



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/030

Judgment No.: UNDT/2020/168

Date: 17 September 2020

Original: English

Before: Judge Francis Belle

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ALEMA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Lucas Dagadu

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR

Rosangela Adamo, AAS/ALD/OHR

The Application and Procedural History

1. The Applicant served as a Water and Sanitation Technician at the United Nations-African Union Mission in Darfur (“UNAMID”). He held a fixed-term appointment at the FS-4 level, and was stationed in El Daein, Sudan.
2. On 16 March 2019, the Applicant filed an application with the United Nations Dispute Tribunal in Nairobi to challenge the Respondent’s decision to not renew his appointment with the Mission beyond 31 March 2019.
3. The Registry received the Respondent’s reply to the application on 19 April 2019.

Facts and Submissions

4. The Applicant received his notice of separation on 6 February 2019. The letter made reference to the previous notification that he had received in November 2018 on the same subject.
5. The notification letter initially indicated that the Applicant has been subject to a comparative review process (“CRP”) in which he was evaluated alongside Vehicle Technicians at the FS-4 level. He sought clarification and was informed that he had, in fact, been rated against Water and Sanitation Technicians.
6. It is the Applicant’s case that the decision to abolish his post is tainted by extraneous factors and that the “last in first to go” approach should have been applied in respect of the Water and Sanitation Technicians.
7. The Respondent contends that the impugned decision was lawful and that there was no impropriety in the process which formed the basis of the decision to abolish the post encumbered by the Applicant. The Applicant was reviewed against three other

Water and Sanitation Technicians using the same evaluation criteria. Two of these technicians, with the highest scores, were retained by the Mission.

8. On 28 October and on 3 December 2018, the Applicant was asked to provide the Human Resources Management Section (“HRMS”) with his updated Personal History Profile, his 2017-2018 performance appraisal, and information pertaining to his roster membership(s) so that his profile could be shared via the Cosmos platform with other missions for consideration for possible placement. He did not.

Deliberations

9. This application should be dismissed.

10. The Applicant was on a fixed-term appointment. Such appointments carry no guarantee of renewal.

11. The Applicant applies to have the Respondent’s decision to make him redundant rescinded. The Tribunal’s role is to review the decision-making process and not the merits of the decision.

12. The Tribunal’s jurisprudence points to the maxim that there is always a presumption that the administration’s decision was properly executed and should stand unless it is shown to be tainted or otherwise improperly made.¹

13. The Tribunal’s task is not to replace the administration’s decision with its own but to assess the lawfulness of the decision.²

14. The Applicant questions the propriety of the decision to retrench him but cites

¹ *Rolland* 2011-UNAT-122. See also *Simmons* 2014-UNAT-425; *Zhuang Zhao and Xie* 2015-UNAT-536; *Tintukasiri* 2015-UNAT-526, *Landgraf* 2014-UNAT-471.

² *Sanwidi* 2010-UNAT-084.

no basis for challenging the decision. He has failed to adduce any evidence to support the allegation that the administration had ulterior motives.

15. The Respondent states that there was a Security Council resolution to reduce the staff employed by the Mission by about 1800 persons. Two of the persons to be retrenched would be staff of the same department as the Applicant.

16. The Respondent conducted a review exercise and the result of the exercise was that the Applicant scored lower than his colleagues. Based on this fact, the Respondent proceeded to issue a retrenchment notice to the Applicant.

17. The Applicant states that the Respondent's policy is to conduct retrenchments on the basis of "first in last out"; on the basis of which a colleague recruited to the section more recently than he should have been retrenched instead. This position is misconceived.

18. The retrenchment exercise is based on a comparative review exercise, which is in turn based on a pre-determined set of criteria. It is in the process of such a review, against his peers in the same section, that the Applicant was scored or assessed.

19. The Respondent's efforts to disseminate the Applicant's profile for possible placement with a different Mission was ignored by the Applicant; he was asked twice to submit documents for this purpose but did not.

20. In conclusion, the following determinations confirm that the Applicant's retrenchment was lawful. Firstly, the fact that the Applicant was on a fixed-term appointment would not protect him from retrenchment. Secondly, the review exercise was completed fairly. Thirdly, the basis for the retrenchment was stated. None of the Applicant's allegations are founded on facts.

21. In other words, the Applicant has simply not shown that the decision to not

renew his appointment is tainted by improper motive or bias, or that the process leading up to the decision to abolish the post he encumbered was irregular or improper.

22. The Respondent, on the other hand, has demonstrated that the Mission acted appropriately under the circumstances before it.

23. Having examined the material by the parties, the decision to separate the Applicant from service does not, without more, give the appearance of an unlawful or otherwise impermissible exercise of discretion on the part of the Respondent. There is nothing in the Applicant's submissions to support a finding or inference that the decision maker was motivated by improper or impermissible motives.

24. The inescapable conclusion is that the administration acted lawfully.

25. There is therefore no basis for any claim in damages.

ORDER

26. The application is DISMISSED.

(Signed)

Judge Francis Belle

Dated this 17th day of September 2020

Entered in the Register on this 17th day of September 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi