



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/114
UNDT/NBI/2015/035
Judgment No.: UNDT/2016/095
Date: 30 June 2016
Original: English

Before: Judge Coral Shaw
Registry: Nairobi
Registrar: Abena Kwakye-Berko

TORKORNOO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON LIABILITY AND
RELIEF**

Counsel for the Applicant:
Nicole Washienko, OSLA

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

Introduction

1. The Applicant is a former staff member of the United Nations Mission in Liberia (UNMIL) who contests the decision not to renew his appointment and the failure to conduct a proper classification review process.

Procedural history

2. On 18 June 2014, the Applicant requested management evaluation of the non-renewal decision and the “downsizing” of his post from P-5 to P-4. This request was rejected by the Management Evaluation Unit (MEU) on 3 October 2014.

3. The Applicant filed an Application with the Dispute Tribunal on 19 December 2014 to contest the decision not to renew his fixed-term appointment. He alleged that the decision was unlawful because of an improper classification process. This Application was registered as Case No. UNDT/NBI/2014/114.

4. On the same day, he submitted a second management evaluation request addressing the Administration’s failure to address his classification appeal.

5. The Respondent filed his Reply to Case No. UNDT/NBI/2014/114 on 22 January 2015 alleging that the classification claim was not receivable.

6. MEU rejected the Applicant’s second management evaluation request on 2 February 2015.

7. The Applicant filed a second Application on 9 February 2015, which was registered as Case No. UNDT/NBI/2015/035. On 9 March 2015, he filed a motion to consolidate the two applications.

8. The Respondent filed his Reply to Case No. UNDT/NBI/2015/035 on 10 March 2015 alleging that neither the non-renewal or classification claims were receivable.

9. By Judgment No. UNDT/2015/094, dated 7 October 2015, the Tribunal found that the Applicant's challenge to the non-renewal of his contract due to re-classification was receivable. It made an order consolidating the two cases.

10. At a case management discussion on 14 October 2015, the Tribunal urged the parties to explore the possibility of informal settlement¹. The parties informed the Tribunal on 21 October 2015 that informal settlement was not possible.

11. On 16 December 2015, the Respondent produced additional documentation and information in accordance with Order No. 371 (NBI/2015).

12. The Tribunal held a second case management discussion on 4 April 2016 and an oral hearing on the merits on 6 and 10 May 2016. The Applicant gave evidence and the Respondent called Mr. Hubert Price, former Director of Mission Support at UNMIL.

Facts

13. The following facts are taken from the pleadings and associated documents supplemented by evidence given at the hearing by the Applicant and Mr. Price orally and in their sworn written statements.

14. The Applicant was appointed to the P-5 post of Chief Transport Officer (CTO), UNMIL in June 2008. At the material time his fixed-term appointment was due to expire on 30 June 2014.

15. From 2010, Mr. Price was the Applicant's second reporting officer (SRO). According to him, the Applicant had struggled in his job for a long time. A performance improvement plan had been attempted. The Applicant's performance review signed off by Mr. Price on 7 August 2012 rated him as unsatisfactory.

16. In 2011 and 2013, the Office of Internal Oversight Services (OIOS) conducted audits of transport operations at UNMIL. On 19 April 2013, IOL

¹ See Order No. 322 (NBI/2015).

News² publically reported that the audit had revealed that UNMIL was unable to account for 70 vehicles.

17. The Applicant said that following this report, his previously cordial and professional relationship with his first reporting officer (FRO) and SRO deteriorated. He was called to Mr. Price's office and in the presence of his FRO asked if he had seen the report and if he was happy with it. He responded that he had seen the report but was not happy as it was not correct.

18. The Applicant stated that Mr. Price said to him that he was not qualified to be a CTO and he would have to resign his post. "Either you fix it or I will deal with you".

19. Mr. Price told the Tribunal that when the news report came out there had already been a lot of discussions about the performance of the Transport Section at UNMIL. He explained to the Tribunal that what he said to the Applicant at this meeting was in the context that if he was in the Applicant's position, he would have been embarrassed and would have resigned his post. He said he would never tell anyone to resign.

20. The Applicant stated that from that time on the DMS refused to sign his performance appraisal for 2012/13 and he was denied his rest and recuperation/family leave on several occasions. He was refused permission to attend a CTO conference in Entebbe in November 2013. His FRO told him he was underperforming and could not attend. When he complained to United Nations Headquarters (HQ) about this he was reprimanded by his FRO for failing to respect the hierarchy of the Organization.

21. In response, Mr. Price said that explanations had been given about the home leave. In relation to attendance at the conference the decision was made to allow other senior people to attend to spread the information.

² A South African online news source.

22. In January 2014, Mr. Price verbally told the Applicant that his post was being downsized from P-5 to P-4 and that he had until the end of June 2014 to work in the Mission³. In his oral evidence the Applicant could not remember this meeting but stated that he was told that the P-4 post would be advertised later in August but that he would not have the option to apply for the post.

23. Mr. Price said that the downsizing of the Applicant's post had nothing to do with his performance but was related to the life cycle of the Mission, which required a change to the management structure.

24. UNMIL had reduced in size since it first started and the Department of Field Support (DFS) requested that UNMIL revise its proposed resourcing level for the 2014/15 budgetary period. A code cable (unclassified) from HQ dated 6 January 2014 stated that the current proposed number of senior posts was excessive compared with missions of similar size and structure and strongly urged the reduction in the level of seniority in the Mission Support Division. A second unclassified code cable sent by DFS on 14 February 2014 said that UNMIL would, *inter alia*, reduce its earlier proposal by a further three P-5 posts.

25. Mr. Price said that he faced pressure from HQ to downgrade all the Mission's section chief posts from P-5 to P-4 but to preserve operations and morale he tried to spread out the downgrading instead of changing them all at the same time. To justify this, he needed to look at those posts where the downsizing made sense and which posts he could sensibly defend. The Transport Section had reduced by 50%, its warehousing had been centralized and a number of its activities had changed. He said that keeping the Transport Section chief at the P-5 level was a battle he could not win. Two posts were proposed to be downgraded for that financial year, one of which was the post of CTO.

26. In the budget document dated 20 February 2014, the Secretary-General proposed plans to the General Assembly to restructure the Mission in order to significantly reduce the size of the Mission. Due to the reduction in the functions

³ Annex 2 of Application, request for management evaluation dated 18 June 2016.

of the Transport Section he proposed that the post of CTO be reclassified from the P-5 to the P-4 level.

27. This proposal was endorsed by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) in its report A/68/782/Add.16 dated 8 May 2014. Mr. Price concluded that as the General Assembly was likely to approve the proposal, UNMIL would be unable to finance the Applicant's P-5 post from 1 July 2014 when his fixed-term contract ended and the new budget cycle commenced.

28. By memorandum dated 29 May 2014, Mr. Price informed the Applicant that:

As UNMIL is downsizing and the Missions budget is being cut, I regret to inform you that your post is being abolished after 30 June 2014. Your contract, which ends on 30 June 2014, will not be renewed for the post.

29. The memorandum advised the Applicant that UNMIL would work with HQ to try to identify other employment opportunities for staff impacted by post abolishment and that UNMIL would give priority consideration to the Applicant's candidacy where suitable vacancies occurred within the mission before 30 June 2014.

30. The Applicant says he was unaware of any classification exercise or classification review to determine whether any changes in the functions that it proposed would result in a change in the grade of his post.

31. Mr. Price said that the performance issues and the adverse publicity from the previous years had not informed the decision to downgrade the Applicant's post. This was not the first restructuring that UNMIL had gone through. It had been done the previous year and the same procedure was used each time. This included giving staff members as much information and prior knowledge as possible. The Applicant had been familiar with that process before it was applied to his post.

32. The Applicant requested management evaluation on 18 June 2014 of the decision not to renew his fixed-term appointment and applied to the Tribunal for a suspension of action pending the outcome of management evaluation.

33. On 30 June 2014, the Tribunal granted the Applicant's request for suspension of action following which the Administration extended his appointment on a monthly basis financed from temporary assistance funds (GTA funds) pending the MEU's response.

34. On 30 June 2014, the General Assembly, by its resolution 68/291, approved the ACABQ budget report which included the proposed reclassification of the CTO post. On 22 July 2014, the Field Personnel Division (FPD) of DFS issued a fax concerning the procedure to be adopted for classification of posts during the staffing changes. Based on decisions from the Dispute Tribunal it gave guidance on when the documents should be submitted to FPD/DFS. This guidance altered the former practice.

35. On 8 August 2014, UNMIL submitted a classification request for the post of P-4 Chief of Unit, Transport to FPD's Organisational Design and Classification Unit. That unit conducted a review of the post and advised UNMIL on 29 August 2014 of the decision to reclassify the post effective 1 September 2014.

36. The decision of the Management Evaluation Unit (MEU) was delivered on 3 October 2014. It found the request to be largely irreceivable. In particular, MEU stated that the Applicant's claims concerning the lack of a reclassification process concerning the post of CTO at UNMIL were now moot because the process was carried out and completed on 29 August 2014 by FPD.

37. The Applicant requested a copy of the reclassification report on 7 October 2014. He received it and its supporting documents on 9 October 2014. He says he learned for the first time that a reclassification process had been carried out from this report.

38. On 15 October 2014, the Applicant submitted a classification appeal and sought an extension of his appointment pending the classification appeal. The request for extension was denied. His Counsel was advised that as the post that the Applicant had encumbered had been reclassified and the P-5 post abolished there was no post to extend his appointment. He was advised that he could apply for the P-4 post once the recruitment was initiated.

39. After the downward classification became effective on 1 September 2014, the P-4 Chief of Unit-Transport post was advertised through a recruit from roster job opening on 13 November 2014. As there were no suitable candidates, UNMIL re-advertised the post in April 2015. The Applicant applied for the post but was not selected.

40. On 19 Nov 2014, the Applicant's Classification appeal was submitted to the Classification Appeals Committee (CAC). To date the appeal has not been concluded.

Issues

41. The issues in this case are as follows:

- a. Was the non-renewal decision lawful? Were reasons given at the time able to be substantiated?
- b. Was the re-classification decision made in accordance with ST/AI/1998/9 (System for the classification of posts)?
- c. Should the Applicant's appointment have been renewed until the classification process was concluded?
- d. Was the contested decision influenced by extraneous considerations?
- e. Was the Appeal procedure in accordance with ST/AI/1998/9?

Applicant's submissions

42. The reasons given to the Applicant at the time he was notified of the non-renewal of his contract were not substantiated. On 29 May 2014, he was told his post was being abolished when it had not been proposed for abolition. The reasons given were not substantiated making his non-renewal and separation unlawful.

43. The Organization failed to conduct a proper classification, classification review or classification appeal before taking the decisions to reclassify the post and not to renew the Applicant's contract. The decision not to renew the Applicant's contract was taken before the request for classification had been sent to the Assistant Secretary-General for Human Resources Management (ASG/OHRM) as required by section 2.1 of ST/AI/1998/9 or before it had been subjected to a classification analysis as required by section 2.3.

44. By taking the decision when it did, the Mission effectively permitted the General Assembly to usurp the reclassification process, and in particular those who are designated by ST/AI/1998/9 to undertake reclassification review.

45. The Applicant was not given notice of the result of the classification review as required by section 2.4 of the ST/AI.

46. As a result of the failure to conduct a review and give the Applicant notice, the Applicant was not given the opportunity to present his views before his separation.

47. The Applicant should have been held in his post pending the conclusion of the classification process, including the appeal.

48. The Administration failed to adhere to the relevant provisions of ST/AI/1998/9 by rendering a decision to separate the Applicant from service prior to the conclusion of the classification process.

49. The Applicant does not contend that a post must be classified prior to the submission of a budget process however according to section 4.1 when an existing

post is proposed for reclassification; any reclassification decision cannot be implemented until the classification decision has become effective.

50. At the time the Applicant received his non-renewal letter the Mission had not even submitted a reclassification request to FPD/DFS.

51. The Organization failed to place the Applicant on the P-4 post pursuant to section 4.2 of the ST/AI. Had this provision been respected the Applicant could have exercised his right of appeal while under contract. It explicitly grants rights to the incumbent. It must be assumed that that person is not going to be separated during the process.

52. The decision was tainted by extraneous factors. The improper bias against the Applicant is demonstrated by the inexplicable delay between the decision to seek downward classification of the post in February 2014 and the submission of the classification request six months later which points to it wanting to deny the Applicant his right to appeal prior to separation.

53. The Applicant and his SRO had a difficult relationship demonstrated by the refusal to allow the Applicant to attend a conference in 2013, his reaction to the OIOS audit and the publication of the critical IOL News report and his opinion that the Applicant was not performing adequately.

54. The Applicant's right to an appeal against classification was not respected. The Administration refused to extend his contract pending the outcome of the appeal.

55. The Administration did not give the Applicant an opportunity to comment on the report of the reviewing service as stipulated in section 6.7 of the ST/AI.

56. The classification was substantively erroneous.

Respondent's submissions

57. The Applicant had no expectancy of renewal (staff rules 4.5(c) and 4.13(c)). His appointment expired by operation of law.

58. The General Assembly approved the UNMIL 2014-2015 budget which included the downward classification of the post the Applicant encumbered. His appointment at the P-5 level expired on 30 June 2014.

59. The reason given to the Applicant was the abolition of his post which was incorrect in the technical sense since his post had been proposed for downward classification and the proposal was before the General Assembly at the time of the non-renewal notification however the reasons given to the Applicant of Mission downsizing and budget cuts were legitimate.

60. The effect of abolition of post and downward classification of a post is the same. The Mission was no longer available to finance the Applicant's appointment after 30 June 2014 and therefore it could not be renewed.

61. The Applicant was well aware of the reason for the non-renewal of his appointment. He was informed at the latest in January 2014 that his post would be proposed for downward classification as part of the UNMIL budget proposal for 2014-2015. In 2013 he was actively involved in discussions about the next budget submission.

62. The reclassification decision was made in accordance with section 1.1 of the ST/AI as the duties and responsibilities of the post changed substantially as a result of the restructuring and the General Assembly resolution.

63. The Applicant had no rights under the staff rules or ST/AI/1998/9 to have his appointment renewed beyond 30 June 2014 in anticipation of a classification exercise given that the General Assembly would more than likely approve the Secretary-General's proposal to reclassify the post in the context of the Missions downsizing.

64. There was no legal or factual basis to permit the Applicant to continue to serve on an appointment at the lower level even though his appointment had expired.

65. UNMIL was not required to reclassify the post prior to proposing the downgrade to the General Assembly. Section 1.1(a) of ST/AI/1998/9 suggests that the classification would normally take place after the budget process.

66. The 22 July 2014 guidance from FPD is irrelevant because it was issued after the contested decision in this case.

67. A new post cannot be established until after the General Assembly authorizes and approves it.

68. The classification of the post was lawful. It was requested in the light of the downsizing. It is within the discretion of the Administration to determine which functions are required for the performance of the Mission's mandate even where there is a resulting loss of employment.

69. The appeal process is proceeding. The Applicant will be notified in due course.

Considerations

Was the non-renewal decision lawful? Were reasons given at the time able to be substantiated?

70. Staff rule 9.4 provides that: "A temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment".

71. Both the United Nations Appeals Tribunal (Appeals Tribunal) and the Administrative Tribunal of the International Labour Organization (ILOAT) have held that it is well settled jurisprudence 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”⁴.

72. The importance and necessity for reasons to be given for non-renewal of a staff member’s contract was established in *Obdeijn* UNDT/2011/032 and 2012-UNAT-201. Such reasons “must be provided in sufficient detail to enable her or him to decide whether to proceed with a formal appeal...”.

73. The first official advice the Applicant received about the possibility of non-renewal of his post was given to him in January 2014 when the DMS told him that his post was to be down-graded to a P-4 meaning his work at the Mission would only be up to the end of June. This was not the final administrative decision.

74. When the Applicant was formally advised on 29 May 2014 that his contract would not be renewed after its expiry date, the reasons given were that UNMIL was downsizing, the Mission’s budget was being cut and his post was being abolished after 30 June 2014. The Respondent agrees the use of the word abolition was “technically wrong”.

75. The Tribunal holds that the instructions from HQ about the need for UNMIL to cut its budget by downsizing provided ample justification for the restructuring of the Mission which included the down-grading of a number of posts including that encumbered by the Applicant. Further, the evidence of the reduction in the resources and responsibilities of the Mission Transport Section necessitating the lowering of responsibilities of the section leader was undisputed. The Tribunal is satisfied that the reasons for the restructuring were genuine.

76. The question is whether, as a result of the mislabeling of the action to be taken on his post, the Applicant was denied his rights, caused harm or precluded from deciding whether to proceed with a formal appeal?

⁴ *Pacheco* 2013-UNAT-281.

77. The fact that the Applicant made a timely request for management review of the non-renewal decision which subsequently resulted in full consideration of his challenge to the non-renewal decision demonstrates that he was not precluded from exercising his legal rights in relation to that decision.

78. The decision was clear on its face that it was due to budget cuts and downsizing. The Tribunal holds that the reference to the abolition of his post was a technical error that did not impact on the Applicant's rights and the non-renewal decision cannot be impugned on this ground.

Was the re-classification decision made in accordance with ST/AI/1998/9?

79. The competence of the Tribunal is limited to reviewing the procedure adopted for the classification request. It may not embark on a review of the merits of the decision.

80. Staff rule 2.1 provides that posts other than those of Under-Secretary-General and Assistant Secretary-General shall be classified in categories and levels by a competent United Nations body according to standards promulgated by the Secretary-General related to the nature of the duties, the level of responsibilities and the qualifications required.

81. Pursuant to section 1 of ST/AI/1998/9, a request for classification or reclassification of a post can be made in four cases of which section 1.1(b) is relevant to these proceedings:

A request for reclassification shall be made ... when the duties and responsibilities of the post have changed substantially as a result of a restructuring within/an office and/or a General Assembly Resolution.

82. Section 2.1 of the AI states that requests for classification of certain specified posts including in the professional category shall be submitted to the ASG/OHRM.

83. Section 2.3 requires that a classification analysis is to be conducted independently by two classification or human resources officers. The classification decision is then taken by or on behalf of the ASG/OHRM or the head of office.

84. Section 2.4 stipulates that notice of the results is sent to the requesting executive or administrative office who will provide a copy to the incumbent of the post.

85. Pursuant to section 4.1, classification decisions are effective from the first of the month following receipt of the classification request or, when it has been submitted for advice prior to a budgetary submission, once the classification has been approved in the budget.

86. The facsimile dated 22 July 2014, which offered guidance to missions on the issue of reclassification of mission posts, advised missions to commence the reclassification process before the budget process or to submit requests while the budget proceeds.

87. This advice marked a significant change to the process that had been previously adopted by the mission. It is instructive about best practice as advised by FPD/DFS, but does not have the force of law. In addition, it post-dates the decision in this case and therefore does not apply.

88. The Applicant alleges that the decision not to renew his contract was made before the reclassification process in section 2 of ST/AI/1998/9 was undertaken. As it was made in reliance on the expectation that the General Assembly would approve the proposed downward classification he alleges that the “the mission effectively allowed the General Assembly to usurp the reclassification process”.

89. This submission confuses the three separate although interrelated matters: the non-renewal decision; the General Assembly’s approval of the UNMIL budget estimates for 1 July 2014 to 30 June 2015; and the reclassification exercise.

90. The non-renewal decision was made in anticipation of the downward classification of the Applicant's post (as well as changes to other affected posts at UNMIL) given the need to scale back the operations of UNMIL and substantially reduce its budget.

91. The ACABQ report, A/68/782, dated 8 May 2014, followed the Secretary-General's budget proposal which had been submitted in February 2014. It recommended approval of the proposal for the abolishment of 54 posts as well as changes to many other posts and positions at UNMIL but was not a decision to reclassify.

92. By resolution 68/291, dated 31 July 2014 the General Assembly, endorsed ACABQ's recommendations in A/68/782. This was not a re-classification decision.

93. The classification request was commenced in accordance with section 1 of ST/AI/1998/9 as the duties and responsibilities of the post had changed substantially due to restructuring within an office and/or a General Assembly resolution. The classification analysis was conducted by the Chief of FPD's Organisational Design and Classification Unit on behalf of the Director FPD/DFS. Notice of the result was sent to the UNMIL Human Resources Section, which had made the request.

94. As the Applicant was no longer the incumbent of the post at the time of the classification request there was no lawful requirement for him to have been informed of the outcome.

95. The Tribunal concludes that the reclassification procedure was commenced and processed lawfully.

Should the Applicant's appointment have been renewed until the classification process was over?

96. The decision to separate the Applicant from service prior to the conclusion of the classification process is challenged by the Applicant on the ground that it was in breach of the relevant provisions of ST/AI/1998/9.

97. An incumbent of a post who considers that their post has been substantially altered by restructuring may seek a classification review pursuant to section 1.3.

98. Section 4.2 states that the classification of a post shall not negatively affect the existing contractual status, salary or other entitlement of the staff member encumbering the post. Staff members whose posts are classified at a level below their personal grade level will retain their current grade and salary level, on the understanding that every reasonable effort will be made to reassign them to a post at their personal grade level.

99. Section 1.1 of ST/AI 1998/8 stipulates the preconditions for making a request for classification but does not specify the chronology for making the request in relation to the individual encumbering the post.

100. The references in the ST/AI to the incumbent of the post can be interpreted to mean either that the request must be made during the term of the incumbent of the existing post and before any decision is made on the future employment of that person. In the alternative such references can be interpreted as specific protective provisions for incumbents whose posts are subject to classification change while they are still in office.

101. The interpretation of an ambiguous ST/AI may be informed by the context and the policy of the document as a whole. In this case, the AI was promulgated as a "System for the Classification of posts" and "for the maintenance of the post classification system". Its principle purpose is therefore to ensure that posts are correctly classified according to their duties and responsibilities.

102. In addition to this purpose the ST/AI addresses the impact that changes to the post may have on persons encumbering it. The ST/AI materially provides that the incumbent of a post which has been the subject of a classification request is entitled by section 2.4 to a copy of the result. In addition, the contractual status of incumbents shall not be negatively affected by a downwards classification. Their personal grade and level are to be maintained and reasonable efforts are to be made to reassign them to a post at their personal grade level.

103. The Tribunal holds that these are protective provisions which apply only to those staff members who are actually on the post at the time that a request for reclassification is made.

104. In this case the Tribunal finds that by the time the classification request was made on 22 August 2014, the Applicant's fixed-term contract had expired. Although he was held on a GTA funded post pending the outcome of the management evaluation of the decision not to renew his fixed-term appointment, he was no longer an incumbent of the post to which he had been appointed.

105. The Tribunal holds that the ST/AI did not require the administration to renew the Applicant's appointment pending the classification decision.

Was the appeal procedure in accordance with ST/AI/1998/9?

106. Under section 5 of ST/AI/1998/9, the incumbent of a post at the time of its classification may appeal the decision against the classification level on the ground that the standards were incorrectly applied, resulting in the classification at the wrong level.

107. As the Applicant was not the incumbent of the post at the time of the decision he had no right of appeal against the classification decision.

108. Further, the appeal process had not been completed as at the date of this judgment and therefore it is not an administrative decision that can be challenged at this time.

Were the contested decisions influenced by extraneous considerations?

109. The burden of proving that the non-renewal of a fixed-term appointment was arbitrary or motivated by bias, prejudice or improper motive is on the staff member who makes the allegations⁵.

110. The Applicant alleges that ill motivation behind the decision is shown by two matters. The first is what he describes as the inexplicable delay between the decision to seek downward classification of the CTO post in February 2014 and then the submission of the classification request six months later. He says this points to the desire to deny him his right to appeal prior to separation.

111. The second is the difficult relationship between him and his SRO demonstrated by the refusal to allow the Applicant to attend a conference in 2013, the SRO's reaction to the OIOS audit and the publication of the critical IOL News report and his opinion that the Applicant had not been performing adequately.

112. The Tribunal finds that the procedure and timing of the reclassification of the post formerly held by the Applicant has been examined above and found to have been lawful. The gap between the non-renewal decision and the reclassification process is not evidence of ill-motivation.

113. When a justification is given by the Administration for the exercise of its discretion it must be supported by the facts. In the case where there may be more than one reason for non-renewal but the genuine reason was a valid re-organisation, the question of performance deficiencies and shortcomings is immaterial⁶.

114. There is no doubt that the SRO was displeased with the performance of the Applicant. This was reflected in his performance reviews from as early as 2012. The IOL News report which reflected badly on the performance of the Transport Division predated the non-renewal decision by over a year. There was no

⁵ *Hepworth* 2015-UNAT-503.

⁶ *Islam* 2011-UNAT-115.

evidence of any other performance or relationship incident closer in time to the notice of non-renewal that may have triggered the decision.

115. The Tribunal finds that the reasons for the restructuring and downgrading of the CTO post were supported by the facts and were genuinely driven by the exigencies of the budget requirements of UNMIL and the reorganization of the Transport Section. It was not an ill-motivated device to remove the Applicant from the Organization.

Conclusion

116. The Tribunal finds that the decision not to renew the Applicant's fixed-term appointment was because of the changes to the UNMIL Transport Section as a result of downsizing of the mission.

117. The decision to reclassify the post formerly encumbered by the Applicant followed the correct procedure and was therefore lawful.

118. There was no lawful requirement by the Administration to renew the Applicant's appointment in his former post until the outcome of the reclassification and subsequent appeal was concluded.

Decision

119. The Application is dismissed in its entirety

(Signed)

Judge Coral Shaw

Dated this 30th day of June 2016

Entered in the Register on this 30th day of June 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi