



**Before:** Judge Rachel Sophie Sikwese

**Registry:** New York

**Registrar:** Isaac Endeley

TADIC

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Martine Lamothe, OSLA

**Counsel for Respondent:**  
Kong Leong Toh, UNOPS

## **Introduction**

1. The Applicant, a former staff member of the United Nations Office for Project Services (“UNOPS”), filed an application contesting the decision on the abolishment of her post and the non-renewal of her fixed-term appointment.
2. The Respondent filed a reply submitting that the application has no merit.
3. For the reasons below, the Tribunal dismisses the application.

## **Facts and Procedure**

4. The Applicant served as a Finance Associate at General Service Level (“G-6”) on a fixed-term appointment (“FTA”), in the Finance Team, the Sustainable Development Cluster (“SDC”) within the New York Service Centre (“NYSC”) of UNOPS.
5. From April 2021 to June 2022, NYSC underwent a restructuring process.
6. On 23 March 2022, the Applicant was verbally informed that following the team review and her terms of reference (“ToR”), her contract would not be renewed beyond its expiration date on 30 June 2022. The Applicant was informed of three internal consultant vacancies that she could apply for.
7. On 6 June 2022, the Applicant was formally notified that her appointment would not be renewed and was advised to consider applying for other available vacancies.
8. On 19 June 2022, the Applicant filed a request for a management evaluation contesting the abolishment of her post.

9. On 3 August 2022, the Applicant received a response to her management evaluation request upholding the contested decision.
10. On 17 November 2022, the Applicant filed her application with the Dispute Tribunal.
11. The Tribunal held a case management discussion (“CMD”) on 2 November 2023. At the CMD, the parties, *inter alia*, agreed that the case may be adjudicated on the papers.
12. Following the CMD, the parties filed their closing submissions on 28 November 2023.
13. On 18 December 2023, the Applicant filed a motion for anonymity. She cited *inter alia* experience of stress, reputational harm and impact on her family’s well-being as the reasons for the request.
14. On 26 December 2023, the Respondent filed a response to the Applicant’s motion for anonymity submitting that the motion be rejected because the grounds for seeking anonymity are not valid.

## **Consideration**

### *Preliminary motion on anonymity*

The Appeals Tribunal has held that:

Absent any order directing otherwise, the usual or standard position has been that the names of the parties are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and accountability and that names should be redacted “in only the most sensitive of cases”. (AAE 2023-UNAT-1332, para. 155).

15. Consistent with the above Appeals Tribunal jurisprudence, this Tribunal may grant a motion for anonymity where it finds that the Applicant has shown that the record contains sensitive information capable of causing harm to the parties or third parties such as witnesses or victims. A careful perusal of the record does not disclose any such sensitive material. The motion is therefore denied.

### **Merits**

*Whether the abolishment of the Applicant's post and the non-renewal of her fixed-term appointment was lawful*

16. The main issue for the Tribunal's consideration in this case relates to whether the abolishment of the Applicant's post leading to the non-renewal of her fixed-term appointment was lawful. In that regard, the Appeals Tribunal has held that the abolition of a post resulting from a reorganization exercise constitutes a valid reason for not renewing a staff member's appointment (see, for instance, the Appeals Tribunal in *Nastase* 2023-UNAT-1367).

17. A restructuring exercise which may result in loss of employment for staff members falls within the Secretary-General's discretionary authority (see, for instance, *Loeber* 2018-UNAT-844). The Appeals Tribunal has affirmed that the Tribunals will not interfere with a genuine organizational restructuring exercise even though it may have resulted in the loss of employment of staff (see, for instance, *Matadi et al* 2015-UNAT-592) and the restructuring may have been unwise (see, for instance, *Collins* 2020-UNAT-1021).

18. There is, however, a duty for the Administration to act fairly, justly, and transparently in dealing with staff members during a restructuring exercise (see *Abdeljalil* 2019-UNAT-960).

19. Although FTAs carry no expectation of renewal in accordance with staff rule 4.13(c), failure to renew may be challenged on the grounds that a staff member had a legitimate expectation of renewal or the existence of a procedural irregularity or that the decision was arbitrary or motivated by bias, prejudice, or improper motive (see, for instance, *Hossain 2023-UNAT-1359*).

20. Where restructuring is the reason for non-renewal of a fixed term contract, the role of the Dispute Tribunal is to review whether the administrative discretion to restructure was conducted in accordance with relevant procedures, whether it was properly motivated, and whether the staff member was afforded due process rights. During this process, the Dispute Tribunal is reminded not to:

...[i]nterfere with an organizational restructuring exercise unless there is evidence that the discretion was exercised unreasonably, unlawfully or without due process. In this regard there is always a presumption that effective official acts have been regularly performed. The presumption of regularity is however rebuttable. If the Administration is able to minimally show that the staff member was given full and fair consideration, then the evidentiary burden shifts to the staff member to show that he or she was subject to an act of unreasonableness or unfairness. (*Nastase 2023-UNAT-1367*, para. 25).

21. The Applicant submits that the abolition of her post was unlawful on the grounds that, firstly it was not a result of genuine organizational restructuring. The Applicant states that the functions of her post were taken away from her and redistributed amongst consultants. Despite it being their duty, the Organization failed to provide evidence of changes in operational realities or restructuring exercises to justify the abolition of the Applicant's post.

22. Secondly, the Applicant submits that the Organization made no effort to identify suitable posts to place the Applicant upon the decision to abolish her post despite her being an FTA holder and having a record of satisfactory performance since 2005 with the United Nations.

23. Finally, the Applicant alleges that the contested decision was motivated by improper motive. The Applicant submits that a series of incidents between the Applicant and senior management, taken in totality, suggest that the Administration harbored a desire to terminate the Applicant's employment, and that the abolition of her position served as a ruse to effect her departure. Crucially, the absence of any discernible effort to locate a replacement position for the Applicant points to the fact that the management saw her removal as a permanent one.

24. In response, the Respondent states that the contested decision was lawful as the record clearly shows that there was a genuine restructuring. Thus, the Respondent argues that the presumption of regularity stands satisfied, and therefore the burden of proof shifts to the Applicant who must show through clear and convincing evidence that the contested decision was unlawful, procedurally flawed or improperly motivated. The Respondent submits that the Applicant has not met her burden of proving that such was the case.

25. The Tribunal notes that the essence of the Applicant's contention is that the abolition of her post was not a result of genuine organizational restructuring and that the Administration failed to demonstrate any significant effort in carrying out its responsibility to find a replacement position for the Applicant. The Tribunal will examine each of these claims in turn.

Was the restructuring genuine?

Changes to positions

26. The Applicant claims that the restructuring process was not genuine and that the new post created to replace her post was effectively conducting the same duties as her position. The Respondent denies and outlines through evidence the steps taken in the restructuring process and the eventual non-renewal of the Applicant's FTA.

27. In terms of the steps taken, the Tribunal notes that from April 2021 to June 2022, NYSC carried out a review of the business needs and financial support services provided by two finance teams within NYSC, namely the SDC finance team (where the Applicant served) and the Peace and Security Cluster ("PSC") finance team.

28. The record, which includes the detailed terms of reference for the SDC-Finance Team at annex 5 of the Respondent's Reply, shows that following a review of the finance functions needed by NYSC, significant changes were proposed to the finance team structure. For instance, that the two prior separate PSC and SDC finance teams be merged to create a single NYSC finance team.

29. The merging of the finance teams necessitated the abolition of three redundant positions including the "Finance Associate" (G-6) post that the Applicant encumbered, and the creation of three new positions, including a "Finance Officer (Management Accounting)" position.

30. In respect of the Applicant's involvement in this process, the record shows that on 23 March 2022, the Applicant was verbally informed that following the team review, her contract would not be renewed beyond its expiration date on 30 June 2022. She was further informed that there would be three internal vacancies for consultant positions that she could apply for. She was advised that these were internal vacancies for NYSC Finance team.

31. The Applicant claims that she should have been retained by the Organization despite this restructuring process as one of the three new posts titled “Finance Officer (Management Accounting)” (International Civil Service (“ICS”)-8) created during the restructuring is substantially the same as the “Finance Associate” (G-6 / ICS-6) post that the Applicant encumbered.

32. The Tribunal finds that although there may have been some similarities on the finance functions carried out under the newly created Finance Officer (Management Accounting) (ICS-8) position and the Applicant’s post of Finance Associate (G-6/ICS-6), the two positions are not substantially similar as argued by the Applicant. The Tribunal notes, for instance, that the new position of Finance Officer (Management Accounting) (ICS-8) was higher than the Finance Associate (G-6/ICS-6) position. The new position had a higher level of responsibilities requiring a higher level of expertise than the level of the Applicant’s abolished post (G-6/ICS-6). Other differences pointed out by the Respondent are that of the five components of the “Finance Officer (Management Accounting)” (ICS-8) position, one component, i.e. “Administration and implementation of operational strategies” did not exist at all in the “Finance Associate” (G-6/ICS-6) post and the main part of one other component, i.e. “Ensures facilitation of knowledge building and knowledge sharing, focusing on achievement of the following results...” did not exist in the Finance Associate (G-6/ICS-6) post.

33. The Applicant was interviewed for the “Finance Officer (Management Accounting)” ICS-8 post, but she was not successful.

34. In the absence of cited authority as a basis, the Tribunal does not accept the Applicant’s opinion that an accurate and correct comparison of the respective functions should have and can only be made based on the terms of reference in the respective job description and the objectives defined in the performance appraisal documents. Especially after the Applicant concedes that out of 5 relevant job description components 3.5 were substantially the same for both posts. The Tribunal



finds that the 1.5 difference supports the decision to abolish the post encumbered by the Applicant, consistent with the requirement of competence as a core consideration when retaining or appointing staff members in the United Nations both under the United Nations Charter, art. 101.3 and the staff regulations and rules. The Tribunal finds that the Applicant's claim that the restructuring did not result in major changes to the post that she encumbered is unsubstantiated. In matters of managerial and operational processes of the Organization, including restructuring, the Dispute Tribunal must defer to the administrative discretion. It is not the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General. In order to succeed under this head, the Applicant needed to adduce clear and convincing evidence that in making the decision the Respondent ignored relevant matters or took irrelevant matters into consideration resulting in an absurd or perverse outcome. (See, AAG 2022-UNAT-1308.)

*Consultation on abolition of post*

35. The Applicant further submits that the Administration did not comply with the requirement to consult her that her post was facing abolition. In making this argument, the Applicant relies on the Appeals Tribunal's decision in *Matadi et al* 2015-UNAT-592.

36. The Tribunal finds that *Matadi et al* is distinguishable from the present case. In *Matadi et al* the issue before the Appeals Tribunal was representation of the Staff Union in consultations leading to downsizing. In *Hossain* 2023-UNAT-1359, the Appeals Tribunal clarified that it does not follow from *Matadi et al* that the Administration is under a legal obligation to consult with individual staff members facing abolition of a post in a reorganization or restructuring exercise. Hence, in the present case, which does not concern staff union consultations, the Administration was not obliged to consult with the Applicant during its restructuring exercise.

37. The record indicates that NYSC Management informed affected team members, including the Applicant, that the teams would be undergoing a restructuring exercise. For example, on 9 August 2021, the Applicant commented on a document that described the plan for the Finance Team's future arrangement which was used during the restructuring process. The Applicant was therefore aware that her team would be affected by the restructuring.

38. The Tribunal finds that the Applicant was made aware of the restructuring exercise. She has not alleged that she was prevented from making any observations on the processes; on the contrary, she contributed her comments toward future arrangements of the Finance Team. The Applicant has not cited any staff regulation or rule that entitled her to be consulted on the abolition of her post. The legal obligation on the Respondent under the rules was to give her notice of non-renewal of her appointment due to the abolition of her post.

*Improper motives- Disagreements with senior management*

39. The Applicant alleges that the contested decision was motivated by improper motives. In this regard, the Applicant submits that a series of incidents between the Applicant and senior management, taken in totality, suggests that the Administration harbored a desire to terminate her employment. In particular, the Applicant states that on 1 March 2021, she received negative comments about her professionalism, politeness, and impact on team morale as a result of proposing a rescheduling of an upcoming meeting. The Applicant states that she did not have any prior knowledge regarding the meeting, but her suggestion alone resulted in negative feedback. During the Mid-Year Performance Review meeting on 20 September 2021, the Applicant submits that she received feedback from her Secondary Supervisor regarding her performance. She was advised to improve her communication skills and be more engaging with UNOPS NYSC Senior Management. Specifically, her supervisor recommended that she be "sweeter" or "more entertaining" in her approach. Additionally, the Applicant was informed that her overall performance might not be

deemed satisfactory by the end of the year. The Applicant claims that in November and December 2021, her request for telecommuting/flexible working arrangements was denied without any justification.

40. The Respondent avers that the Applicant's claims of improper motive have no merit. The Respondent states that a plain reading of the annexes to the Applicant's application show that the Applicant's supervisors were professional in their dealings with the Applicant. However, when they had to deal with the above mentioned situations: the Applicant (i) failed to respond to the Secondary Supervisor's messages, (ii) turned down a meeting requested by colleagues at UNOPS Headquarters (even though the Applicant's electronic calendar showed that she was available), and then (iii) made unhelpful comments to the Secondary Supervisor suggesting that she had made other plans and proposing a time that worked for her and that the topic on petty cash was according to her already discussed. The Respondent claims that the Applicant had refused a senior manager's request for the Applicant to implement a decision that had been made in agreement with her Secondary Supervisor, and the Applicant instead told the requesting senior manager "[the Secondary Supervisor] can make [the] change herself if she wants to".

41. In terms of the Applicant's request for flexible working arrangements, the Respondent explains that the Applicant submitted a request to work (between "19:45" and "21:45" every other Monday, Wednesday and Friday. The Respondent notes that this meant that the Applicant was not contactable during a large part of regular working hours on those days.

42. Having reviewed the record, the Tribunal finds that although there were some workplace issues as set out above between the Applicant and her supervisor, concerning feedback on the Applicant's communication skills and her request for telecommuting/flexible working arrangements, there is no clear and convincing evidence that these issues were linked to or had an influence on the restructuring process. The Tribunal notes that these were normal interactions aimed at proper

administration and arrangement of work. The Applicant has not established any bias, prejudice or discrimination arising from the interactions with her supervisors or with senior management.

*Stripped off functions*

43. The Applicant states that the functions of her post were taken away from her and redistributed amongst consultants. There is, however, no evidence to show how this fact affected her terms and conditions of appointment. The Applicant merely makes a general allegation that lacks substantive and specific material evidence to sustain an allegation of irregularity on a clear and convincing evidence standard.

*Responsibility to find a replacement position*

44. The Applicant submits that the Organization made no effort to identify available suitable posts to place her upon the decision to abolish her post despite her being an FTA holder and having a record of satisfactory performance with the United Nations since 2005. In support of this argument, the Applicant cited the Appeals Tribunal decision in *Icha* 2021-UNAT-1077.

45. The Applicant's argument is, however, misplaced as the Appeals Tribunal in *Icha* dealt with a case of termination of an FTA governed by staff rule 9.6(e). The present case concerns expiration (not termination) of appointment, therefore staff rule 9.6(e) that obliges the Respondent to find means of retaining the staff member in employment does not apply. The Appeals Tribunal has confirmed that in cases of expiration of appointment, there is no duty on the Respondent to try to reassign a staff member (*Russo-Got* 2021-UNAT-1090).

## **Conclusion**

46. The Tribunal finds that the Applicant has not met the requisite standard to rebut the presumption that the restructuring was genuine and therefore a valid reason for not renewing her FTA.

47. The Tribunal decides to reject the application.

*(Signed)*

Judge Rachel Sophie Sikwese

Dated this 28<sup>th</sup> day of December 2023

Entered in the Register on this 28<sup>th</sup> day of December 2023

*(Signed)*

Isaac Endeley, Registrar, New York