant are moot.

Decision not to assist the Applicant in the exceptional placement against a post

46. By expressing her discontent over the fact that she had not been assisted by the Administration in the placement against another post following the abolishment of the post she initially encumbered, the Applicant is in fact referring to sec. 11.1 (b) of administrative instruction ST/AI/2010/3 on the Staff selection system, which provides that the Assistant Secretary-General for Human Resources Management shall have the authority to place certain staff members in need of placement in a suitable position outside the normal process; among these, the administrative instruction in question refers to “staff, other than staff members holding a temporary appointment, affected by abolition of posts or funding cutbacks, in accordance with Staff Rule 9.6 (c) (i)”.

47. The Tribunal finds that the Applicant does not fall under the relevant categories of staff. Indeed, staff rule 9.6(c)(i) refers to termination of appointments for abolition of posts or reduction of staff; however, as defined in staff rule 9.6(b), separation as a result of “expiration of appointment”—which would have been the Applicant's case had her fixed-term appointment not been renewed after 31 December 2013—“shall not be regarded as a termination within

the meaning of the Staff Rules”. Therefore, the Applicant’s contention in this regard fails.

Decision on the conditions of her release on temporary assignment to OICT

48. This ”decision” is linked to the Applicant’s contention that, as early as of 5 October 2013—*i.e.* before the final decision on the abolishment of her post had been made by the GA—her PA reflected that while she was temporarily assigned to OICT, she had no lien on her post in MSS (see para. 13 above). The Tribunal considers that such a statement in her PA was not constitutive of an administrative decision as per the above-quoted definition, as it had no direct legal effect on the Applicant’s rights, hence the application is not receivable in this respect.

Decision to withhold information regarding accountability for MSS posts and resources

49. In the Tribunal’s view, this contention by the Applicant does not meet the definition of an administrative decision, since it does obviously not have direct legal consequences on her terms of appointment. In *Zeid* 2014-UNAT-401, the Appeals Tribunal held that “[t]he Administration’s failure to respond to Mr. Zeid’s repeated requests for information was not a breach of his substantive contractual entitlements or his procedural rights. A staff member cannot create a duty where none exists in the Staff Regulations and Rules”. Having reviewed the applicable rules, the Tribunal cannot find a legal basis for the Applicant’s claim to be informed about the accountability for specific posts and resources. The Applicant’s application is therefore rejected, as not receivable.

Procedural matters

50. The Applicant has filed a motion for production of evidence by the Respondent. The evidence she seeks to obtain mainly relates to the issue of the abolishment of her post, which was found by the Tribunal to be an irreceivable matter. In view of its decision, and because the Tribunal is not in a position to assess the merits of an application if it was found irreceivable (*Servas* 2013-UNAT-349), the Tribunal has to reject the Applicant’s motion as it shall not

request the Respondent to disclose documents which are irrelevant to its decision on the case.

Conclusion

51. In view of the foregoing, the Tribunal DECIDES:

The application is rejected in its entirety.

(Signed)

Judge Thomas Laker

Dated this 30th day of September 2014

Entered in the Register on this 30th day of September 2014

(Signed)

René M. Vargas M., Registrar, Geneva