



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

MARDIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. By application filed on 18 August 2015, the Applicant, a former staff member of the United Nations Disengagement Observer Force (“UNDOF”), Syria, contests the decision to terminate his indefinite appointment effective 30 June 2015.

Facts

2. UNDOF was established by the Security Council through resolution 350 (1974) of 31 May 1974, and its mandate was subsequently extended by the Security Council in several resolutions.

3. The Applicant worked with UNDOF since 1987. Since 1995, he worked as Office Assistant/Warehouse worker, at the G-2 level, under an indefinite appointment. He was stationed at Camp Faouar.

4. In September 2014, UNDOF relocated its entire military component from Camp Faouar to Camp Ziouni.

5. In his Report on the proposed *Budget for the UNDOF for the period from 1 July 2015 to 30 June 2016* (A/69/732) dated 19 January 2015, the Secretary-General proposed, *inter alia*, the abolition of four international posts and 21 national General Service posts in the mission support structure. More specifically, in para. 25, the report provided that “[i]n the Supply Section, it is proposed that three Office Assistant positions (national General Service) be abolished; these staff members are in fact warehouse labourers and any future requirements will be met by outsourcing”.

6. The Advisory Committee on Administrative and Budgetary Questions (“ACABQ”), in its report of 17 April 2015 on *Budget performance for the period from 1 July 2013 to 30 June 2014 and proposed budget for the period from 1 July 2015 to 30 June 2016 of the UNDOF* (A/69/839/Add.1), considered the proposal for changes to staffing and resources for civilian personnel contained in

the report of the Secretary-General. In paras. 32 and 34 of its report, the ACABQ noted the following:

32. The Advisory Committee recognizes that the proposed abolishment of the 21 national General Service posts is a direct result of the changed structure and location of the Force.

...

34. The Advisory Committee has no objection to the staffing changes and resources for civilian personnel as proposed by the Secretary-General and recommends their approval by the General Assembly.

7. On 8 June 2015, the Applicant received a letter, dated 3 June 2015, informing him that due to the restructuring of UNDOF, his indefinite appointment would be terminated with a proposed effective date of 30 June 2015.

8. On 23 June 2015, the Fifth Committee of the General Assembly issued a draft resolution on the *Financing of the [UNDOF]* (A/C.5/69/L.55) and, taking note of paras. 32 and 34 of the ACABQ report (quoted above), stated in para. 9 of its draft resolution, *inter alia*, that it “decide[d] not to abolish five national posts”.

9. The General Assembly held its 97th plenary meeting on 25 June 2015 (A/RES/69/301) and endorsed the conclusions and recommendations contained in the report of the ACABQ (A/69/839/Add.1). In para. 9 of its resolution, the General-Assembly explicitly referred to para. 32 and 34 of the ACABQ report, and noted, *inter alia*, that it “decide[d] not to abolish five national posts”.

10. The Under-Secretary-General for Management approved the termination of the Applicant’s appointment on 25 June 2015.

11. On 26 June 2015, the Applicant filed a request for management evaluation and suspension of action of the contested decision with the Management Evaluation Unit (“MEU”). On the same day, the decision to terminate the Applicant’s appointment was suspended, pending the outcome of the management evaluation.

12. By letter dated 14 August 2015, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had decided to accept the recommendation of the MEU to uphold the decision to terminate his appointment.

13. The Applicant separated from service on 14 August 2015. He filed with the Tribunal a request for suspension of action/interim measures and an application on the merits on 18 August 2015. By Order No. 154 (GVA/2015) of 19 August 2015, the Tribunal rejected the request for suspension of action.

14. The Respondent filed his reply on the application on the merits on 18 September 2015.

15. By Order No. 226 (GVA/2015) of 9 November 2015, the Tribunal ordered the Respondent to provide additional information, which he did on 16 November 2015.

16. By Order No. 26 (GVA/2016) of 25 January 2016, the Tribunal asked the parties to file comments, if any, by 1 February 2016, with respect to a judgment being rendered on the papers. None of the parties reverted back to the Tribunal.

17. Pursuant to Order No. 43 (GVA/2016) of 9 March 2016, in light of the additional information received from the Respondent, the Tribunal ordered the latter to provide it with evidence on any reconsideration of the case by the Under-Secretary-General (“USG”) for Management, following the General Assembly’s decision of 25 June 2015 plus staffing tables of UNDOF before and after the implementation of said decision. The Applicant was invited to file comments on the Respondent’s submission, if any, by 23 March 2016.

18. On 16 March 2016, the Respondent filed a submission in response to the above-referenced order, noting that the USG for Management had not reconsidered the matter following the decision by the General Assembly. The Respondent further filed a “staffing table, listing the 16 posts that were abolished and the five posts that were retained”.

19. Pursuant to Order No. 66 (GVA/2016) of 31 March 2016, the Tribunal ordered the Respondent to file the staffing tables as requested by Order No. 43 (GVA/2016), which he did on 7 April 2016.

Parties' submissions

20. The Applicant's principal contentions are:

a. The Applicant submits that he is capable of working and serving the Organization and that his country, Syria, is undergoing a very difficult situation. He further notes that he had outstanding performance evaluations throughout the years.

b. He stresses that the relocation of the entire military component from Camp Faouar to Camp Ziouni was a wrong decision, and that the opening of a new base camp in the same area of Camp Faouar implies recruitment of new staff members in the logistic warehouse. As such, the decision to terminate his appointment after so many years of service is unfair.

21. The Respondent's principal contentions are:

a. The Administration disposes of broad discretion in the restructuring and reorganisation of its services and it is not the role of the Tribunal to substitute itself to the Administration in this respect (*Gehr* UNAT-2012-236; *Pérez-Soto* 2013-UNAT-329); the Dispute Tribunal is limited to examine whether the restructuring was conducted in accordance with the relevant procedures, respected due process rights and was not motivated by extraneous considerations (*Sanwidi* 2010-UNAT-084; *Leclercq* UNDT/2012/007);

b. The post encumbered by the Applicant was abolished by decision of the General Assembly; the duties of local logistical staff, such as the Applicant, consisted in directly supporting the UNDOF military; since after the restructuring in 2014, only seven percent of the military are accessible to the Syrian logistic staff, the decision to abolish the post encumbered by the Applicant was taken in the interests of the Organization, and in light of

operational realities of the mission (cf. *Gehr* 2012-UNAT-236; *Pérez-Soto* 2013-UNAT-329; *Galbraith* UNDT/2013/102);

c. Between October 2014 and June 2015, several town hall meetings were held with UNDOF staff, with respect to the restructuring of the mission support component, in light of the withdrawal of troops and the overall reduction in troop strength; furthermore, extensive consultations were carried out with staff members and staff representatives and, additionally, the UNDOF Human Resources Section held one-to-one meetings with staff members affected by the reduction in the civilian staffing level;

d. The Applicant received advanced information of the abolition of the post he encumbered; it follows that the decision to terminate the Applicant's indefinite appointment was made in accordance with staff regulation 9.3(a) and staff rule 9.6(c); the Applicant is entitled to twelve months net pay salary as termination indemnity; and

e. The application should be dismissed.

Consideration

22. The Applicant contests the decision to terminate his indefinite contract with UNODF, pursuant to staff regulations 9.3(a)(i) and staff rule 9.6(c)(i), for reasons of abolition of post.

23. Staff regulation 9.3(a)(i) provides that:

(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 13.2 provides in its relevant parts:

Indefinite appointment

(a) ... Effective 1 July 2009, the staff member's indefinite appointment shall be governed by the terms and conditions applicable to continuing appointments under the Staff Regulations and Staff Rules.

...

(c) The Secretary-General may at any time terminate the appointment of a staff member who holds an indefinite appointment if in his or her opinion such action would be in the interest of the United Nations. Staff regulation 9.3 (b) and staff rule 9.6 (d) do not apply to indefinite appointments.

25. Further, staff rule 9.6 stipulates in its relevant part:

Termination

Definitions

(a) A termination within the meaning of the Staff Regulations and Staff Rules is a separation from service initiated by the Secretary-General.

...

Reasons for termination

(c) 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 the appointment or on any of the following grounds:

(i) Abolition of posts or reduction of staff.

26. The Tribunal recalls the consistent jurisprudence of the Appeals Tribunal 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” (*Pacheco* 2013-UNAT-281; *Hersh* 2014-UNAT-433; *Bali* 2014-UNAT-450).

27. In reviewing an organizational restructuring exercise, which may result in the loss of employment of staff, the Tribunal will review whether in its dealing with the staff members, the Administration acted fairly, justly and transparently (*Hersh* 2014-UNAT-433). In its judicial review, the Tribunal cannot substitute itself to the Secretary-General, and is limited to examine whether the exercise of administrative discretion was reasonable, legal, rational, respected due process, and was free from procedural irregularities, bias or arbitrariness (*Sanwidi* 2010-UNAT-084).

28. Further, the Tribunal notes that it is limited to review the legality of the implementation of the decision to downsize UNODF with respect to the Applicant. It cannot, however, review the downsizing decision itself, a decision taken by the General Assembly that was prefatory to the administrative decision affecting the Applicant (cf. *Lee* 2014-UNAT-481). The Tribunal further recalled that decisions taken by the General Assembly are binding on the Secretary-General (*Ovcharenko et al.* 2015-UNAT-530).

29. The Tribunal notes that in the case at hand, the Applicant was informed on 8 June 2015 (by letter dated 3 June 2015), that his appointment would be terminated, subject to the approval of the Secretary-General. At that time, the Secretary-General's report proposing the abolition of 21 UNODF General Service posts had already been endorsed by the ACABQ. By the time of the approval by the Under-Secretary-General for Management, within his delegation of authority, that is, on 25 June 2015, the ACABQ report had also been endorsed by the Fifth Committee and, subsequently, by the General Assembly during its plenary meeting of the same day. This is reflected in General Assembly resolution A/RES/69/301 of 16 July 2015.

30. The Tribunal is satisfied that by stating that it decided not to abolish five out of the 21 national posts proposed for abolition, the General Assembly, in para. 9 of its resolution, clearly decided that the remaining 16 posts were to be abolished. These 16 posts included all Office Assistant posts at the GL-1 and GL-2 level, including that of the Applicant. Indeed, upon review of the additional material received from the Respondent, particularly the staffing tables of UNDOF prior

and after 30 June 2015, the Tribunal is satisfied that as a consequence of the above-referenced decision of the General Assembly, no posts of Office Assistant for which the Applicant could have potentially been considered remained at UNDOF. The reason provided for the decision to terminate the Applicant's appointment on the grounds of post abolition is therefore supported by the facts.

31. The foregoing notwithstanding, the Tribunal is mindful that the administrative arrangements and procedures for the implementation of the decision to restructure UNDOF fell within the realm of ST/SGB/172 (Staff management relations: Decentralization of Consultation Procedure) and ST/SGB/274 (Procedures and Terms of Reference of the Staff Management Consultation Machinery at the Departmental or Office Level). Indeed, sec. 3 of ST/SGB/172 requires heads of department and others to hold consultations with appropriate unit representatives regarding major organizational changes. Section 5 of ST/SGB/274 seeks to define when consultation will be required, and provides for consultation if "(a) The issue or policy should affect the entire department or office or at least a significant number of staff in a particular unit or service of the department or office." There is no doubt that the downsizing of UNODF was a major organizational change; hence, its implementation was subject to staff and management consultations pursuant to ST/SGB/172 and ST/SGB/274.

32. With respect to the extent of staff consultation, this Tribunal has found that an essential element of consultation is that each party have the opportunity to make the other party aware of its views (*Allen* UNDT/2010/009). At the same time, the Appeals Tribunal has noted that "consultations are not negotiations and it is not necessary for the Administration to secure consent or agreement of the consulted parties" (cf. *Leboeuf et al.* 2015-UNAT-568).

33. In light of the information and material provided by the Respondent upon the Tribunal's request, which was not contested by the Applicant, the Tribunal notes that consultations were held with staff at large and with staff representatives during the restructuring process, as early as October 2014 and until June 2015. The Tribunal is satisfied that these consultations fulfil the standard set by the above-referenced jurisprudence. It follows that the requirements of ST/SGB/172

and ST/SGB/274 with respect to staff consultations were complied with in this case.

34. The decision to terminate the Applicant's appointment was, therefore, taken on the basis of a decision of the General Assembly to abolish the post encumbered by the Applicant, and duly considering the operational realities and interests of the Organization. The requirements of staff consultation under the terms of the above referenced bulletin were respected. The Applicant was duly informed about the process, and that he was among the staff members affected by the reduction of staff and abolition of post. The Tribunal finds that the Respondent acted fairly and transparently vis-à-vis the Applicant.

Conclusion

35. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Rowan Downing

Dated this 28th day of April 2016

Entered in the Register on this 28th day of April 2016

(Signed)

René M. Vargas M., Registrar, Geneva