UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NY/2021/011
Judgment No.:	UNDT/2021/157
Date:	21 December 2021
Original:	English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

WEIDMANN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Yun Hwa Ko, UNFPA
Katrina Waiters, UNFPA

Introduction

1. The Applicant, a staff member of the United Nations Population Fund ("UNFPA"), appealed the rejection of his request to "maintain [his] personal P-4 grade following a restructuring exercise in [the Division of Human Resources ("DHR")] and the resulting downgrading of [his] personal grade from P-4 to P-3".

2. The Respondent replied that the application was without merit.

3. For the reasons set out below, the Tribunal rejects the application in its entirety.

Relevant facts

4. Since 2018, the Applicant encumbered the post of Human Resources Specialist at the P-4 level.

5. On 15 September 2020, the Applicant was notified that, following a re-alignment exercise in DHR, the post that he encumbered would be abolished on 30 November 2020 and that he would exceptionally be retained for service with UNFPA until 14 March 2021. The Applicant was also informed of the possibility to apply for other vacant posts.

6. On 1 October 2020, the Applicant applied to various posts at the P-5, P-4 and P-3 levels. On 4 November 2020, the Applicant was notified that he was selected for one of those posts, namely, the post of HR Specialist, Policy and Complex Case Management, at the P-3 level ("the P-3 post").

7. The Applicant accepted the offer of appointment to the P-3 post on 30 November 2020.

Consideration

8. The Applicant states that the "mere reassignment to a lower grade post does not grant a legal basis to downgrade a staff member's personal grade" and there are no provisions in UNFPA's human resources framework "authorizing the Administration to reduce a staff member's personal grade after reassigning them to a lower level post".

9. The Applicant further states that in appointing him at the P-3 level, the Administration departed from its standing practice of maintaining the staff member's personal grade upon reassignment.

10. In essence, the Applicant contends that he was reassigned to a lower-level post and therefore, the Administration should have kept his personal grade as per its standing practice.

11. The Respondent responds that the Applicant was lawfully appointed to the budgeted level of the post he was selected to.

12. The Tribunal notes that para. 61 of UNFPA's Policy and Procedures for Organizational Structuring states:

> Alternatively, there may be a need to reclassify a job description for an encumbered post at a lower level due to a gradual reduction in the level of responsibilities over time. In these circumstances, the reclassification will not negatively affect the incumbent's existing contractual status, salary, or entitlements, provided the incumbent has demonstrated fully satisfactory performance documented via at least one formal performance appraisal. The incumbent may remain in the post retaining the current grade and salary level on the understanding that reasonable efforts will be made by the staff member and the organization to facilitate appointment to a post at the same personal grade.

13. Moreover, para. 65 of UNFPA's Policy on Personnel of UNFPA on fixed-term appointments ("UNFPA's staffing policy"), reassignment of staff members occurs when "the Executive Director […] exceptionally decide[s] to select an applicant or re-

assign a staff member of UNFPA from one post to another outside of [the regular staff selection process]".

14. Paragraph 81 of the staffing policy provides that "[a]ny person who is recruited for a post, regardless of whether he/she is recruited from within or outside of the United Nations common system of salaries and allowances, is appointed at the budgeted and classified level of the post".

15. Therefore, whether the Applicant had a right to maintain his appointment to the P-4 level will hinge on whether the Applicant's post was reclassified or whether he was reassigned or selected for and thereafter appointed to a new post.

16. In the 15 September 2020 letter notifying the Applicant of the abolition of the post he encumbered, he was informed of his right to apply for other vacant posts.

17. Thereafter, the 4 November 2020 letter informing him of his selection for the P-3 level post further clarified that regardless of the grade of the post he encumbered at the time, the post against which he was selected was budgeted at the lower P-3 grade. Accordingly, the Applicant was cautioned and asked to confirm his understanding that, should he accept his selection, he would be appointed at the post's budgeted grade.

18. The Applicant accepted the offer of appointment to the P-3 level post.

19. The evidence therefore shows that the Applicant's former post was abolished, not reclassified. The evidence further shows that the P-3 post was a newly created post and to which the Applicant voluntarily applied and was thereafter selected for.

20. Therefore, the Applicant was not exceptionally reassigned by the Executive Director under para. 65 of UNFPA's staffing policy but was selected to a newly created post through the regular selection process governed by para. 81 of the staffing policy.

21. The Applicant claims that while he accepted the offer of appointment, he "clarified that accepting the P3 position was not his choice or done freely, but only

done to avoid being terminated. As the post the Applicant encumbered had been abolished, he would otherwise have faced unemployment when his contract came to an end a few months later on 14 March 2021".

22. The Tribunal finds that the Applicant's motivations for accepting his appointment to the P-3 post have no bearing on the lawfulness of the decision. The Applicant was cautioned in advance of his right to apply for other vacant posts, and he voluntarily decided to apply for a lower-level post. The Applicant, upon selection for the P-3 level post, was cautioned that he would be appointed at the P-3 level regardless of the grade of the post he encumbered at the time. This course of action was open to the Organization under UNFPA's staffing policy. The Applicant then proceeded to accept this appointment under these conditions.

23. The Applicant further states that he was not treated equally to other staff members whose personal grades were maintained after they were assigned to other positions. The Respondent replies that the Applicant was not treated differently from other staff members.

24. The Tribunal notes that the appointment or reassignment decisions of other staff members are not under review in this case and have no effect on the lawfulness of the impugned decision. As stated above, the evidence shows that the decision to appoint the Applicant to the post to which he applied at the post's budgeted level was lawful. Furthermore, as explained above, the evidence shows that the Administration acted in full transparency in giving early notice to the Applicant that he would be appointed at the budgeted level of the post he applied and was selected for. In these circumstances and absent any evidence of ulterior motive, the Applicant's argument fails.

25. The Applicant makes further arguments with respect to a mediation attempt to resolve this matter informally through the Office of the Ombudsman.

26. The Tribunal recalls that under art. 15.7 of the Tribunal's Rules of Procedure, mediation proceedings handled by the Office of the Ombudsman are confidential and not within the purview of the Tribunal.

27. The Respondent further objects to the additional unequal treatment arguments raised by the Applicant in support of which he provides a list of staff members of UNFPA who, he contends, were permitted to maintain their grade despite being assigned to a lower-grade post. The Respondent seeks leave to respond to these assertions which, he states, are misleading.

28. The Tribunal has already concluded that the contested decision is lawful and that absent any indicia of ill-motive in the contested decision, the decisions concerning the appointments or reassignments of other staff members are not under review in this case. The Tribunal does not, therefore, need additional submissions from the Respondent in this respect.

29. Any documents filed by the Applicant in support of this argument will remain confidential.

Conclusion

30. In light of the foregoing, the application is rejected in its entirety.

(Signed)
Judge Joelle Adda
Dated this 21st day of December 2021

Entered in the Register on this 21st day of December 2021

(Signed)

for:
Nerea Suero Fontecha, Registrar, New York