



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/095
UNDT/NBI/2021/007
Judgment No.: UNDT/2021/142
Date: 30 November 2021
Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: Nairobi

Registrar: Abena Kwakye-Berko

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Monika Ona Bileris

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Maureen Munyolo, AAS/ALD/OHR, UN Secretrait

Introduction

1. The Applicant is the Chief of Section, Logistics, Transportation and Movement Integrated Control Centre (“TMICC”), at the Regional Service Centre Entebbe (“RSCE”). She serves on a continuing appointment at the P-5, step 7 level.¹

2. On 23 November 2020, she filed an application before the Dispute Tribunal contesting the decision to reassign her from the post of Chief of Central Service (“Chief/CS”) with the United Nations Global Service Centre (“UNGSC”) in Brindisi to the current position of Chief of Section, Logistics, TMICC, RSCE.² This application was registered as Case No. UNDT/NBI/2020/095.

3. The Respondent filed a reply on 4 January 2021 in which it is argued that the contested decision was legal, rational and procedurally correct.

4. On 23 November 2020, the Applicant filed another application, which was registered as Case No. UNDT/NBI/2020/007. She contests the decision to place her on Special Leave with Full Pay (“SLWP”) from 2 October 2020 to 31 October 2020 pending management evaluation of the decision to reassign her from UNGSC in Brindisi to TMICC, RSCE.

5. The Respondent filed a reply on 24 February 2021.

6. On 5 January 2021, the Applicant filed a motion for leave to file a rejoinder to the Respondent’s reply. On 6 September 2021, the Tribunal granted the Applicant’s request. The Applicant filed the rejoinder on 30 September 2021.

¹ Application, section I.

² Application, section V.

7. On 26 January 2021, the parties filed a joint motion to join cases UNDT/NBI/2020/095 and UNDT/NBI/2021/007. By Order No. 181 (NBI/2021), the Tribunal granted the parties' joint motion and the two cases were joined.

8. By Order No. 247 (NBI/2021), the Tribunal directed the Respondent to file submissions in response to the Applicant's rejoinder. The Respondent complied and filed the submissions on 8 November 2021.

Facts

9. The Applicant joined the Organization on 20 February 2007 as a Logistics Officer, P-3. She subsequently served in different missions and rose through the ranks. As of 1 October 2016, the Applicant became Chief/CS, UNGSC.³

10. In 2017, the Applicant and some other management-level staff received threatening messages, including an envelope containing a bullet. The threats were allegedly related to the transformational changes at Brindisi involving the Civilian Staffing Review ("CSR").⁴

11. The envelopes containing a bullet were addressed to the Applicant and another staff member, who was serving on a temporary appointment as Deputy Director of Mission Support and Principal Logistics Officer, UNGSC.⁵

12. The United Nations Department of Safety and Security ("UNDSS") undertook a Personal Security Risk Assessment ("PSRA") for both staff members to whom a bullet was mailed and in consultation with the host country authorities, recommended that the staff members be relocated away from Brindisi.⁶

13. In light of the UNDSS recommendation, in September 2018, the Applicant and the other staff member were temporarily moved from Brindisi to Valencia, Spain, as a

³ Application, section VII, para 1.

⁴ Application, section VII, para. 2, application, annex 5.

⁵ Reply, annex 10; Respondent's sur-reply, para. 3, filed on 8 November 2021.

⁶ Application, section VII, para. 3; Respondent's sur-reply, para. 4, filed on 8 November 2021.

temporary mitigation measure.⁷ The other staff member later telecommunicated from his home country, the Netherlands, until his separation from the Organization at the end of his temporary appointment in January 2019.⁸

14. With regard to the Applicant, further in September 2018, the Administration made a decision to temporarily assign her to the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), Kinshasa, as Chief, Operations Resource Management, D-1, on Temporary Duty (“TDY”) for three months effective 1 October 2018.⁹ On 15 January 2019, the Applicant, through a competitive process, was appointed temporarily to the position of Chief, Operations Resource Management, D-1. Her contract, which was initially to run until 30 June 2020, was extended to until 31 August 2020.¹⁰ Through all of this time, she retained a lien to her position in Brindisi.

15. In May 2020, the Applicant contacted the Director, UNGSC and the Office of Internal Oversight Services (“OIOS”) over the lack of information on her return to her post in Brindisi at the end of her temporary assignment with MONUSCO.¹¹ In reply, the Director, UNGSC informed the Applicant that her return was contingent upon the completion of the second PSRA. The Deputy Director of OIOS informed the Applicant, among others, that the “OIOS investigation should not have any bearing on her return to her duty station, and that her return was purely a matter of management and UNDSS, both of whom are responsible for ensuring her personal safety and security and in providing her with a safe working environment”.¹²

16. Meanwhile, during her stay in MONUSCO, the Applicant continued to receive threats. On 8 July 2019, she forwarded to the Acting Director, UNGSC an email she had received warning her against returning to Brindisi and threatening to send another

⁷ Reply, annex 2; Respondent’s sur-reply, para. 4, filed on 8 November 2021.

⁸ Reply, annex 15; Respondent’s sur-reply, para. 4, filed on 8 November 2021.

⁹ Application, section V11, para 4.

¹⁰ Application, annexes 5 and 6.

¹¹ Application, annexes 7, 9, 10 and 11.

¹² Application, annex 13. P.2.

bullet to her if she ever returned from “the jungle”.¹³ Further, in June 2020, the Applicant confidentially informed the Acting Director, UNGSC that she had received other threats by email in the preceding weeks.¹⁴

17. On 19 June 2020, prior to the Applicant’s end of assignment in MONUSCO, UNDSS conducted a second PSRA. In the report, it is indicated that no perpetrators of the threats were identified and that the Applicant’s risk level remained high. The PSRA, therefore, discussed two options: reassigning the Applicant from Brindisi which appeared “more practicable” or allowing her return if measures were implemented to attenuate the risk.¹⁵

18. On 3 August 2020, via a video conference, the Applicant met with, the Assistant Secretary-General for Supply Chain Management (“ASG-SCM”) and the Director, UNGSC to discuss her return to Brindisi following her temporary assignment in MONUSCO. During the meeting, the ASG-SCM informed the Applicant of his plan to place her in the position of Chief of Section, TMICC, RSCE.¹⁶

19. On 10 August 2020, the Applicant sent an email to both the ASG-SCM and the Director, UNGSC protesting the proposed reassignment. She indicated that the proposed position is not commensurate with her skills, training, qualifications and experience.¹⁷

20. On 11 August 2020, the ASG-SCM replied to the Applicant’s email insisting that, “I can see how you will bring added value to the post of Chief TMICC in Entebbe, and it reinforces my view this is the right fit for you”.¹⁸

21. On 18 August 2020, Director, UNGSC requested the Under-Secretary-General for Operational Support (“USG/DOS”) that in response to the confidential UNDSS

¹³ Reply, annex 16.

¹⁴ Reply, annex 7.

¹⁵ Application, annex 13, p. 2.

¹⁶ Application, annex 16, p.2.

¹⁷ Ibid.

¹⁸ Ibid, p.1.

assessment, to authorize the lateral reassignment of the Applicant from UNGSC.¹⁹ The USG/DOS gave his approval on the same day.²⁰

22. On 27 August 2020, the Chief Human Resources Officer (“CHRO”), UNGSC informed the Applicant that her reassignment to RSCE would be effective 1 September 2020.²¹ The Applicant has since received her Personnel Action indicating that her reassignment is permanent and commenced on 1 September 2020.²²

23. On 31 August 2020, the Applicant requested management evaluation of the contested decision.²³ On the same day, the Applicant filed before the Dispute Tribunal, an application for suspension of the implementation of the decision to reassign her pending management evaluation.²⁴

24. On 1 September 2020, the Dispute Tribunal granted the application and suspended the contested decision pending management evaluation.²⁵

25. On 1 October 2020, pending management evaluation, the Applicant was placed on Special Leave with Full Pay (“SLWFP”).²⁶

26. On 30 October 2020, the Management Evaluation Unit (“MEU”) issued its decision upholding the contested decision.²⁷

Submissions

Applicant’s submissions

Did the Organization abuse its discretionary authority by failing to return the

¹⁹ Application, annex 4b.

²⁰ *ibid.*

²¹ Application, annex 2.

²² Application, annex 2a.

²³ Application, annex 23.

²⁴ Application, annex 24.

²⁵ Application, annex 3.

²⁶ Application, annex 27.

²⁷ Application, annex 5.

Applicant to her post in Brindisi?

27. The Applicant presents her case in four parts. On point one, the Applicant contends that the Organization abused its discretionary authority by failing to return her to her post in Brindisi under the pretext of security concerns. She submits that while she had received several threatening messages from an anonymous sender, she was not the only one to receive them, yet she was the only staff member sent away from her post. Despite the threats, it took the Administration two years to undertake an investigation after she had informed it of the threats, meaning that the Administration did not consider the threats credible and worrisome. When it finally investigated, its findings could not identify the perpetrator or show how the Applicant was in any imminent harm, yet it insisted that she was unsafe, even though UNDSS had previously made recommendations for measures that could be taken to allow her to work safely in Brindisi, including working remotely. Therefore, the Organization abused its discretion by using the excuse of security as a pretext for not returning her to her post.

28. On the second prong, the Applicant contends that the decision to reassign her to the TMICC post is tainted by procedural and substantive irregularities which render it null and void. The Applicant states that the Organization notified her on 31 August 2020 that as of 1 September 2020 (one day's notice) that she would be moved out of her Brindisi post on a permanent basis, meaning that she would no longer hold a lien on her post with a right of return when the security issue is resolved.

29. She further submits that the TMICC post is completely unrelated to anything she has done in the past. For more than four years, she has been performing purely managerial and administrative cross-cutting coordination functions while the TMICC post requires technical work and experience she simply does not possess. It is, therefore, impossible to assess whether the functions to be performed are commensurate with her competencies and skills or considered to be in the interest of the Organization. In view of the above, the Applicant maintains that the contested decision is faulty and it should be set aside.

30. Thirdly, the Applicant avers that the contested decision is tainted by personal prejudice, malice, ill-will, bias and discrimination by UNGSC officials. Her post was unceremoniously handed over to another staff member who has been allowed to work remotely from Spain, while she was never offered that option, even though she had been the incumbent on that post and the PSRA recommendations called for such mitigation measures. She was given false reasons as to why she is not being allowed to return to Brindisi - there are no threats against her and the threats she has received previously are out of date. The contested decision is simply tainted with bad faith.

31. Lastly, the Applicant submits that the Administration failed to treat her with the respect and dignity owed to international civil servants. UNGSC and DOS leadership failed to answer her queries on her job situation, failed to return her to her post as expected, refused to give her the option of working remotely, placed her on SLWFP, reinvestigated a stale claim to justify their decision to remove her from her post and reassigned her to a post which they know she cannot perform.

32. The Applicant thus requests the Tribunal, by way of remedy, to:

- a. Rescind the contested decision;
- b. Order for her return to her post in Brindisi or be placed into a similar post commensurate with her skills, training, qualifications and experience;
- c. Award her moral damages in the amount of USD50,000;
- d. Award her other damages for the damage to her mental and emotional health due to the stress she has suffered;
- e. Award interest on all amounts awarded to her at the rate of five percent per annum, from the date of the impugned decision to the date all redress will be paid in full; and
- f. Order for the reimbursement of legal fees incurred.

Respondent's submissions

33. With regard to the Applicant's first argument, the Respondent submits that the USG/DOS acted on the recommendations of the 29 August 2018 and 30 June 2020 PSRAs to reassign her from Brindisi, where there was a high risk to her personal safety, to Entebbe. Although the 30 June 2020 PRSA recommended some preventive and mitigative measures that could be taken should the Applicant return to Brindisi to work for UNGSC remotely, it determined that the risk to the Applicant's safety would remain high. Based on the recommendations, the Secretary-General used his broad discretion to reassign the Applicant to Entebbe to lower the risk to her personal security.

34. On her second argument, the Respondent denies that the contested decision is tainted with procedural and substantive irregularities. The Respondent states that the Applicant was reassigned to a position at the same grade and level commensurate with her skills and competencies. By Inter-Office-Memorandum dated 18 August 2020, the USG/DOS reassigned the Applicant to another P-5 position, allowing her to maintain her current grade, level and contract status. Whereas the Applicant alleged that she lacked the professional experience in supply chain and logistics as required for the TMICC post in Entebbe, her Personal History Profile ("PHP") confirms that she has over 31 years' experience working within the United Nations system in different capacities dealing with logistics, administration and supply chain management. The Applicant's PHP further indicates that she possesses the three main logistical areas for the TMICC position in Entebbe, namely, support to movement of goods and personnel in the region, management of the section's performance, and building partnerships. The TMICC position in Entebbe is thus commensurate with her skills and competencies.

35. Further, the Respondent denies the allegation that the contested decision is tainted with personal prejudice and malice, ill-will, bias or discrimination. Contrary to her allegations, the Applicant was consulted about the TMICC position. On 3 August 2020, she met with the ASG-SCM at which time the Applicant expressed her views

and engaged in a substantive dialogue on the matter. Her disagreement with the reassignment decision did not preclude its implementation. Relying on *Hepworth*,²⁸ the Respondent opines that her consent was not required. The Appeals Tribunal has held that it is for the Organization to determine whether a reassignment is in its interest or not. It was not for the Applicant to substitute her judgment for that of the Administration. Neither should the Dispute Tribunal substitute its judgment for that of the Secretary-General.

36. Contrary to the Applicant's allegation that the Organization did not to treat her with respect and dignity, the Respondent submits that the reassignment was reasonable and in accordance with the Organization's duty of care to the Applicant. There were documented risks against the Applicant, given that they were envisioned to be temporary in light of alternative work arrangements in place for staff due to the Covid-19 pandemic. The Applicant further acknowledged that telecommuting with a six-hour time difference was not an option due to the nature of the Chief/CS functions.²⁹

37. Further, the Respondent submits that the Applicant has produced no evidence to support her claim that the contested decision was prejudicial and malicious. On the contrary, the contested decision was taken to protect her and the Organization. The Organization offered the Applicant a higher-level opportunity, as the D-1 Chief, Operations and Resource Management in MONUSCO. That decision did not prejudice her, but rather allowed her to gain additional skills. When the UNGSC released her for the temporary assignment in MONUSCO, they intended for her to return to her P-5 position with UNGSC. However, since the security risk remained high when the Applicant's temporary assignment ended, her return was not feasible.

38. In view of the above, the Respondent contends that the Applicant is not entitled to the relief she requests. She has not demonstrated any procedural or substantive breach of her rights. She has also not presented evidence of any harm as required by

²⁸ *Hepworth* 2015-UNAT-503, para. 26.

²⁹ Reply, para. 23; application, annex 14, p. 1.

art. 10 (b)(5) of the Dispute Tribunal's Statute. Accordingly, the Application is without merit and it should be denied.

Respondent's submissions on Application UNDT/NBI/2021/007

39. The Respondent submits that the decision to place the Applicant on SLWFP pending management evaluation was legal and reasonable. It was also in the interest of the Organization and the Applicant's safety. Placing the Applicant on SLWFP was the only feasible option as a result of the suspension of the implementation of the reassignment decision. The Applicant had completed her temporary assignment with MONUSCO and already checked out from MONUSCO at the time of the contested decision. She could not return to Brindisi due to the documented security risks against her there; nor could she report to the new assignment in Entebbe in light of the Dispute Tribunal's Order suspending the implementation of the reassignment decision. The Secretary-General, therefore, determined that placing the Applicant on SLWFP under these exceptional circumstances was the only viable option to maintain the *status quo* during the pendency of the management evaluation.

40. The Respondent also maintains that the Director, UNGSC, reached out to the Applicant with alternative reassignment options, but the Applicant turned them all down. There was, therefore, no other assignment on which the Applicant could temporarily have been placed pending the outcome of management evaluation. The Administration was obliged to comply both with the Dispute Tribunal's Order suspending the implementation of the reassignment decision and its duty of care towards the Applicant.

Considerations

Applicable law

41. The Tribunal recalls that according to staff regulation 1.2(c), staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations.

42. There is well settled jurisprudence that the reassignment of a staff member's functions comes within the broad discretion of the Organization to use its resources and personnel as it deems appropriate.³⁰ This discretion is not unfettered and is subject to examination pursuant to the *Sanwidi* test, *i.e.*, "the Dispute Tribunal determines if the decision is legal, rational, procedurally correct and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse."³¹ The Appeals Tribunal emphasized that it is not for the Tribunal to replace the discretionary decision with its own determination of what would have been a better, or alternative, course of action.³²

43. It is equally settled by the Appeals Tribunal that the reassignment of a staff member to another position is proper where the new position is at the staff member's grade, the assigned functions correspond to the staff member's level, and the functions to be performed are commensurate with the staff member's competence and skills.³³

44. There is a presumption that official acts have been regularly performed.³⁴ The applicant bears the burden of proving that an administrative decision was arbitrary or tainted by improper motives.³⁵

Whether the contested decision to reassign the Applicant to the position of Chief of Logistics, TMICC was lawful

45. The USG/DOS acted on the recommendations of the 29 August 2018 and 30 June 2020 PSRAs to reassign the Applicant to Entebbe from Brindisi where there was a high risk to her personal safety.³⁶ Although the 30 June 2020 PRSA recommended some preventive and mitigative measures that could be taken should the Applicant

³⁰ *Gehr* 2012-UNAT-236; *Kamunyi* 2012-UNAT-194; *Allen* 2011-UNAT-187; *Kaddoura* 2011-UNAT-151; *Hepworth* 2015-UNAT-503.

³¹ *Sanwidi* 2010-UNAT-084, para. 40.

³² *Ibid.*

³³ *Chemingui* 2019-UNAT-930, para. 40; *Awe* 2016-UNAT-667, para. 27.

³⁴ *Rolland* 2011-UNAT-122, para. 26.

³⁵ *Nouinou* 2019 UNAT-902, paras 64-65; *Hepworth* 2015-UNAT-503, paras. 43-44; *Obdeijin* 2012-UNAT 201, para. 38.

³⁶ Application, annex 4b.

return to Brindisi to work for UNGSC remotely, it determined that the risk to the Applicant's safety would remain high.³⁷ Based on these recommendations, the Secretary-General used his broad discretion to reassign the Applicant to Entebbe to lower the risk to her personal security.³⁸

46. The Applicant's allegations that the Organization failed to investigate the threats against her for more than two years are baseless.³⁹ Initially, there were just anonymous letters sent to the UNGSC that contained offensive comments about the Applicant and other staff members. They did not contain direct threats to the Applicant. Following the Applicant's reports of additional conduct directed at her only, i.e., a suspicious person following her, objects left on her desk, notes slipped under her office door, "hang-up" phone calls, and feces on her personal vehicle, the UNDSS, the OIOS, the then-Department of Field Service ("DFS") and the UNGSC evaluated the security risk and initiated investigations to establish the source of the conduct.⁴⁰ In addition, the Director requested the Applicant to meet with a UNGSC Security Officer who briefed the Applicant on various safety measures she should take in the interim. Video surveillance cameras were also placed outside of the Applicant's office since she reported there had been objects left on her desk and letters slipped under her office door.⁴¹ This was done in accordance with the United Nations Security Management System, Security Policy Manual ("Manual") which requires evaluation of security risks to ensure that a comprehensive threat and risk analysis leads to effective security decision-making and to the implementation of security risk management measures.⁴²

47. The Applicant was treated the same as the other staff member who received a death threat. While the investigations were still ongoing, on 16 August 2018, the Italian postal service intercepted two envelopes each containing a bullet and reported the incident to the Italian military police, the Carabinieri. The envelopes were addressed

³⁷ Application, annex 13, p. 2.

³⁸ Staff regulation 1.2 (c); *Hepworth* 2015-UNAT-503, para. 43.

³⁹ Application, section VIII, para. 2.

⁴⁰ Respondent's sur-reply, filed on 8 November 2021, para. 2.

⁴¹ *Ibid.*

⁴² *Ibid.*

to the Applicant and the other staff member, who was serving on a temporary appointment as Deputy Director of Mission Support and Principal Logistics Officer, UNGSC. The following day, the host country authorities notified UNDSS of the intercepted envelopes.⁴³ UNDSS called the Applicant half an hour later to inform her of the incident and that the host country authorities had requested her to make a formal statement.⁴⁴ The host country authorities considered the bullets a credible death threat within the local context of crime in southern Italy.⁴⁵ The threat was serious enough that the Italian Public Prosecutor and OIOS launched investigations.⁴⁶ The host country, Italy, is primarily responsible for the safety of United Nations staff. Accordingly, UNDSS conducted a PSRA for both staff members to whom a bullet was mailed and recommended, along with the host country authorities, that the staff members be relocated away from Brindisi. Upon the recommendation of the Italian government, the Under-Secretary-Generals in the-then Department of Field Support and OIOS, the Assistant Secretary-General Office of Legal Affairs (ASG-OLA) and the United Nations Designated Official (“DO”) for Italy agreed with the UNDSS’s recommendation to relocate both staff members.⁴⁷

48. The Host country was involved in the risk management and advised UNDSS to reassign the two staff members from Brindisi given the magnitude of the threat. In each country or designated area where the United Nations is present, the most senior United Nations official is normally appointed in writing by the Secretary-General as the Designated Official for Security and accredited to the host Government as such. The DO is accountable to the Secretary-General, through the Under Secretary-General for Safety and Security, and is responsible for the security of United Nations personnel, premises, and assets throughout the country or designated area.

⁴³ Ibid, para. 3.

⁴⁴ Reply, annex 10.

⁴⁵ Ibid; Respondent’s sur-reply, filed on 8 November 2021, para. 4.

⁴⁶ Reply, annex 10.

⁴⁷ Respondent’s sur-reply, filed on 8 November 2021, para. 4.

49. The second PSRA was conducted to assess the risk to the Applicant if she returned to Brindisi. In September 2018, the UNGSC released the Applicant to MONUSCO where she served on temporary assignment until August 2020.⁴⁸ On 19 June 2020, prior to the end of her assignment, UNDSS conducted a second PSRA in anticipation of the Applicant's return to the duty station. The second PSRA was not in response to the Applicant's suspension of action application. That application was not filed until later in August 2020 after the PSRA had already been issued.⁴⁹

50. Contrary to the Applicant's allegations that there were no fresh threats to her between the first and second PSRA; the Applicant is aware of the threats because she is the one who reported them.⁵⁰ On 8 July 2019, she forwarded to the Acting Director, UNGSC an email warning her against returning to Brindisi and threatening to send another bullet directly to her if she ever returned from "the jungle." (Presumably, the perpetrator was referencing the Applicant's two-year assignment in MONUSCO in the Democratic Republic of Congo).⁵¹

51. In addition, in June 2020, the Applicant confidentially informed the UNGSC Acting Director that she had received other threats by email in the preceding weeks, the last threat being on 25 June 2020.⁵²

52. In view of the continued threats against the Applicant, OIOS continued with its investigations until November 2020. However, the investigation was unable to identify any person(s) responsible for the anonymous missives and threats that targeted the Applicant. As such, it closed the investigations in November 2020 but indicated that it would reassess the case in the event of any new information and given that the perpetrator(s) remained at large.⁵³

⁴⁸ Reply, annexes 3 and 4.

⁴⁹ Respondent's sur-reply, filed on 8 November 2021, para. 5.

⁵⁰ Applicant's rejoinder, filed on 30 September 2021, para. 17 (c).

⁵¹ Reply, annex 16.

⁵² Reply, annex 7.

⁵³ Reply, annex 17.

53. The Applicant was not treated differently than the staff member who was similarly situated. To the contrary, in September 2018, both she and the other staff member were temporarily moved from Brindisi to Valencia, Spain, as a temporary mitigation measure.⁵⁴ The other staff member later telecommuted from his home country, the Netherlands, until his separation from the Organization at the end of his temporary appointment in January 2019.⁵⁵

54. The Applicant was reassigned to a position at the same grade and level commensurate with her skills and competencies. By Inter-Office-Memorandum dated 18 August 2020, the USG/DOS reassigned the Applicant to another P-5 position, allowing her to maintain her current grade, level and contract status.⁵⁶

55. The Applicant alleged that she lacked the professional experience in supply chain and logistics as required for the TMICC post in Entebbe. However, her PHP and cover letter for the D-1 Chief of Service, Supply Chain Management position in the UNGSC confirms that she has over 31 years of experience working within the United Nations system in different capacities dealing with logistics, administration and supply chain management.⁵⁷ The Applicant's PHP further indicates that she possesses experience in the three main logistical areas for the TMICC position in Entebbe, namely, Support to movement of goods and personnel in the region, Management of the Section's performance, and Building Partnerships.⁵⁸ The TMICC position in Entebbe is therefore commensurate with her stated skills and competencies.

56. The Applicant has produced no evidence to substantiate her claim that there was an orchestrated plan to “oust” her from the UNGSC.⁵⁹ The record shows that the threats were substantial and real and that the Organization, at all levels of management,

⁵⁴ Reply, annex 2; Respondent's sur-reply, para. 4, filed on 8 November 2021.

⁵⁵ Reply, annex 15.

⁵⁶ Application, annex 4b.

⁵⁷ Reply, annex 16.

⁵⁸ Application, annex 22.

⁵⁹ Applicant's rejoinder, para. 12.

treated them as such. The Organization was obliged to take reasonable measures to ensure the Applicant's safety given its duty of care towards her.

57. The Applicant has not met her burden to show that the contested decision was ill-motivated or in bad faith. Mere assertions and innuendo are insufficient.⁶⁰

58. Contrary to the Applicant's assertions, she was consulted and given sufficient notice of the reassignment decision. However, the Appeals Tribunal has held that consultation does not mean that the staff member must consent to the reassignment.⁶¹

59. On 13 July 2020, the UNGSC Acting Director discussed with the Applicant the various options that UNGSC was exploring, including extension of her temporary appointment in MONUSCO, reassignment to an alternative position in the United Nations Support Office in Somalia ("UNSOS"), and resumption of her duties in UNGSC under a telecommuting arrangement.⁶² The Applicant responded that she was not interested in staying in MONUSCO or in taking up the position in UNSOS given her long permanence in Africa and her health situation.⁶³ She also indicated that reassignment to UNGSC with a telecommuting arrangement was not a workable option because the nature of the job did not allow remote working and because she anticipated to encounter a toxic environment.⁶⁴

60. The Applicant was also consulted during the 3 August 2020 meeting with the ASG-SCM.⁶⁵ She expressed her views and engaged in a substantive dialogue with the new ASG-SCM. Her disagreement with the reassignment decision did not preclude its implementation. It is for the Organization to decide the threat/personal risk to the Applicant and to determine whether to reassign her in her own and in the

⁶⁰ *Nouinou* 2019 UNAT-902, paras 64-65.

⁶¹ *Hepworth* 2015-UNAT-503, para. 26.

⁶² Reply, annex 7.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Reply, annex 18.

Organization's best interest. Staff regulation 1.2(c) requires that the Secretary-General assign staff with due regard to their safety and security.⁶⁶

61. The Applicant was also provided with the terms of reference ("ToRs") for the TMICC position on 22 August 2020.⁶⁷ There is no basis for the Applicant's claim that the ToRs were not the ones in effect simply because they were dated 2017. A position is not classified and given revised ToRs annually. Nevertheless, the Chief, Human Resources invited the Applicant to give her input to revise the ToRs if she wished to do so.⁶⁸

62. The mere fact that the Applicant would work in an area where she has previously worked at a different level does not mean her career has regressed.⁶⁹ Nor does a return to Africa to work in Uganda constitute a career regression. As rightly stated by the ASG/DOS during the 3 August 2020 meeting, working for the United Nations, includes also working in Africa.⁷⁰ The General Assembly has also emphasized the requirement of mobility of all internationally recruited staff of the Organization as an integral part of their obligation.⁷¹

Issue of Special leave with full pay ("SLWFP")

Applicable law

63. The Secretary-General has broad discretion to determine the interests and needs of the Organization, ranging from matters such as organization of work, staffing, and budgetary needs.⁷² The Dispute Tribunal cannot substitute its own views for those of the Secretary-General in matters bearing on the interests of the Organization.⁷³

⁶⁶ *Han* 2016-UNAT-666, para. 32.

⁶⁷ Reply, annex 19.

⁶⁸ *Ibid.*

⁶⁹ Applicant's Rejoinder, filed on 30 September 2021, para. 13.

⁷⁰ Reply, annex 18.

⁷¹ *Hepworth* 2015-UNAT-503, para. 48.

⁷² *Hassanin* 2017-UNAT-759, para. 45; *Simmons* 2016 UNAT-624, para. 12.

⁷³ *Sanwidi* 2010-UNAT-084, para. 40.

64. Staff Rule 5.3 (f) provides:

In exceptional cases, the Secretary General may, at his or her initiative, place a staff member on special leave with full or partial pay or without pay if he or she considers such leave to be in the interest of the Organization.

65. The Secretary-General has delegated the authority to place a staff member on special leave with full or partial pay or without pay to the Heads of Entities, in this case, the ASG/DOS.⁷⁴

The contested decision to place the Applicant on SLWFP was lawful

66. The decision to place the Applicant on SLWFP pending management evaluation was legal and reasonable.⁷⁵ It was also in the interest of the Organization and the Applicant's safety.⁷⁶ Placing the Applicant on SLWFP was the only feasible option to take as a result of the suspension of the implementation of the reassignment decision.

67. The Applicant had completed her temporary assignment with MONUSCO and had already checked out from MONUSCO at the time of the contested decision.⁷⁷ She could not return to Brindisi due to the documented security risks against her there.⁷⁸ Nor could she report to the new assignment in Entebbe in light of the Dispute Tribunal's Order suspending the implementation of the reassignment decision.⁷⁹ The Secretary-General therefore, determined that placing the Applicant on SLWFP under these exceptional circumstances was the only viable option to maintain the *status quo* during the pendency of the management evaluation.⁸⁰

⁷⁴ ST/SGB/2019/2, Delegation of authority of the Staff Regulations and Rules and the Financial Regulations and Rules, ch. V and annex IV.

⁷⁵ Staff rule 5.3 (f).

⁷⁶ Staff rule 5.3 (f); reply, annex 2.

⁷⁷ Application, annex 10; application, annex 12, p. 2.

⁷⁸ Application, annex 6; application, annex 11.

⁷⁹ Application, annex 3.

⁸⁰ *Prempeh* 2019-UNAT-904, para. 19.

68. The Director of UNGSC reached out to the Applicant with alternative reassignment options but the Applicant turned them all down.⁸¹ There was therefore, no other assignment on which the Applicant could temporarily have been placed pending the outcome of management evaluation. The Administration was obliged to comply both with the Dispute Tribunal's Order suspending the implementation of the reassignment decision and its duty of care towards the Applicant.⁸² It was also not practical to reassign the Applicant to another location during this short period of time.

69. The Appeals Tribunal in *Lauritzen*⁸³ held that it is permissible to place a staff member on SLWFP while in between assignments provided that such placement is only for a limited duration. The Applicant was placed on SLWFP for two months pending management evaluation.⁸⁴ She contests one month of that two-month period.

70. Staff rule 11.2(d) allows 45 days for management evaluation. However, placing the Applicant on SLWFP for the full two months was no less reasonable than for the first month especially since the staff rules allow for more than one month for management evaluation.⁸⁵ Following the management evaluation outcome upholding the reassignment decision, the Applicant was reassigned to Entebbe, effectively ending her placement on SLWFP.⁸⁶ Given that the Applicant was placed on SLWFP only for the period required to evaluate her management evaluation request, the length of time taken was reasonable.

71. The Applicant did not suffer any harm while on SLWFP.⁸⁷ She received her full salary and all benefits without a break in service in accordance with staff rule 5.3 (g). Moreover, there is no risk of reputational damage as the Applicant claims. The

⁸¹ Reply, annex 3.

⁸² *McKay* 2013-UNAT-287.

⁸³ *Lauritzen* 2013-UNAT-282, para. 41.

⁸⁴ Staff rule 11.2(d).

⁸⁵ *Ibid.*

⁸⁶ Application, section VII, para. 15; Application, annex 5.

⁸⁷ *Gido* 2020-UNAT-1053, Para.34.

Applicant's personnel record reflects that she was placed on SLWFP without any fault attributable to herself.⁸⁸

72. The Applicant has produced no evidence to support her claim that the contested decision was biased, prejudicial or malicious.⁸⁹ On the contrary, the contested decision was taken to protect her and was in the interest of the Organization.⁹⁰

JUDGMENT

73. The applications are rejected in all respects.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 30th day November 2021

Entered in the Register on this 30th day of November 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

⁸⁸ Application, section VIII.

⁸⁹ *Nouinou* 2019-UNAT-902, Paras. 64-65; *Onana* 2015-UNAT-527, Para. 30.

⁹⁰ Staff rule 5.3(f).