



Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Wanda L. Carter

MARGIEH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Hilda Ojiambo, OSLA

Counsel for Respondent:

Michel Boulianne, UN Women

Michael Ryneveld, UN Women

Introduction

1. The Applicant is a Programme Coordinator at the UN Women Palestine Country Office at the NOC/10 level. On 29 April 2024, she filed an application contesting what she describes as a decision to:

reassign her to a lesser post following internationalization of her post by creation of a new post of Deputy Special Representative, which takes away her main functions and duties as well as her leadership role in the organization as a member of the country office management team.

Historical and procedural facts

2. On 1 May 2013, the Applicant joined the UN Women Office in the occupied Palestinian territory (“oPt”) as National Programme Officer at the NOC level on a fixed-term appointment, renewed on a yearly basis.

3. In early 2022, the oPt Office began reviewing its organizational structure and practices as part of a business transformation process (“BTP”).

4. In May 2022, an external consultant was engaged by UN Women to conduct a functional review of its presence in the oPt, and who worked with the Human Resources (“HR”) and Change Management teams to consult with UN Women staff in East Jerusalem, Ramallah, and Gaza.

5. In June 2022, the external consultant completed the functional analysis in collaboration with the HR and Change Management teams and made various recommendations for the oPt Office.

6. In November 2022, UN Women’s Regional Office management as well as the Global Change Management team approved the proposed revised structure for the oPt Office.

7. On 20 December 2022, the Special Representative had shared with the Applicant, through the Ombudsman, proposed revised ToRs of the Applicant’s post (with revised title of “Programme Specialist/Coordinator, Intergovernmental and Normative Engagement”) for her review and comments. On 14 June 2023, the

Special Representative shared the ToRs for a second NOC post in the oPt Office (“Strategic Planning Specialist”) for the Applicant’s review and feedback and offered her the opportunity of moving to the second NOC position in a team focused on UN Women’s operational mandate if such position would be preferable to her. In the following months, the Applicant was repeatedly offered to choose either of the two NOC posts for which she had reviewed the ToRs, but she declined to make a choice.

8. The BTP resulted in the creation of the post of Deputy Special Representative (“DSR”) which was advertised on 26 October 2023.

9. On 20 December 2023, the Applicant submitted a Management Evaluation Request (“MER”) to review what she claimed was “the drastic alteration of the Applicant’s Terms of Reference (ToRs) and the taking away of her core duties by creation of a new post of Deputy Special Representative, among other actions.”

10. On 16 April 2024, the Administration, needing to proceed with the implementation of the afore mentioned business transformation, assigned the Applicant the ToRs of Programme Specialist/Coordinator, Intergovernmental & Normative Engagement with effect from that date.

11. The Applicant currently remains employed in oPt Office at the same level of NOC level on a fixed-term appointment with revised ToRs and a revised title of “Programme Specialist/Coordinator (Intergovernmental and Normative Engagement)”.

12. On 29 April 2024, the Applicant filed the application mentioned in para. 1. She claimed that she was excluded from leadership (as her ToRs would have required) of the BTP leading to the creation of the new post of DSR, that her feedback - requested at the very last moment - was disregarded, and that the newly created DSR post had significant overlap with her functions. She recalled that on 16 April 2024 she had been reassigned to the post of Programme Specialist/Coordinator – Intergovernmental and normative Engagement, which was not clearly part of the institutional budget, and in any case affected her seniority,

excluding her from the management team and making her report to the deputy and not directly to the Special Representative anymore.

13. By the application mentioned in para. 1, challenging her reassignment to a lesser post following the creation of the new DSR post, which took away her main functions, the Applicant requests rescission of the reassignment and reinstatement to a post and functions commensurate with her previous position in the Organization or, in the alternative, she requests damages for lost opportunity and harm to her career progression and job security.

14. On 30 May 2024, the Respondent filed his reply, requesting the Tribunal to dismiss the application in its entirety. He contends that, on the one hand, the application is not receivable *ratione materiae* as there was no decision in this matter meeting the definition of an administrative decision and, on the other hand, that the Administration acted lawfully.

15. On 10 June 2024, the Duty Judge of this Tribunal issued Order No. 64 (2024 (the “Order”), ordering that the Applicant file a rejoinder, not exceeding five pages, and that the parties explore resolving the dispute amicably.

16. On 25 June 2024, the Applicant filed a rejoinder to the reply.

17. On 2 July 20024 the parties filed a joint submission expressing that their efforts exploring an amicable solution of the matter produced no results.

18. On 5 August 2024, the case was assigned to the undersigned Judge.

Parties’ submissions on receivability

19. The Applicant’s principal contentions are:

a. She inquired if an administrative decision had been taken to her detriment when the oPt office began to implement the recommendations of the business transformation process but received no firm answer.

b. Her NOC post of Programme Coordinator had been removed from the office organigram adopted after the BTP, which had been presented at the

meetings of the Senior Management Team and All Staff meetings on 12 September 2023.

c. On 29 September 2023, she noticed that the new NOC position of Programme Specialist/Intergovernmental and Normative Engagement that was presented on 12 September as vacant had been changed to a filled NOC position while the other new NOC position of “Strategic Planning Specialist” remained vacant.

d. The job opening of the DSR post advertised on 26 October 2023 duplicated the ToRs for the Applicant’s post which had removed from the newly adopted office organigram.

e. The foregoing three acts, taken together, imply an administrative decision taken to alter the Applicant’s original ToRs and reassign her to new ToRs for the post of “Programme Specialist/Coordinator (Intergovernmental and Normative Engagement)”.

f. The administrative decision can only be implied because the Applicant repeatedly inquired whether a decision had been taken as the above changes took place, but the Administration remained elusive. It became apparent to the Applicant on 26 October 2023 when the Administration advertised the post of DSR which mirrored her original TORs for the post removed from the organigram that an administrative decision had been taken to reassign her to the new NOC post of Programme Specialist/Coordinator that was indicated as filled.

g. It is the Applicant’s submission that on 29 September 2023 when she was seized of the TORs that have now been imposed on her, she had inquired whether a decision had been taken to change her position and ToRs into a different role. The Applicant did not receive an answer from the Administration and had to deduce it from this and subsequent actions, namely advertisement of the international DSR post that largely duplicated the TORs of her post that had been removed from the organigram.

h. In view of the foregoing, the Applicant submits that an administrative decision was taken to her detriment as soon as 12 September 2023 when her post had been removed from the organigram and the new NOC post of Programme Specialist/ Coordinator - Intergovernmental and Normative Engagement indicated as filled. However, this decision became apparent to the Applicant only on 26 October 2023 when she could firmly and conclusively deduce that the filled NOC post was her new post, and that her previous functions would be performed by the new international DSR post. Therefore, the matter is receivable *rationae temporis* because she sought management evaluation within 60 days of becoming aware of an administrative decision.

i. The effective date of reassigning the Applicant to the new post of Programme Specialist/Coordinator - Intergovernmental and Normative Engagement may have been 16 April 2024 but the decision to alter the Applicant's TORs and reassign her to a new post was reached earlier and became apparent to the Applicant on 26 October 2023.

j. This matter is also receivable *rationae materiae*. The drastic change in her functions and reporting lines to the extent that she loses her seniority in the organization adversely affects the rights of the Applicant to work and to be treated fairly, justly and transparently. Further, the ToRs of the Applicant's post prior to the BTP have been duplicated for the DSR post. This is not mere revision of ToRs and retitling.

k. Contrary to the Respondent's contentions, the assertion that her seniority was not different from any other NOC position in the Organization is not accurate. She had the highest delegation among the NOCs and her Officer-in-Charge functions were not at the discretion of the Special Representative as these were specified as part and parcel of her ToRs. Further, her post was in charge of other functions such as planning, head of programmes and coordination, which have now been removed from her new post.

20. The Respondent's principal contentions are:

a. The Applicant has not identified an administrative decision, that is, a decision which has produced direct legal consequences affecting the terms and conditions of her appointment in an adverse manner.

b. The fact that the Applicant has not identified a contestable administrative decision is further underlined by the wording of the Applicant's own MER in which she states she seeks to contest "various administrative actions (...)". Administrative actions are not comparable to administrative decisions, which, it is emphasised, must impact the staff member's individual terms of appointment in an adverse manner.

c. , the Applicant is contesting the creation of a new post of DSR in the UN Women's office in the oPt Office, advertised on 26 October 2023, claiming that that the duties and responsibilities of the DSR are similar to those undertaken by the Applicant.

d. The decision to create the DSR post is a prerogative of the Organization producing no direct legal consequences affecting the Applicant's contract of employment or terms of her appointment, as is required by staff rule 11.2. If the Tribunal were to conclude that the application is receivable in seeking to contest the decision to advertise the new post of DSR, the logical consequence would be that any staff member could contest the creation/advertisement of a new post with which they disagree. Such position cannot be supported. In such circumstances, the administration of the organisation would grind to a halt.

e. Furthermore, following the establishment of the DSR post, the Applicant's role, duties and responsibilities remained unaffected. This underlines the point that the decision to create the DSR post did not have any adverse consequences for the Applicant.

f. The Applicant is also contesting what she claims to be the “reassignment to a lesser post” which, by her own account, was confirmed to her by email on 16 April 2024.

g. While the Applicant’s MER referenced an alleged “reassignment to a lesser post”, the reality is that there was no decision to ‘reassign’ the Applicant. Rather, the email of 16 April 2024 confirmed to the Applicant that her post would remain at the same level of NOC, albeit with new ToRs and a revised title, as foreseen by the implementation of the business transformation process. As such, the Applicant has not experienced any adverse consequences in respect of the terms and conditions of her appointment: She is in a post at the same level and with the same pay as previously. Consequently, there was no decision fitting the definition of an administrative decision.

h. Furthermore, pursuant to staff rule 11.2, staff members wishing to formally contest an administrative decision alleging non-compliance with their contract of employment or terms of appointment, shall, as a mandatory first step, request a management evaluation of the decision, unless the decision was taken “pursuant to advice obtained from technical bodies” or taken to impose disciplinary or non-disciplinary measures pursuant to staff rule 10.2. As neither of the aforementioned situations apply in the present case, the Applicant was required to submit such a request before filing the application but failed or neglected to do so. The Applicant is thus barred from contesting the 16 April 2024 decision to revise her ToRs and job title in the context of this application.

i. For these reasons, the Respondent submits that the application is not receivable *ratione materiae*.

Consideration

21. The Applicant is contesting two decisions:

a. The creation of a new post of Deputy Special Representative, which she claims takes away her main functions and duties as well as her leadership role in the organization as a member of the country office management team. The Applicant states that she became aware of this decision on 26 October 2023.

b. The decision to reassign her to a lesser post following internationalization of her post. She became aware of this decision on 16 April 2024.

22. As respects the decision to create a new post of DSR, the Applicant requested the management evaluation on 20 December 2023.

23. On 2 February 2024, the Director of Human Resources raised concerns of receivability issues of the MER, stressing that “a decision of the administration needs to have been made that affects the terms or conditions of appointment or the contract of employment”, that “it must produce direct legal consequences affecting a staff member’s terms of appointment adversely” and that in this case

the creation and subsequent posting of the position of Deputy Special Representative (DSR) on 26 October 2023, referred to in the Request, was the consequence of a thorough and considered business transformation process (“BTP”) which is a process that is the prerogative of the organization. For the creation of the DSR post to amount to a contestable administrative decision, as stated above, it would need to be a decision that correlates to the non-compliance with **your** contract of employment or terms of appointment, as is required by staff rule 11.2. Moreover, as you may be aware, the review of your Terms of Reference (“ToR”) is aligned with the organization-wide approach of using the updated classified job descriptions in UN Women’s Job Dictionary (a repository of all UN Women generic job descriptions that serves as a reference guide to ensure transparency and consistency for similar jobs across UN Women). With the above in mind, and given that you have alleged the “impugned actions” have been ongoing since 2019 (which is well before the 60 days required by staff rule 11.2), I am unable to identify in the Request a single contestable administrative decision alleging noncompliance with **your** contract of employment or terms of appointment otherwise within the 60 day window, and that could

amount to adverse legal consequences. I am therefore of the view that the Request is not receivable, *ratione materiae*.

24. As to the decision under para. 21(a), the Tribunal notes that the parties filed detailed submissions explaining the oPt's business transformation process leading to the creation of said post. The process was consultative involving many staff members and HR experts.

25. The Tribunal is aware that the decision to create a new budgeted post in the administrative structure is an exclusive prerogative of the Administration, being the way it manages and organizes its resources in its exclusive interest. An international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, the creation of new posts and the redeployment of staff.

26. The reorganization of the administrative structure is an administrative decision of a general nature, which produces no direct legal consequences affecting the staff member's contract of employment or terms of her appointment.

27. An administrative decision that is subject to judicial review is indeed a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry "direct legal consequences" affecting a staff-member's terms or conditions of appointment (*Ngokeng* 2014-UNAT-460, paras. 26-27; *Wasserstrom* 2014-UNAT-457, para. 34; *Bauzá Mercére* 2014-UNAT-404, para. 18).

28. It is true that an organisational decision may impact indirectly the staff member's work relationship, and in that case the staff member is entitled to

challenge not the organisational decision in itself, but only the effects of that decision on his/her specific work relationship.

29. Given the cases cited above, the Appeals Tribunal has consistently 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 (which is not the case here).

30. As recalled in *Matadi et al*, 2015-UNAT-592, para. 17, the Tribunal, provided that the Administration acted fairly, justly and transparently in dealing with its staff members and that it would not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff.

31. The decision to create the DSR post did not have any direct adverse consequences for the Applicant, who remained in employment, with the same post and ToRs; in other terms, by the establishment of the DSR post, the Applicant's role, duties and responsibilities remained unaffected.

32. The Applicant's contention that the decision to alter her ToRs and reassign her to a new post was reached before her formal reassignment of 16 April 2024 and became apparent to her on 26 October 2023 is not relevant because it is based on purely speculative assumptions and does not consider the long contradictory process after that date and the subsequent exchanges between the Administration and the Applicant with the aim of a proficient and agreed implementation of the BTP, nor the administrative decision formally taken only on 16 April 2024 with specific reference to the Applicant's position (decision which remained unchallenged before the Director of Human Resources in UN Women who undertook the management evaluation).

33. The Applicant has failed to identify a contestable administrative decision - before the said date of 16 April 2024 - adversely affecting the terms and conditions of her appointment.

34. Therefore, the claim towards the decision under para. 21(a) is not receivable *ratione materiae*.

35. The Tribunal stresses that, when an administrative decision is of general application and aims to promote administrative objectives, policies and goals, the implementation of that decision may impose some requirements in order for a staff member to exercise his or her rights, eventually affecting his or her terms of appointment or contract of employment (see *Andati-Amwayi* 2010-UNAT-058, paras. 16-19).

36. With reference to the case at hand, the Tribunal is aware that the Applicant's working situation changed in April 2024, when the Administration took the aforementioned decision and assigned the Applicant the ToRs of Programme Specialist/Coordinator, Intergovernmental & Normative Engagement with immediate effect.

37. Indeed, this is an administrative decision which, although taken in execution of the BTP reorganizational process, directly impacted the Applicant's work relationship.

38. As to the decision under para. 21(b), the Tribunal notes that this decision has never been subjected to management evaluation as required under staff rule 11.2 and art. 8.3 of the Dispute Tribunal's Statute.

39. Indeed, pursuant to staff rule 11.2, staff members wishing to formally contest an administrative decision alleging non-compliance with their contract of employment or terms of appointment, shall, as a mandatory first step, request a management evaluation of the decision, unless the decision was taken "pursuant to advice obtained from technical bodies" or taken to impose disciplinary or non-disciplinary measures pursuant to staff rule 10.2. As neither of the aforementioned situations apply in the present case, the Applicant was required to submit such a request before filing the application but failed or neglected to do so.

40. As the Applicant did not request management evaluation of the administrative decision of 16 April 2024 to revise her ToRs and job title, her complaint is therefore not receivable *ratione materiae*.

Conclusion

41. In view of the foregoing, the Tribunal DECIDES to reject the application as irreceivable.

(Signed)

Judge Francesco Buffa

Dated this 25th day of September 2024

Entered in the Register on this 25th day of September 2024

(Signed)

Wanda L. Carter, Registrar, Nairobi