



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/043

Judgment No.: UNDT/2015/091

Date: 1 October 2015

Original: English

**Before:** Judge Vinod Boolell  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

AL-BADRI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON LIABILITY AND  
RELIEF**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Ronja Bandyopadhyay, UNDP

## **Introduction**

1. The Applicant is a former staff member of the United Nations Development Programme (UNDP). She filed the current application with the Registry of the United Nations Dispute Tribunal (the Tribunal) in Nairobi to contest:

- a. The “sudden verbal decision” to relocate her post from Amman, Jordan, to Baghdad, Iraq, without any notice and the subsequent abolition of her post in Amman; and
- b. The rejection of her request by the Country Office to postpone her entry on duty (EOD) date for a post in Baghdad to the end of March 2011.

2. The Applicant is seeking financial compensation from 1 January 2011 to date.

## **Procedural history**

3. The Applicant filed the current Application on 7 August 2011, which was served on the Respondent on 19 September 2011. On 18 October 2011, the Respondent filed a Reply and a motion for summary judgment. Both were served on the Applicant the same day.

4. By Order No. 139 (NBI/2013), the Tribunal directed the Applicant to file a response on the issue of receivability and on the motion for summary judgment on or before 3 July 2013, which she did.

5. On 16 August 2013, the Tribunal ruled in Judgment No. UNDT/2013/103 that the claim relating to the abolishment of the Applicant’s post was receivable but held that the claim relating to the EOD date was not receivable.

6. The Respondent filed an appeal against Judgment No. UNDT/2013/103 on 11 October 2013. The United Nations Appeals Tribunal (UNAT) dismissed the appeal on 14 October 2014 by Judgment No. 2014-UNAT-461.

## Hearing

7. The United Nations Appeals Tribunal (UNAT) has previously ruled that<sup>1</sup>:

[T]he UNDT has broad discretion in all matters relating to case handling and that, in order to ensure that the case is fairly and expeditiously adjudicated and that justice is served, the Appeals Tribunal should not intervene hastily in the exercise of the jurisdictional power conferred on the Tribunal of first instance.

8. Pursuant to article 16.1 of the Tribunal's Rules of Procedure, the judge hearing a case may hold oral hearings. Normally, the Tribunal will not hold an oral hearing for a non-disciplinary case in which the written submissions are sufficient for rendering an informed decision.

9. After a careful review of the record, this Tribunal concluded that the issues for decision were clearly defined in the parties' submissions and that the documentary evidence provided adequately addressed the issues raised.

10. Consequently, although the Applicant requested an oral hearing, the Tribunal has determined that an oral hearing is not required and will rely on the Parties' pleadings, written submissions and the documentary evidence.

## Facts

11. The Applicant joined the UNDP Country Office in Iraq (UNDP Iraq) on 21 December 2000 on a fixed-term appointment (FTA). In January 2003, she was appointed as a Human Resources Associate with UNDP Iraq at the GS-6 level. After the bombing of the United Nations Headquarters in Baghdad, Iraq, in 2003, the Applicant and other UNDP Iraq staff members were evacuated in December 2003 to Amman, Jordan.

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<sup>1</sup> *Hersh* 2012-UNAT-243. See also *Bertucci* 2010-UNAT-062 and *Calvani* 2012-UNAT-257.

12. On 1 January 2004, she was appointed as an Operations Associate with UNDP Iraq at the GS-7, step 2 level.

13. By a letter dated 31 October 2005, the Country Director, UNDP Iraq, informed the Applicant that since UNDP was not in a position to return to its office in Iraq in the near future, there was no longer an Iraq duty station for the Country Office. Thus UNDP management had decided that the new duty station for UNDP Iraq would be Jordan. He further informed her that as a result all the local posts in Iraq, including hers, would be abolished as of 31 January 2006 and would be replaced as of 1 February 2006 by the same local posts at the new duty station, under the Jordan local conditions.

14. The Applicant was then offered the same post in Jordan that she had encumbered as a local staff member of the Iraq duty station. She accepted the offer and effective 1 February 2006 she held the position of Operations Associate at the G-7 level with UNPD Iraq in Amman.

15. By an email dated 5 March 2009<sup>2</sup>, the then Resident Representative provided a synthesis of the key issues discussed at a UNDP 2009 Retreat<sup>3</sup> to all UNDP Iraq staff members. He informed the staff that the United Nations system was on a “gradual but sure path back to Iraq” and that all efforts were being made to increase United Nations agencies presence both in Baghdad and in the field offices. In this respect, he: (i) urged that new personnel be recruited on the understanding that they would be based in Iraq; and (ii) indicated that while a sizeable Country Office would remain in Amman for some time, he, along with UNDP senior management and senior project personnel, would be spending more time in Iraq.

16. The Country Director wrote to the Deputy Resident Representative (Operations), UNDP Iraq, on 8 March 2010 requesting that the Applicant’s post be advertised with the duty station as Baghdad, Iraq. He explained that this move was

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<sup>2</sup> The Resident Representative provided all UNDP Iraq staff members with a copy of the Retreat Report on 29 April 2009.

<sup>3</sup> This was a UNDP Iraq retreat, which was held from 24 – 26 February 2009.

necessary because: (i) UNDP Iraq did not have any core operations staff in Baghdad; (ii) the increase of project activities and coordination functions in Baghdad; and (iii) the need to provide administrative assistance to the large number of staff going on missions from Amman to Baghdad.

17. A Human Resources Specialist from the Human Resources Unit (HRU) verbally informed the Applicant of the Country Director's decision to relocate her post to Baghdad on 11 March 2010. Upon her request, a copy of the Country Director's email was shown to her.

18. The Country Director informed all UNPD Iraq staff members, by an email dated 18 March 2010, of the United Nations Country Team's (UNCT) decision to freeze all Amman-based future recruitments and to shift toward Iraqi nationals being posted in Iraq. He advised staff to expect that in the near future certain positions, including that of Operations Associate would be Baghdad-based.

19. The Deputy Resident Representative (Operations) informed all UNDP Iraq staff members on 21 March 2010 that the positions of Programme Specialist, Procurement Analyst, Operations Associate and Administrative Associate would be based in Iraq with immediate effect. This was followed up by an email from the Country Director dated 29 March 2010 to all UNDP Iraq staff members reiterating the relocation of the four positions to Baghdad.

20. Subsequently, the Resident Representative informed the Applicant by a letter dated 26 April 2010 that her post in Amman would be abolished and that a new post at the same level would be established in Baghdad with new terms of reference. The Applicant was further informed that the new post in Baghdad would be advertised for competitive selection and that if she was not selected for the new post by 31 August 2010 she would be separated effective 1 September 2010.

21. According to the Applicant's submissions, she did not apply for the new post in Baghdad but rather applied for two positions based in Amman. She was informed

on 9 June 2010 and 15 July 2010 that her applications for these positions were not successful.

22. By a letter dated 8 August 2010 addressed to the Director of the UNDP Office of Human Resources, Bureau of Management (OHR/BOM), the Applicant requested management evaluation of the decision to abolish and transfer her post from Amman to Baghdad. She received communication from the Chief of the Bureau of Management Directorate that a reply to her request would be sent to her by 22 September 2010.

23. In a response dated 25 August 2010, the Officer-in-Charge (OIC), OHR/BOM, confirmed the abolishment of the Applicant's post in Amman as of 1 October 2010 and offered the Applicant, without resort to a competitive recruitment process, the post in Baghdad as it was the same post she was encumbering in Amman. The OIC informed the Applicant that she had up until 30 September 2010 to either accept or decline the offer and that if she chose to decline she would be separated from UNDP effective 31 December 2010.

24. On 22 September 2010, the Applicant sent an email to the Bureau of Management requesting suspension of her request for management evaluation pending efforts to informally resolve the matter with the assistance of the Ombudsman.

25. During a meeting with the Deputy Director/OHR on 23 September 2010, the Applicant requested that her application for the Procurement Analyst post in Baghdad, which she had submitted after the application deadline due to pressing family/personal matters, be considered. Consequently, she was offered the post on 12 October 2010 and asked to communicate her acceptance by 25 October 2010.

26. The Applicant wrote to the Deputy Director/OHR on 20 October 2010 seeking clarification as to whether the Entry on Duty (EOD) date was negotiable in light of the security situation in Iraq. On 25 October 2010, she communicated her initial acceptance of the offer.

27. On the same day, the Deputy Director/OHR informed the Applicant that the United Nations Department of Safety and Security (UNDSS) had authorized the presence of national staff in Baghdad and that UNDP already had national staff there. On 26 October 2010, UNDP Iraq informed the Applicant that the EOD date for the Procurement Analyst post was as soon as possible but no later than 1 December 2010.

28. On 27 October 2010, the Applicant requested that the EOD be changed to the end of March 2011 due to critical family commitments that she needed to deal with. UNDP Iraq subsequently informed her that her request did not meet the immediate needs of the Country Office but that they were consulting with OHR on the way forward. On 4 November 2010, the Deputy Director/OHR informed the Applicant that due to the needs of the Iraq Country Office, the incumbent was expected to take up the functions of the post as soon as possible. The Deputy Director then requested that the Applicant provide further clarification to enable her to assess when the Applicant would be able to take up the post.

29. The Applicant provided the Deputy Director with additional information on 11 November 2010 and on 12 November 2010, the Deputy Director advised her to consult with UNDP Iraq on the way forward.

30. The Applicant declined the offer on 16 November 2010. On 23 December 2010, she applied for Special Leave Without Pay for a period of one year from 1 January 2011 to 31 December 2011, which was approved by OHR/BOM.

31. On 29 March 2011, the Applicant requested that OHR/BOM resume management evaluation of her initial 8 August 2010 request. In a response dated 13 May 2011, the Applicant was informed by the Assistant Administrator and Director/BOM that her 8 August 2010 request for management evaluation was, *inter alia*, time-barred and therefore not receivable.

## **Issues**

32. The only issue before the Tribunal in this case is the lawfulness of the Respondent's decision to abolish the Applicant's post in Amman, Jordan, and to create a new post at the same level in Baghdad, Iraq.

## **Parties' submissions**

### *Applicant's submissions*

33. The Applicant submits that the decision to abolish her post in Amman and create another one in Baghdad was sudden, made without consultation or prior notice to her and lacked transparency.

34. The decision was conveyed to her verbally by an HR specialist and her immediate supervisor.

35. The Respondent did not abolish her post in Amman.

### *Respondent's submissions*

36. The Respondent submits that the Applicant had ample notice of UNDP Iraq's strategy to gradually move back to Iraq from Jordan and of the fact that her post with UNDP Iraq in Amman would be abolished and relocated to Baghdad. In this respect, the Respondent refers to all-staff meetings and email communications from UNDP Iraq senior managers to UNDP Iraq staff between March 2009 and March 2010 explaining the relocation process.

37. With regards to the Applicant's allegation that there was no subsequent abolition of her post, the Respondent submits that her post was abolished and relocated to Iraq. The Applicant subsequently declined the offer that was made to her to take up the newly created post in Iraq.

38. The decision to abolish the Applicant's post in Amman and create a new one in Baghdad was fully in line with the UNDP Interim Country Strategy for 2009-2010,



the Secretary-General's statements made at the Policy Committee in April 2010 and the United Nations Development Action Framework (UNDAF) 2010-2014 directing the move from post-recovery programming to capacity building and private and public sector reforms.

### **Considerations**

39. In *Simmons* 2014-UNAT-425, UNAT held that “the Organization has the power to restructure some or all of its units which include cancellation or abolition of posts or reassignment due to organizational or budgetary reasons”.

40. The relocation of the Applicant and other staff members from Iraq to Jordan was motivated by the bombing of the United Nations Headquarters in Baghdad. The posts that were encumbered by the Applicant as well as other staff members were abolished and corresponding posts were established in Jordan. Once the situation permitted, the staff that had been relocated in Jordan were asked to move back to Baghdad. The Tribunal finds that the position held by the Applicant in Jordan was abolished and that a new post at the same level was established in Baghdad with new terms of reference. Without resort to a competitive recruitment process, UNDP Iraq offered the Applicant the new post in Baghdad with the rider that she either accept or decline the offer by 30 September 2010 and that if she chose to decline she would be separated from service effective 31 December 2010.

41. The Applicant did not to accept the offer but rather requested that her application for a Procurement Analyst post in Baghdad, which she had submitted after the application deadline, be considered. She was offered the post on 12 October 2010 and asked to communicate her acceptance by 25 October 2010, which she did. Although UNDP Iraq informed the Applicant that she would have assume her duties as a Procurement Analyst in Baghdad no later than 1 December 2010 due to urgent operational requirements, she sought to change her EOD to the end of March 2011 due to critical family commitments that she had. The record shows that between 27 October and 12 November 2010, UNDP made best efforts to work with the Applicant

on the EOD date but she chose to walk away from the consultations by declining the offer outright on 16 November 2010.

42. In light of the foregoing, the Tribunal therefore concludes that the abolition of the Applicant's post in Jordan was part of a genuine organizational restructuring and that there is no indication that the Administration did not act fairly, justly and transparently in dealing with its staff members<sup>4</sup> when they had to move to Jordan and back to Baghdad subsequently.

43. The Tribunal finds also that UNDP Iraq provided the Applicant with sufficient notice of its strategy to gradually move back to Iraq from Jordan and of the fact that her post with UNDP Iraq in Amman would be abolished and relocated to Baghdad. The record shows that there were all-staff meetings and email communications from UNDP Iraq senior managers to UNDP Iraq staff between March 2009 and March 2010 explaining the relocation process. Further, on 26 April 2010, the Applicant was provided with written notification of the abolishment of her post effective 1 September 2010 in the event that she was not selected for the new post in Baghdad. She was effectively provided with more than four months notice of the abolishment of her post.

44. On the assumption that the case of the Applicant on the administrative decision not to delay her EOD for the Procurement Analyst post until the end of March 2011 would have been deemed receivable the Applicant claim in this respect would still not have been successful. In the case of *Verdrager*<sup>5</sup>, the applicant refused a transfer first to Sri Lanka and then to Bangladesh on the basis that the living conditions in those countries were not suitable for his family. The World Health Organization found his reasons inadequate and upon his repeated refusal to transfer, terminated his employment. The ILOAT held that the refusal on strictly personal

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<sup>5</sup> ILOAT Judgment No.325 (1977)

grounds to take up posts to which the applicant was assigned by the competent authority constituted a grave breach of duty<sup>6</sup>.

**Decision**

45. The Application is rejected in its entirety.

*(Signed)*

Judge Vinod Boolell  
Dated this 1<sup>st</sup> day of October 2015

Entered in the Register on this 1<sup>st</sup> day of October 2015

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi

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<sup>6</sup> See also Hepworth UNDT/2013/151 and 2015-UNAT-503



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## **Issues**

32. The only issue before the Tribunal in this case is the lawfulness of the Respondent's decision to abolish the Applicant's post in Amman, Jordan, and to create a new post at the same level in Baghdad, Iraq.

## **Parties' submissions**

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35. The Respondent did not abolish her post in Amman.

### *Respondent's submissions*

36. The Respondent submits that the Applicant had ample notice of UNDP Iraq's strategy to gradually move back to Iraq from Jordan and of the fact that her post with UNDP Iraq in Amman would be abolished and relocated to Baghdad. In this respect, the Respondent refers to all-staff meetings and email communications from UNDP Iraq senior managers to UNDP Iraq staff between March 2009 and March 2010 explaining the relocation process.

37. With regards to the Applicant's allegation that there was no subsequent abolition of her post, the Respondent submits that her post was abolished and relocated to Iraq. The Applicant subsequently declined the offer that was made to her to take up the newly created post in Iraq.

38. The decision to abolish the Applicant's post in Amman and create a new one in Baghdad was fully in line with the UNDP Interim Country Strategy for 2009-2010,

the Secretary-General's statements made at the Policy Committee in April 2010 and the United Nations Development Action Framework (UNDAF) 2010-2014 directing the move from post-recovery programming to capacity building and private and public sector reforms.

### **Considerations**

39. In *Simmons* 2014-UNAT-425, UNAT held that "the Organization has the power to restructure some or all of its units which include cancellation or abolition of posts or reassignment due to organizational or budgetary reasons".

40. The relocation of the Applicant and other staff members from Iraq to Jordan was motivated by the bombing of the United Nations Headquarters in Baghdad. The posts that were encumbered by the Applicant as well as other staff members were abolished and corresponding posts were established in Jordan. Once the situation permitted, the staff that had been relocated in Jordan were asked to move back to Baghdad. The Tribunal finds that the position held by the Applicant in Jordan was abolished and that a new post at the same level was established in Baghdad with new terms of reference. Without resort to a competitive recruitment process, UNDP Iraq offered the Applicant the new post in Baghdad with the rider that she either accept or decline the offer by 30 September 2010 and that if she chose to decline she would be separated from service effective 31 December 2010.

41. The Applicant did not to accept the offer but rather requested that her application for a Procurement Analyst post in Baghdad, which she had submitted after the application deadline, be considered. She was offered the post on 12 October 2010 and asked to communicate her acceptance by 25 October 2010, which she did. Although UNDP Iraq informed the Applicant that she would have assume her duties as a Procurement Analyst in Baghdad no later than 1 December 2010 due to urgent operational requirements, she sought to change her EOD to the end of March 2011 due to critical family commitments that she had. The record shows that between 27 October and 12 November 2010, UNDP made best efforts to work with the Applicant

on the EOD date but she chose to walk away from the consultations by declining the offer outright on 16 November 2010.

42. In light of the foregoing, the Tribunal therefore concludes that the abolition of the Applicant's post in Jordan was part of a genuine organizational restructuring and that there is no indication that the Administration did not act fairly, justly and transparently in dealing with its staff members<sup>4</sup> when they had to move to Jordan and back to Baghdad subsequently.

43. The Tribunal finds also that UNDP Iraq provided the Applicant with sufficient notice of its strategy to gradually move back to Iraq from Jordan and of the fact that her post with UNDP Iraq in Amman would be abolished and relocated to Baghdad. The record shows that there were all-staff meetings and email communications from UNDP Iraq senior managers to UNDP Iraq staff between March 2009 and March 2010 explaining the relocation process. Further, on 26 April 2010, the Applicant was provided with written notification of the abolishment of her post effective 1 September 2010 in the event that she was not selected for the new post in Baghdad. She was effectively provided with more than four months notice of the abolishment of her post.

44. On the assumption that the case of the Applicant on the administrative decision not to delay her EOD for the Procurement Analyst post until the end of March 2011 would have been deemed receivable the Applicant claim in this respect would still not have been successful. In the case of *Verdrager*<sup>5</sup>, the applicant refused a transfer first to Sri Lanka and then to Bangladesh on the basis that the living conditions in those countries were not suitable for his family. The World Health Organization found his reasons inadequate and upon his repeated refusal to transfer, terminated his employment. The ILOAT held that the refusal on strictly personal

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grounds to take up posts to which the applicant was assigned by the competent authority constituted a grave breach of duty<sup>6</sup>.

**Decision**

45. The Application is rejected in its entirety.

*(Signed)*

Judge Vinod Boolell  
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Abena Kwakye-Berko, Registrar, Nairobi

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