



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

LAHOUD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, ALS/OHRM
Steven Dietrich, ALS/OHRM

Introduction

1. The Applicant is a Team Assistant at the United Nations Interim Force in Lebanon (UNIFIL). She serves at the GS-4 level on a fixed-term appointment.
2. On 17 September 2015, she filed an Application for Suspension of Action, pending management evaluation, seeking the suspension of the decision to change her functional title from Team Assistant to Language Assistant without budget approval and to remove her from her post at the J1 Branch (Force Military Personnel) “under the verbal excuse that [her] post was abolished and no longer needed”.
3. The Application was served on the Respondent on 21 September 2015.
4. The Respondent filed a Reply to the Application on 23 September 2015 in which it was asserted that the Application was not receivable *rationae materiae* because the Applicant does not contest administrative decisions that affect the terms of her appointment.
5. The Tribunal held a hearing on 24 September 2015.

Applicant’s submissions

6. The case of the Applicant who was self-represented all through is summarized below.
7. The Applicant started working in UNIFIL in March 2003 as an Administrative Clerk. She applied for a Team Assistant post in FMPO Branch (Force Military Personnel Office, now J1 Branch, Force Military Personnel) in January 2005 as the Assistant of the Military Editor of the UNIFIL *Litani* magazine.
8. She was recruited to the post as a civilian and was under the former General Service Section. Since then, she has worked as Team Assistant for the Branch, besides working on the production of UNIFIL *Litani* Magazine, UNIFIL yearly calendars and official folders.

9. After the July 2006 war and the establishment of the new mission, the post of the Military Editor was removed and she was left in charge of producing the UNIFIL *Litani* magazine, calendars and folders.

10. Her UNIFIL renewal of contract form (P5 form) shows her functional title to be Team Assistant. On 4 August 2015, a Human Resources Officer confirmed that her functional title and classification post was Team Assistant and not Language Assistant and she has never applied for or worked as a Language Assistant. The only change was that with the establishment of the new mission, all civilian staff members working in Military Branches were placed under the LSU (Language Support Unit which included all the newly recruited Language Assistants), and also included about eight civilians working in Military Branches but with different job descriptions which are not Language Assistants, mainly in J1, J9, Liaison and Combat Engineer Branches.

11. For the past 10 years, the Applicant while in her substantive post of Team Assistant discharged her functions as producer of the *Litani* magazine with efficiency and professionalism. She had worked with 10 Colonels and four Force Commanders and was always complimented for her hard work, creativity and professionalism.

12. In January 2015, UNIFIL's acting Deputy Director of Mission Support (DDMS), Mr. Fabio Bendinelli, sent her an email in which he accused her of making a mistake in the UNIFIL 2015 Calendar and copied all Senior Management instead of checking with the *Aide-de-Camp* (ADC) of the Head of Mission & Force Commander (HoM&FC) as to why the mistake had not been spotted by him before giving it to the HoM&FC for his approval.

13. After that incident, Mr. Bendinelli ordered her to change the way actions were undertaken and specifically to use the official routine slip by passing all the publications she produced to the Office of the Chief of Special Staff of the HoM&FC, Colonel Marucci for his approval before giving it to the HoM&FC for the printing approval process. She strictly followed the instructions given to her by the acting DDMS.

14. In March 2015, pursuant to Mr. Bendinelli's instructions, she finalized the *Litani* issue of March 2015 and sent it using the official routine to Colonel Marucci, whose role was to control, check and approve the submitted draft before giving it to the HoM&FC for his final approval for printing. Once approved, the magazine was sent to her with the signed official routine slip for printing on 14 March 2015. Again, the blame for another error was solely placed on her by Mr. Bendinelli who sent another email to that effect copying all Senior Management.

15. On 8 July 2015, 10 years after having worked as Team Assistant in J1 Branch, she was verbally and unofficially advised by Colonel Marucci that she was no longer in charge of producing *Litani* Magazine. She never received an official communication, nor was she consulted about the decision.

16. On 11 August 2015, the Chief Human Resources Officer (CHRO), Ms. Jeanie Frazer and the Chief of the Language Support Unit (LSU), Mr. Wilkinson, on the recommendation of Mr. Bendinelli decided to change the Applicant's post from Team Assistant to Language Assistant and move her out of J1 Branch effective 17 August 2015 as, according to them, the post that she had been occupying did not exist anymore and was abolished. No document was provided to her to show and prove the abolishment of her post and the change of her functional title.

17. Moreover, Mr. Wilkinson, taking advantage of the fact that she was on sick leave due to a serious health problem and without consulting her, decided to assign her to the Italian contingent as Language Assistant.

18. She has never applied for a Language Assistant post nor has she ever worked as Language Assistant. She is not capable of writing in classical Arabic as she does not know how to use the Arabic key board and has never had any training on being an Interpreter. She is able to speak Italian, but she is not capable of translating it into classical Arabic.

19. The other civilians in her similar situation working in the other Military Branches as Team Assistants were not moved and are still working in their respective branches.

Prima Facie Unlawfulness

20. The decision to remove her from the production of the magazine using fake and falsified reasons and moving her from her actual duties and place of work despite the fact that the Chief of her section was very satisfied with her work and performance was unlawful. The Chief spoke with Ms. Frazer, Chief of Human Resources, to defend her case and explain the need for her to work in the branch as she is the only civilian who keeps the continuity of the branch as the military rotates.

21. Her Performance Appraisal for 2014-2015 is proof of her achievements and the great job she was doing.

22. She was framed and unlawfully accused of making mistakes by Mr. Bendinelli to cover the staff of the HoM&FC and to disgrace her before the HoM&FC. She was used as a scapegoat for the mistakes.

Urgency

23. The decision was taken very quickly and applied hastily and on very short notice.

24. The decision maker took advantage of her absence from work on sick leave to relocate her without consulting her.

25. There is no proof about the abolishment of her post in the J1 Branch.

26. There is no approval or proof from the United Nations Headquarters about changing her functional title.

27. The decision was an act of retaliation, abuse of authority and harassment.

Irreparable harm

28. The irreparable harm caused by this administrative decision was taking away from her the production of the *Litani* magazine which she was producing for the past 10 years and moving her to the function of Language Assistant and

downgrading her professionally and psychologically because Language Assistant post levels are never upgraded.

29. The decision also denies her the possibility of allowing her to go on TDY to other missions because Language Assistants are not sent on TDY. These actions will seriously and irrevocably damage her career possibilities within the United Nations.

Respondent's submissions

30. The Respondent's case is summarized below.

31. On 1 March 2003, the Applicant joined the Organization as an Administrative Clerk at the GS-3 level.

32. In March 2005, she was appointed Secretary in the internal *Litani* magazine office under the direct supervision of the Chief Military Personnel Officer (CMPO).

33. In 2009, the LSU was established to include all Language Assistants working in Naqoura HQ, Sector East and West. At that time, several staff members who were providing administrative support to military branches and units were also grouped under the LSU. As a result, the Applicant was incorporated into the LSU as Secretary at the GS-3 level.

34. In 2010, the Applicant was promoted to the GS-4 level as a Team Assistant in the LSU and remains a GS-4 Team Assistant in the LSU till date.

35. On 13 July 2015, the Head of Mission directed that the production of the *Litani* magazine, where the Applicant was working, be moved from the J1 Military Unit into the Civil and Political Affairs/Public Information Office.

36. When the decision was made to relocate the *Litani* magazine production functions to the Public Information Office, the Applicant remained on her post in the LSU. After discussions between the CHRO and the Officer-in-Charge (OIC), DDMS, the CHRO informed the Applicant that, given the transfer of her functions

to another office, she would be assigned to other functions in the LSU, effective 17 August 2015.

Receivability

37. The Application is not receivable because the Applicant does not contest an administrative decision that affects the terms of her appointment.

38. The UNIFIL Administration has taken no decision with direct legal consequences to the Applicant's appointment. Contrary to her allegations, the Applicant was not moved to the LSU. She has always been assigned to the LSU and encumbers a post within the LSU, although she served the CMPO Office, working on the *Litani* magazine. When the production of the magazine was moved to the Public Information Office, UNIFIL, valuing her experience and expertise, made an effort to retain her in the LSU, where the post she encumbers is located.

39. The Applicant continues to serve as a Team Assistant at the same grade and level and against the same post. The post she encumbers has not been abolished. She has presented no evidence to this effect. Contrary to the Applicant's contentions, her functional title has not been changed from Team Assistant to Language Assistant.

40. The UNIFIL Administration seeks to retain the Applicant in the LSU and to identify functions that would best suit her skills and experiences to meet existing needs within the unit. The Applicant has not suffered any adverse consequences as result of this decision. The generic job profile for Team Assistant contains general responsibilities and duties that can be performed within the LSU. It does not specify that the Applicant must work on the *Litani* magazine.

41. There has been no administrative decision that has negatively affected the Applicant's appointment. The Dispute Tribunal, therefore, lacks jurisdiction and the Application should be rejected.

Prima facie unlawfulness

42. The evidence shows that the Applicant has always been assigned to the LSU and that both her functional title and the post she encumbers have remained the same. The Applicant has not identified any staff rule or regulation that the UNIFIL Administration has violated by deciding to reassign her to functions within the unit consistent with her job description. In light of the restructuring of the *Litani* magazine, the Applicant could not continue to perform functions which no longer exist in her office.

43. The Secretary-General has broad discretion to reassign staff members to different functions, even if there has been no assignment to a new post. Staff regulation 1.2 (c) provides:

General rights and obligations

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. In exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them.

Urgency

44. The Applicant has not provided any evidence to prove that the requirement of particular urgency has been met.

Irreparable harm

45. The Applicant has not established that the contested decision would cause her irreparable damage. The Applicant maintains a contractual relationship with the Organization, which expires on 30 June 2016.

Considerations

46. The Respondent submits that the Applicant is not challenging an administrative decision within the meaning of art. 2.1(a) of the Tribunal's Statute and as such, the Application is not receivable.

47. The Respondent further submits that the UNIFIL Administration has taken no decision with direct legal consequences to the Applicant's appointment.

48. Article 2.1(a) of the Statute of the Tribunal (UNDT Statute) provides that the Tribunal shall be competent to hear and pass judgment on an application filed by an individual against the Secretary-General of the United Nations:

To appeal an administrative decision that is alleged to be in noncompliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance [...].

49. The current Application purports to challenge the decision to change the Applicant's functional title from Team Assistant to Language Assistant without budget approval and to remove her from her post at the J1 Branch (Force Military Personnel) "under the verbal excuse that [her] post was abolished and no longer needed".

50. Staff regulation 1.2(c) provides that 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. The Tribunal is of the clear view that the Applicant was not recruited as an editor or journalist to work on the magazine. She was only assigned to work on the said magazine in the course of her duties as a Team Assistant. The Applicant told the Tribunal during the hearing of this case that she was no longer challenging her removal from work on the said magazine.

51. With regard to another issue raised by the Applicant, the unrebutted evidence before the Tribunal is that the Applicant has always been assigned to the LSU since 2009 when that unit was created and both her functional title and the post she encumbers have remained the same. The Tribunal agrees with the submission by the Respondent that the Applicant has not identified any staff rule or regulation that the UNIFIL Administration has violated by deciding to reassign her to functions within the unit consistent with her job description.

Conclusion

52. There is no merit in this Application. It is accordingly refused. .

(Signed)

Judge Nkemdilim Izuako

Dated this 30th day of September 2015

Entered in the Register on this 30th day of September 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi