



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

COLLINS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
George G. Irving

Counsel for Respondent:
Federica Midiri, UNFPA

Introduction

1. On 23 December 2016, the Applicant, a Technical Advisor at the P-5 step 12 level with the Technical Division in the United Nations Population Fund (“UNFPA”) filed an application for suspension of action, pending completion of management evaluation, of the “abolition of [her] post and termination of contract” beyond 31 December 2016. She submits, *inter alia*, that this occurs “one year before retirement of a long-standing staff member with exceptional performance record and expertise relevant to [the] UNFPA mandate”.

2. On the same date, the Registry transmitted the application for suspension of action to the Respondent, requesting him to file a response by 28 December 2016.

3. In his response, duly filed on 28 December 2016, the Respondent requests the Tribunal to reject the application on the grounds that it does not satisfy any of the three basic cumulative conditions for suspending the impugned decision during management evaluation, notably: *prima facie* unlawfulness, urgency, and irreparable harm.

Background

4. The following factual background is based on the parties’ submissions and the documentation that they have filed. The Tribunal observes that the Respondent did not contest any of the material facts presented by the Applicant, which have been reflected in the outline below, but rather provided supplementary and additional information.

5. The Applicant entered the United Nations (“UN”) system in 1978 and has 21 years of pensionable UN employment.

6. On 6 January 2006, the Applicant’s fixed-term appointment was transferred from the United Nations Development Programme to UNFPA.

7. The Applicant currently holds a fixed-term appointment and encumbers the post of Technical Adviser at the P-5 level in the Technical Division of HIV/AIDS Branch in UNFPA in New York. This fixed-term appointment ends on 31 December 2017, which is also her mandatory date of retirement at age 62.

8. The Applicant is a recognised expert in linking/integrating HIV and sexual and reproductive health and rights (“SRHR”), which is critical to UNFPA’s mandate, as reflected in the 2017-2021 UNFPA HIV Strategic Framework. Her overall performance was mostly rated as exceptional in her 2014 and 2015 performance appraisals. In her 2015 performance appraisal, her supervisor, *inter alia*, states that:

An essential member of the HIV team, [the Applicant] has an innate ability to cross boundaries of team, culture, and thematic focus and is one of the few who truly bring together the full breadth of SRHR in an integrated manner. Her technical skills are of the highest caliber while at the same time she is a person easy to work with and who can be counted on to deliver. These will prove critical talents in moving forward on the [Sustainable Development Goals, “SDG”] agenda with universality and sustainability at its core.

9. Since about 2011, the Applicant has been authorized to work remotely from home due to a certified medical condition attributable to the UNFPA building premises in New York.

10. On 25 February 2016, the Applicant, along with her colleagues, was informed in writing that the HIV/AIDS Branch, Technical Division, was to be integrated into the SRHR Branch. There was no mention of abolishing specific posts other than that of the Chief.

11. Regarding the retrenchment process, the Respondent submits, as part of the factual background, the following:

During 2016, UNFPA was faced with funding reductions in the Unified Budget. Results and Accountability Framework [“UBRAF”] for the 2016-2017 budget. As a result funds were reduced by 50% with UNFPA in receipt of \$5.25 million in 2016, to be further reduced to \$2.2 million in 2017, In order to address the situation related to the shortage of funds, the Organization conducted several

analysis of the implications in terms of resource distribution across business units and subsequently implications for human resources. As a result two scenarios (“A” and “B”) were analyzed and proposed to the attention of the UNFPA Executive Director via multiple documentations during the months of September and October 2016 [reference to annexes omitted]. Scenario “A” was finally selected as the appropriate way forward as it would have provided more funding for programme activities. Therefore, changes to the structure of posts and functions in affected Units and reallocation of funds (both at Headquarters and in the field) were therefore implemented according to the selected scenario [reference to annex omitted].

12. On 29 November 2016 the Applicant states that she spoke with the Director, Division of Human Resources (“DHR”) at his request, and was given three options to consider: to continue in her current capacity, take a package or take another position. This has not been disputed by the Respondent.

13. On 30 November 2016, the Applicant informed the DHR Director orally that she expected and preferred to continue in her current capacity until her contract was completed upon her date of retirement on 31 December 2017. This has not been disputed by the Respondent.

14. On 1 December 2016, the UNFPA Executive Director authorized the abolition of the Applicant’s post and the termination of her fixed-term appointment.

15. On 2 December, the Applicant received an email from the DHR Director that her post was being abolished due to organizational restructuring and her contract would be terminated on 31 December 2016.

Applicant’s submissions

16. The Applicant’s principal contentions may be summarized as follows:

Prima facie unlawfulness

a. The impugned decisions were: (i) marked by a lack of due process and equal treatment, (ii) unjustified by either programmatic or financial

considerations, and (iii) potentially based on discrimination due to health status or age. Also, no reason was given for the decision other than organizational restructuring for abolition of her specific post. The Applicant was given no explanation why she was only afforded the minimum thirty-day termination notice, given that she is a long-serving staff member with documented excellent performance appraisals and only one year left before reaching mandatory age of retirement. No prior consultation was conducted with her about her future status, and no comparative analysis was conducted as to whether she could continue her functions or be placed in another position prior to her termination. Finally, UNFPA policy mandates a six-month search period for abolition of post but this was not made available to the Applicant;

Urgency

b. The termination of the Applicant's contract is to become effective 31 December 2016. The urgency is not self-created—the termination notice came without prior warning while consultations on other alternatives, initiated by the DHR Director, were still ongoing. In the course of these consultations, the Administration has given every indication that an amicable solution could be found but has not taken any action to defer the termination;

Irreparable damage

c. Separation will prevent the staff member from ending her service to the UN in a dignified and financially sound manner. Should the Applicant be separated from service, it will affect her pension entitlements which cannot be rectified through compensation. The manner of the separation will cause significant professional dislocation at a time when the Applicant is nearing retirement and not easily re-employable. Also, the Applicant is suffering significant stress and anxiety over the uncertainty of her future, which cannot be compensated.

Respondent's submissions

17. The Respondent's principal contentions may be summarized as follows:

Prima facie unlawfulness

a. The decision to terminate the Applicant's fixed-term appointment was taken following the abolition of the post she currently encumbers due to funding reductions of the UBRAF budget and consequent necessities of the Organization to realign its structure for 2017. HIV/AIDS functions were integrated into SRHR to maximize the delivery of a strategic plan and to ensure a more efficient use of human resources;

b. The abolition of the Applicant's post and termination of her fixed-term appointment follows a restructuring initiated by UNFPA because of reductions of funds and the need to reorganize the internal structure to ensure the full delivery of its mandate. It is settled jurisprudence that international organisations have the power to restructure, including by abolishing posts;

c. As stated in multiple documents submitted to the UNFPA Senior Management, the restructuring plan, including the possible abolition of the Applicant's post, was thoroughly analyzed and multiple aspects were considered, including costs, financial availability, affected staff and UNFPA's ability to achieve its mandate effectively. The restructuring was aimed at prioritizing Regional and Country Offices positions, and the functions carried out by the Applicant are to be redistributed to different posts under the new structure of the SRHR Branch;

d. The decision to abolish the post encumbered by the Applicant and to terminate her fixed-term appointment has no relation to her performance or her medical condition and, with the full agreement and support of UNFPA, the Applicant has successfully been working from home since 2011.

The Applicant has not demonstrated any relation between her medical condition and the challenged administrative decision;

e. The Applicant was informed of the abolition of her post on 2 December 2016 and received the notice of termination in compliance with the time limits of staff rule 9.7(b). Paragraph 7.2.4 of UNFPA's "Policies and Procedures Manual: Human Resources Personnel Policies and Procedures" on "Separation from Service" does not require a staff member to be provided with six months search period, but provides that UNFPA may choose to pay out the remaining of six months' notice period in cash. In accordance herewith, the Applicant is to receive payment equivalent to the six-month notice period, in addition to a termination indemnity, calculated on the basis of Annex III to Staff Regulations;

f. A fixed-term appointment, such as that of the Applicant, may be terminated due to the abolition of post. Under staff rule 9.6, subject to availability of suitable posts in which the services of the staff can be effectively utilized, staff members whose posts are to be abolished must be retained in order of preference: first, permanent appointees and, second, fixed-term appointees. The Respondent did so but, as the Technical Divisions of HIV/AIDS and SRHR were merged into the SRHR Branch, the post of the Applicant was no longer necessary and no suitable post at the same level was available for her;

g. The process carried out when reaching the impugned decisions was not biased and not tainted by improper motives.

Urgency

h. The case is not urgent as: (i) the Applicant will not be able to retain her post even if the decision to terminate her appointment is to be suspended, and (ii) she is eligible to apply for other positions as an internal candidate in

accordance with UNHPA's policies. Also, as the Applicant was notified of the impugned decisions on 2 December 2016, the urgency was self-created;

Irreparable damage

i. The termination of the Applicant's appointment is in itself insufficient to demonstrate irreparable harm as such harm is an injury that cannot be adequately compensated by an award for damages (*Fradin de Bellabre* UNDT/2009/004);

j. The Applicant's appointment was terminated due to the restructuring exercise and not because of reasons of non-performance or bias towards the Applicant. No evidence therefore shows that the contested decision will cause the Applicant irreparable harm, and irreparable harm cannot be established when restructuring is caused by lack of funds and to complete a mandate more effectively;

k. While the employment status of the Applicant will be affected by the termination, any harm can be adequately compensated and, therefore, is not irreparable.

Consideration

Legal framework

18. Article 2.2 of the Statute of the Dispute Tribunal provides:

2. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

19. Article 13.1 of the Tribunal's Rules of Procedure states:

The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

20. In accordance with art. 2.2 of the Dispute Tribunal's Statute, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can suspend the contested decision only if all three requirements of art. 2.2 of its Statute have been met.

21. Under art. 2.2 of the Statute, a suspension of action order is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the *status quo* between the parties to an application pending a management evaluation of the contested decision.

22. Parties approaching the Tribunal for a suspension of action order must do so on a genuinely urgent basis, and with sufficient information for the Tribunal to preferably decide the matter on the papers before it. An application may well stand or fall on its founding papers. Likewise, a Respondent's reply should be complete to the extent possible in all relevant respects, and be succinctly and precisely pleaded, bearing in mind that the matter is not at the merits stage at this point of the proceedings, and that the luxury of time is unavailable.

Prima facie unlawfulness

Applicable law

23. Staff regulation 9.3(a)(i) states as follows regarding termination of an appointment following the abolition of a post (emphasis added):

Regulation 9.3

(a) The Secretary-General may, *giving the reasons therefor*, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of his or her appointment or for any of the following reasons:

(i) If the necessities of service require abolition of the post or reduction of the staff;

...

24. Staff rule 9.6 reiterates the content of staff regulation 9.3(a)(i) and adds, of relevance to the present case, the following:

Rule 9.6

Termination

...

Termination for abolition of posts and reduction of staff

(e) Except as otherwise expressly provided in paragraph (f) below and staff rule 13.1, if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, staff members shall be retained in the following order of preference:

(i) Staff members holding continuing appointments;

(ii) Staff members recruited through competitive examinations for a career appointment serving on a two-year fixed-term appointment;

(iii) Staff members holding fixed-term appointments.

...

25. UNFPA has also adopted its own “Policies and Procedures Manual: Human Resources Personnel Policies and Procedures” on “Separation from Service” dated 1 January 2014 (“the Policies and Procedures Manual”) that provides as follows, of relevance to the present case, on the basic conditions for terminating a UNFPA staff member’s appointment due to the abolition of her or his post and the procedures to be followed:

7.2 Termination following abolition of post or reduction of staff:

7.2.1 An appointment or a number of appointments may be terminated if the necessities of service require abolition of post or reduction of staff (Staff Regulation 9.3(a)(i) and Staff Rule 9.6(e)).

Necessities of service:

7.2.2 The determination as to whether the necessities of service require the abolition of a post or the reduction of staff leading to the termination of the incumbent's appointment rests within the discretion of the UNDP/UNFPA Executive Board and/or the Executive Director.

7.2.3 Reasons for abolishing a post or reducing the staff may include, but are not limited to:

- (a) changing programme requirements;
- (b) expiration of finite mandates (such as, for example, country programme cycles or technical assistance projects) or tasks (other projects) in respect of which the appointment was made;
- (c) downsizing, restructuring or closing offices;
- (d) lack of funding;
- (e) changes in the functions, duties and responsibilities underlying a post if such changes are treated as an abolition of the current post and the establishment of a new post in accordance with the UNFPA Policies and Procedures Manual; Human Resources; Posts.

Informing the concerned staff member:

7.2.4 A staff member who encumbers a post that has been identified for abolition leading to the termination of his or her appointment shall be so informed six months prior to the abolition of the post. If the abolition of the post becomes effective earlier than six months after the staff member has been so informed, the staff member should be retained on an alternative post or other funding arrangement (e.g. "supernumerary post") until the expiration of the six-month time frame, or the remaining time may be commuted into cash.

7.2.5 The staff member shall be informed about the post abolition in writing (e.g. by letter, memorandum or e-mail). If such information was first given verbally, for example in a meeting with the Director, DHR, his/her designee or a Line Manager, it should be followed-up in writing; the six month time frame referred to above shall apply as of the date of such written information furnished to the staff member.

Protections in cases of abolition of post or reduction of staff:

7.2.6 Staff Rules 13.1 and 9.6(e) state the protections certain classes of staff members must be afforded in the event of abolition of their posts or reduction of staff. Staff Rule 13.1(d) provides:

“If the necessities of service require abolition of a post or reduction of the staff and subject to the availability of suitable posts for which their services can be effectively utilized, staff members with permanent appointments shall be retained in preference to those on all other types of appointments, provided that due regard shall be given in all cases to relative competence, integrity and length of service.”

Staff Rule 9.6(e) further provides:

“Except as otherwise expressly provided in paragraph (f) below and staff rule 13.1, if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, staff members shall be retained in the following order of preference: (i) Staff members holding continuing appointments; ... (iii) Staff members holding fixed-term appointments.”

Therefore, these protections are subject to the requirement (a) that a post on which the services of the staff member can be retained is “available” and (b) that the available post is “suitable”, having due regard to relative competence, integrity and length of service.

Availability of a post:

7.2.7 An “available post” is defined as a UNFPA post that is vacant. In addition, it shall extend to a post that is becoming vacant and will be filled within the notice period. The funding source of the post may differ from that of the abolished post.

Suitability of the post:

7.2.8 The post is “suitable” if the staff member in question has the core and functional competencies required for the available post, as assessed in the respective staff selection process,

taking into account relative competence, integrity and length of service.

Equally suitable applicants:

7.2.9 Equally suitable applicants on abolished posts will be retained in service in the following order of preference:

- (a) Staff members holding permanent appointments;
- (b) Staff members holding continuing appointments;
- (c) Staff members holding fixed-term appointments.

7.2.10 If two or more staff members on abolished posts within the same category are under consideration, the most suitable applicant will be selected.

Action by the staff member:

7.2.11 Staff members subject to abolition of post shall apply to available UNFPA posts for which they believe they have the required competencies.

Actions by DHR or relevant managers in the field:

7.2.12 In addition, the following steps may be taken: (i) Draw the attention of such staff members to specific posts that are available and solicit an application to the post from the staff member; (ii) add the staff member in question to a list of applicants or to a shortlist for an available post even if the staff member did not submit an application for that post. This is done:

- (a) by DHR in cases of internationally recruited staff members and staff members in General Service category serving at Headquarters; and
- (b) by the Manager of the UNFPA field duty station in cases of staff members appointed in the General Service or National Officers categories at field duty stations.

...

Was the termination of the Applicant *prima facie* unlawful?

26. Under staff regulation 9.3(a)(i) and staff rule 9.6, the Respondent may terminate a staff member's appointment if her or his post is abolished but must give proper reasons therefore. In this regard, see the Appeals Tribunal's judgment in *Islam* 2011-UNAT-115 which provides that "when a justification is given by

the Administration for the exercise of its discretion it must be supported by the facts”. Also, there are international norms and standards regarding the termination of employment of work due to economic, technological or structural change, and the rights of retrenched workers. The International Labour Organization Convention on Termination of Employment (Convention No. C158) (1982), which contains provisions applicable to all branches of economic activity and to all employed persons (art. 2), states at art. 4 that the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

27. Article 19 of ILO Recommendation on Termination of Employment (Recommendation No. R166) (1982), enjoins all parties concerned to seek to minimize and mitigate the adverse effects of the termination of employment of workers for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking. Amongst measures to avert or minimize termination, Recommendation No. R166 recommends, *inter alia*: restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal working hours. Recommendation No. R166 also emphasizes the need for established criteria for selection for termination and priority on rehiring.

28. In the case of the Applicant, the DHR Director stated in his letter of 2 December 2016 to the Applicant, that the Applicant’s post was abolished solely due to “organizational restructuring at UNFPA”, implying a programmatic consideration. In his response the Respondent states that the “termination of the Applicant’s post was taken following the abolition [of her post] as result of the funding reductions of the UBRAF budget and consequent necessities of the Organization to realign its structure as a consequence of the further reduced budget for 2017 budget”. The Applicant contends that the decision to abolish her post appears unjustified by

programmatic or financial considerations since the functions are consistent with the 2017-2021 UNFPA HIV Strategic Framework and the level of HIV-designated funding remains the same in 2017.

29. Whereas these reasons appear to comply with 7.2.3 of UNFPA's Policies and Procedures Manual, the justifications provided in the Respondent's response to the application for suspension of action are not corroborated by the otherwise substantial amount of documentation that the Respondent has submitted attempting to explain the restructuring process and the decision to abolish the Applicant's post:

a. Funding source: From the case record, it appears that the Applicant's post was not funded through UBRAF budget, as submitted by the Respondent, but instead by another founding source, notably "RR", which apparently stands for "Regular Resources" according to the Technical Division Director's letters to the UNFPA Executive Director dated 21 September and 14 October 2016 (titled, "Implications of UBRAF Financial shortfalls: Proposed way forward"). To these letters is attached a table titled, "Scenario A. Overview of proposed changes for HQ posts currently assigned to work on HIV&AIDS portfolios", which sets out three different options for a "funding source" for the various posts in the Technical Division, listing these sources as either "UBRAF", "RR" or "frozen". In the table, the funding source for the Applicant's post and name is clearly indicated as, "RR", as opposed to, "UBRAF", which the Respondent wrongfully contends that the Applicant's post was funded by.

b. Cost-saving: The "cost" of abolishing the Applicant's post is stated as USD106,208 in an "Appendix 1: cost breakdown Scenario A", appended to the Technical Division Director's 14 October 2016 letter. However, in the DHR Director's letter to the UNFPA Executive Director dated 1 December 2016 (titled, "Abolition of post, Adviser SRHR and HIV linkages, P5 (No. 35421) – [the Applicant]"), the DHR Director stated that the Applicant's "termination indemnity has been calculated at \$167,000

(please note that this includes five months cash in lieu of notice of abolition)”. Since the Applicant in any event would have to separate from UNFPA by the end of 2017 as her mandatory retirement date is 31 December 2017, it is not clear how much, if at all, UNFPA would appear to save, if anything at all, compared to the cost of her salary as a P-5 level staff member. The Tribunal notes that the termination indemnity in itself, the Applicant being a staff member with more than 15 years in service, under Annex III to the Staff Rules, would appear to amount to 12 months’ gross salary. Rather than a justification for cost saving, as argued by the Respondent, abolishing the Applicant’s post and terminating her appointment would appear to result in a greater expense for UNFPA, for which funding appears instantly available. Considering the Applicant’s impeccable performance appraisal record and her perceived key role and competency in UNFPA’s SDG agenda in her 2015 performance appraisal, the decision raises serious doubts regarding its rationale.

c. Justification: As “justification” for abolishing the Applicant’s post, in a table dated 23 December 2016, the DHR Director states that this was, “Merging tasks into new structure. Role to be redistributed for effective coverage”. In the same table the justification for all other posts to be abolished is either, “Need to focus on fast-track countries and emerging issues”, or, “No funds for keeping the position”. The DHR Director’s justification for abolishing the Applicant’s post is not in line with any of the other reasons provided for its abolition, and rather seems to provide an explanation on how to deal with the Applicant’s separation. Also, the DHR Director’s justification is inconsistent with the Applicant’s 2015 performance appraisal in which it was, *inter alia*, stated that she is “one of the few who truly bring together the full breadth of SRHR in an integrated manner”, making it difficult to understand how her function can be simply “merged” into a new structure and/or “redistributed” to others. Finally, the DHR Director’s justification goes directly against and contrary to the Respondent’s submission that it had been

decided that her post was no longer necessary—if not needed, then why were her role and tasks to be merged and redistributed? Indeed, the Respondent has not refuted the Applicant’s submission that her functions have not been abolished but rather have been reassigned to other parts of the organization. Nor has the Respondent disputed that one of the three options the Applicant was given to consider on 29 November 2016, was to continue in her current capacity.

30. Furthermore, the Appeals Tribunal has stated that “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” (see, for example, *Matadi et al* 2015-UNAT-592, para. 16, *Bali* 2014-UNAT-2014-450, para., and *Hersh* 2014-UNAT-433, para.16, referring also to the jurisprudence of the Administrative Tribunal of the International Labour Organization.). The Appeals Tribunal has further held that it will not interfere with “a genuine organizational restructuring even though it may have resulted in the loss of employment of staff” but that, at the same time, this must be done “fairly, justly and transparently” (*Matadi et al*, para. 17, and *Bali*, para. 17). Also, as noted by the Appeals Tribunal in *Masri* 2016-UNAT-626 (para. 30), “it is within the remit of management to organize its processes to lend to a more efficient and effective operation of its departments”. However, there is a long line of authorities regarding the Respondent’s duties towards staff members on abolished posts (see, for instance, *Shashaa* UNDT/2009/034, *Mistral Al-Kidwa* UNDT/2011/199, *Tolstopiatov* UNDT/2010/147 and *Pacheco* UNDT/2012/008), and Administration must give proper consideration, on a priority basis, with a view to retaining staff members whose posts have been abolished.

31. To comply with these demands, when undertaking a retrenchment process, the Administration will normally undertake a timely comparative review process to ensure that the process is fair, just and transparent and staff members are retained on a priority basis. Staff members shall be retained in the order of preference as stipulated under staff rule 9.6 (e), subject to availability of suitable post in which their

services can be effectively utilized, due regard being given to relative competence, integrity, and length of service. The administration is obligated to make good faith efforts to identify suitable alternative posts, even at a lower level to find alternative employment for the retention of staff members whose posts have been abolished (see *Crotty* UNDT/2016/190).

32. However, contrary to the Respondent's submissions, nothing in the case record shows that UNFPA undertook any analysis that demonstrates why specifically the Applicant's post was abolished as compared to those of her colleagues in the Technical Division, and why she was not retained in that or any other capacity—contrary to the rank of priority of in staff rule 9.6(e). In particular, the Tribunal observes that, according to the Applicant, and not challenged by the Response, even a consultant was apparently retained over the Applicant. In itself, this does not necessarily lead the Tribunal to conclude that the decision to abolish her post and terminate her appointment was necessarily tainted by ulterior motives, but the absence of documentation and/or explanation for why the Applicant's post was singled out for abolition in the Technical Division leaves the impression that the decision was arbitrary and not based on actual and properly identified functional or budgetary needs. Indeed, the Respondent has not sought to rebut the Applicant's contention that there was lack of proper consultation, lack of transparency, inadequate notice and other elements pertinent to a fair retrenchment or redundancy process.

33. In *Hassanin* UNDT/2016/181 and *Nakhlawi* UNDT/2016/204, the Dispute Tribunal found that, before abolishing the post of a staff member on a continuing/permanent appointment, the Administration has the duty to first take suitable steps to find her or him alternative employment. While the Applicant in this case holds a fixed-term appointment, considering her long service with the Organization and the fact that she is only one year from retirement, it would appear only reasonable to expect that UNFPA would, at least, undertake some attempt to look for another position for the Applicant. However, it appears from the case record that UNFPA did nothing to do so.

34. Considering the above, the Tribunal therefore finds that the impugned decisions to abolish the Applicant's post and terminate her appointment are *prima facie* unlawful.

Urgency

35. According to art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure, a suspension of action application is only to be granted in cases of particular urgency.

36. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (*Villamoran* UNDT/2011/126; *Dougherty* UNDT/2011/133; *Jitsamruay* UNDT/2011/206).

37. The Applicant was notified of the impugned decisions on 2 December 2016, but submits that she was thereafter in negotiations with the Administration to find a solution. The Respondent has not denied this. The Applicant's submission that the termination notice came as a complete surprise whilst consultations on other alternatives initiated by the DHR Director were still ongoing, remains unchallenged. The urgency in this case therefore does not appear to be self-created, and the matter is urgent as the Applicant's stands to be separated by 31 December 2016.

38. In the circumstances and on the papers before it, the Tribunal finds the requirement of particular urgency to be satisfied.

Irreparable damage

39. It is generally accepted that mere economic loss only is not enough to satisfy the requirement of irreparable damage. Depending on the circumstances of the case, harm to professional reputation and career prospects, harm to health, or sudden loss of employment may constitute irreparable damage (*Adundo et al.* UNDT/2012/077; *Gallieny* Order No. 60 (NY/2014)). In each case, the Tribunal has to look at the particular factual circumstances.

40. It is established law that loss of a career opportunity with the United Nations may constitute irreparable harm for the affected individual (see, for instance, *Saffir* Order No. 49 (NY/2013); *Finniss* Order No. 116 (GVA/2016)).

41. The Applicant submits that she has been employed with the Organization for 21 years and that the termination of employment would cause her harm, including significant professional dislocation at close to retirement age, and loss of pension rights, that cannot be compensated for in financial terms.

42. In the circumstances and on the papers before it, the Tribunal finds the requirement of irreparable damage to be satisfied.

Conclusion

43. In light of the foregoing, the Tribunal ORDERS:

The application for suspension of action is granted and the contested decision is suspended pending management evaluation.

(Signed)

Judge Memooda Ebrahim-Carstens

Dated this 29th day of December 2016