



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

LAHOUD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, ALS/OHRM

Steven Dietrich, ALS/OHRM

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Procedural history

1. The Applicant was a Team Assistant at the United Nations Interim Force in Lebanon (UNIFIL). She served at the GS-4 level on a fixed-term appointment with the Language Support Unit (LSU).

2. On 25 May 2016, she filed an application in which she impugns the following decisions by UNIFIL Management:

- a. removing responsibility for the *Litani* magazine from her to the Public Information Office, which she describes as harassment and abuse of authority;
- b. attempted change of her functional title from Team Assistant to Language Assistant; and
- c. re-assigning her from the office of the Chief Military Personnel Officer (CMPO or “J1 Branch”) to the office of the Chief LSU, which she also describes as harassment and retaliation.

3. The Applicant sought the following relief:

I am requesting the mission’s attempt to reassign me to be reversed, as forcing me to work with the person who harassed me and used his authority to retaliate against me, will not ensure a healthy environment to be able to work efficiently. I am also requesting my return to my original and established post in J1 Branch. More over (sic) the consideration of a financial compensation would be highly appreciated for all the physical, psychological and emotional harm and damages done to me.

4. The Respondent filed a reply to the application on 8 July 2016 in which it was asserted that the application was not receivable as well as unfounded on the merits.

5. By Order No. 018 (NBI/2017), the Tribunal enquired whether the parties deemed it necessary to hold a hearing. The Applicant did not respond within the set deadline. The Respondent informed the Tribunal that a hearing was not necessary and that the Applicant, having exhausted her sick-leave, separated from

the Organization on 17 January 2017 upon her request. The Respondent submitted that this development rendered the application moot and not receivable.

6. For reasons specified below the Tribunal found that the application was irreceivable only in part, on another part it was capable of being resolved on the merits.

Facts

7. Facts summarized below are undisputed and/or result unambiguously from the submitted documents.

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

9. In March 2005, she was assigned the duties of secretary in the internal *Litani* magazine, initially under the supervision of a military editor and since 2006 under the direct supervision of the CMPO.

10. In 2009, the LSU was established to include all language assistants working in Naqoura Headquarters, Sector East and West. Administrative support to military branches and units was also grouped under the LSU. As a result, the Applicant was assigned to the LSU at the GS-3 level. Her functional title does not seem to have been firmly established and varies in e-PAS documents as “administrative assistant”, “secretary” and “language assistant”.

11. In 2010, the Applicant was promoted to the GS-4 level as a Team Assistant in the LSU, pursuant to a generic job profile. She continued to perform her functions with the J1 Branch as Team Assistant for the Branch, besides working on the production of UNIFIL *Litani* Magazine, UNIFIL yearly calendars and official folders.

12. In March 2015, she finalized the *Litani* issue of March 2015 and sent it using the official routine all the way to the Head of Mission & Force Commander (HoM&FC) for his final approval for printing, which was obtained. There turned

out to be a mistake in a caption describing a photograph, which was spotted only after the magazine had been approved and distributed.

13. On 13 July 2015, the HoM&FC directed that the production of the *Litani* magazine and all similar publications be moved from the J1 Branch into the Civil and Political Affairs/Public Information Office whereas national staff involved in its production would be put at the disposal of Human Resources (Application, Annex 6).

14. After discussions between the Chief Human Resources Officer (CHRO) and the OIC Deputy Director of Mission Support (DDMS), the CHRO informed the Applicant, on 11 August 2015, that given the transfer of her functions concerning the *Litani* magazine to another office, she would be assigned to other functions in the LSU, effective 17 August 2015, as Language Assistant to the Italian Battalion (Application, Annex 7 and 8).

15. On 17 September 2015, the Applicant requested management evaluation of the decision to change her functional title from Team Assistant to Language Assistant and to reassign her to the Italian Battalion as a Language Assistant. On the same date, she also filed an application for suspension of action of the same decision before the Dispute Tribunal.

16. On 30 September, the Dispute Tribunal issued Order No. 305 (NBI/2015) finding that the decision to assign the Applicant other functions consistent with her job description was lawful.

17. By letter dated 6 November 2015, the Management Evaluation Unit (MEU) informed the Applicant that her request was moot, as her functional title remained that of a Team Assistant, and that she was not being transferred as a Language Assistant to the Italian Battalion. The MEU also advised that UNIFIL had expressed its commitment to finding a suitable role for the Applicant that was in line with her job description and best served UNIFIL's operational needs.

18. On 10 November 2015, the CHRO informed the Applicant that upon her return from certified sick leave, she would take up the duties of a Team Assistant in the Office of the Chief of the LSU providing administrative support in principle

towards the Language Assistant support staff and their military supervisors (Application, unnumbered Annex).

19. On 7 and 22 January 2016, the Applicant requested a management evaluation of the decision to assign her different functions.

Submissions on receivability

20. The Respondent's submissions are summarized as follows:

- a. The Applicant separated from the Organization in January 2017 which renders her application moot and not receivable.
- b. The Dispute Tribunal lacks jurisdiction to review the claim of harassment and abuse of authority for the following reasons:
 - i. Neither the 7 nor the 22 January 2016 requests for management evaluation allege harassment or abuse of authority.
 - ii. The Applicant did not exhaust her administrative remedies under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment and abuse of authority). A staff member who alleges harassment and abuse of authority must follow the procedures set out therein.
 - iii. Relying on *Messinger* (2011-UNAT-123) para. 25, the Respondent submits that the Dispute Tribunal is not competent to investigate complaints of harassment and discrimination. The Dispute Tribunal's jurisdiction to review complaints under ST/SGB/2008/5 is limited to inquiring whether there was a proper investigation of the claims.
- c. The UNIFIL Administration has taken no decision with direct legal consequences to the Applicant's appointment in that:
 - i. Contrary to her allegations, the Applicant has not been moved to the LSU. Since 2009, she has been assigned to the LSU and

encumbers a post within the LSU. Only the production of the *Litani* magazine was moved to the Public Information Office. The Applicant was retained in the LSU, where the post she encumbers is located.

- ii. The Applicant continues to serve as a Team Assistant at the same grade and level and against the same post. Contrary to the Applicant's contentions, her functional title has not been changed from Team Assistant to Language Assistant and her post was not abolished.
- iii. The Applicant has not suffered any adverse consequences as a 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. Even when the Applicant was assigned to the CMPO's office, she performed administrative duties consistent with a Team Assistant's functions.
- iv. The 10 November 2015 email from the CHRO to the Applicant assured her that her responsibilities will conform to her job description at the same grade and level and that the duties could be adjusted as necessary. The Applicant's claim that her revised functions will not be consistent with her terms of reference at the same grade and level or that her tenure will be short-lived, is mere conjecture.

21. The Applicant did not make submissions on receivability.

Considerations on receivability

22. Article 3.1 of the Statute of the Tribunal (UNDT Statute) provides that an application may be filed by any staff member or former staff member of the United Nations. As such, separation from service does not remove the capacity to file or support an application before the UNDT and does not automatically render an application moot and not receivable.

23. As to whether the application in the present case became irreceivable as a result of the non-implementation of the decision, the Tribunal notes that non-implementation renders an application moot insofar as either the matter is resolved in a manner consistent with the thrust of the application, e.g., the Administration withdrew from the decision or the claim was otherwise satisfied to the effect there is no *gravamen* on the part of the applicant, or the claim cannot be satisfied for objective reasons. (*Gehr* 2013-UNAT-328; *see also Lackner* UNDT/2016/105 and *Castelli* UNDT/2015/057: “the general principle arising from [*Gehr*] is that where an impugned decision has been corrected by the Administration before a challenge to the Tribunal has been determined; it is in the power of the Tribunal to find that the challenge is moot and therefore not receivable”). However, the question needs to be analysed in relation to the nature and extent of the claim. Specifically, where the non-implementation results from the fact that the grievance prompts an applicant to quit, or change position, the question is what part of the claim can still be satisfied. The application certainly does not automatically become moot in relation to a claim for compensation.

24. In reference to the Applicant’s complaint about the attempted change of her functional title from Team Assistant to Language Assistant, the Tribunal recalls that the Respondent withdrew from the impugned decision and the Applicant retained her functional title of Team Assistant. Accordingly, the claim may be categorized as moot at the time of the filing of the application. The application in this part is not receivable.

25. In reference to the decision to “remove responsibility for the *Litani* magazine from her to the UNFIL Public Information Office”, the Tribunal finds that latter decision was not the subject of management evaluation. As such, in this part, the Applicant indeed failed to exhaust the obligatory administrative remedies. Notwithstanding the fact that the Respondent did not bring this specific argument on non-receivability, the Dispute Tribunal is competent to review its own jurisdiction even if the parties do not raise the issue, because it constitutes a matter of law and the Statute prevents the Dispute Tribunal from considering cases that are not receivable (*O’Neill* 2011-UNAT-182; *Gehr* 2013-UNAT-313;

Christensen 2013-UNAT-335). Therefore, and based on UNDT Statute art. 8.1(c), the Tribunal finds that the application is not receivable in the part relevant to the decision to remove responsibility for the *Litani* magazine to the UNFICIL Public Information Office and in this part it falls to be rejected. The impugned decision will be subject to the Tribunal's consideration only to the extent that it has been put forth as a premise for a subsequent decision to re-assign the Applicant from the J1 Branch to the LSU Office and altogether gave rise to compensation.

26. Finally, in reference to the decision about removing the Applicant from the J1 branch to the Office of the Chief of LSU, the Respondent's argument that the UNFICIL Administration has taken no decision with direct legal consequences to the Applicant's appointment, the Tribunal notes that the impugned decision entailed for the Applicant a change of her placement of work (within the same duty station), the supervisor and, largely, the nature of her duties. It is moreover alleged to have been motivated by harassment and retaliation. As such, this decision is capable of being reviewed for compliance with the terms of her appointment. In reference, however to the claim that the decision be reversed, the Tribunal finds that the claim cannot be satisfied upon her separation from service and that in this part the application has become moot and not receivable.

27. The only part in which the application is receivable is the claim for compensation for the alleged harm caused by the decision to re-assign the Applicant from the J1 Branch to the LSU Office, to which the Tribunal now turns.

28. Regarding the Respondent's contention that the Dispute Tribunal "is not competent to investigate complaints of harassment and discrimination" because "the Dispute Tribunal's jurisdiction to review complaints under ST/SGB/2008/5 is limited to inquiring whether there was a proper investigation of the claims", and that "the Applicant did not exhaust her administrative remedies under ST/SGB/2008/5", the Tribunal feels compelled to dwell a bit on the Respondent's arguments in order to dispel potential misconceptions.

29. At the outset, the Tribunal recalls that art. 2.1(a) of the UNDT Statute provides that the Tribunal shall be competent to hear and pass judgment on an application [...]

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 [...].

30. The competence of the Tribunal is determined by the UNDT Statute alone and this competence does not fall to be modified by administrative issuances; the latter must not be attributed legal effect inconsistent with the Statute. Several consequences stem from this for the relation of UNDT proceedings and proceedings under ST/SGB/2008/5.

31. First, in the aspect of subject matter jurisdiction, as long as the application is against a “decision that is alleged to be in noncompliance with the terms of appointment or the contract of employment”, the UNDT Statute does not exclude from the jurisdiction of the Tribunal any decision based on its particular content. Specifically, if an administrative decision related to terms of appointment or the contract of employment constituted in itself an act of harassment, discrimination or abuse of authority, such decision would not be removed from the UNDT competence solely because it bears characteristics of harassment, discrimination or abuse of authority. Furthermore, given that every United Nations staff member has the right to work in an environment free from discrimination, harassment and abuse (ST/SGB/2008/5, section 2.1); such a decision could readily be challenged as contradicting the terms of appointment or the contract of employment. Therefore, to the extent the reply suggests that the UNDT would generally not be competent to deal with complaints of harassment and discrimination, it is inaccurate.

32. Second, art. 2 of the UNDT Statute determines expressly and exhaustively the impact of administrative proceedings on matters falling under UNDT jurisdiction. The UNDT Statute provides that the impugned decision must be submitted for management evaluation, where required. The UNDT Statute does not, however, require “exhausting administrative remedies of ST/SGB/2008/5”.

33. Furthermore, analysis of ST/SGB/2008/5 demonstrates that UNDT proceedings and administrative proceedings under ST/SGB/2008/5 have different

functions and are largely independent of each other. Proceedings under ST/SGB/2008/5 serve the purpose of establishing whether there are basis for instituting corrective measures. Harassment, discrimination or abuse of authority is committed not only by discrete administrative decisions but also by other actions, often forming a pattern of behaviour. The mental state of the alleged perpetrator will usually be placed in issue and will have to be proved on the basis of circumstantial evidence and inference drawn from that evidence. In any event, such allegations will invariably give rise to difficult and complex factual inquiries.

34. The proceedings before UNDT are employment-focused, are designed to be quick and document-based and use a different distribution of proof, in that an applicant who alleges harassment, discrimination and abuse of authority before the UNDT carries a burden of proving it (*Azzouni* 2010-UNAT-081). As such, the UNDT is indeed not equipped to conduct investigations, in the sense of ST/SGB/2008/5, into allegations of harassment, discrimination and abuse of authority, just as it has no competence to pronounce on the corrective, preventive, or monitoring measures foreseen in ST/SGB/2008/5. This said, for the purpose of proceedings against a decision concerning the terms of appointment or the contract of employment, the Tribunal independently establishes all facts relevant for the proceedings before it, without being formally limited or bound by the pendency or outcome of proceedings under ST/SGB/2008/5.

35. The same is expressed by UNAT in *Messinger* 2011-UNAT-123, para 25, on which the Respondent relies, and which, when cited less selectively, states:

It is clear that the UNDT is not clothed with jurisdiction to investigate harassment complaints under Article 2 of the UNDT Statute. However, for the purpose of determining if the impugned administrative decisions were improperly motivated, it is within the competence of the UNDT to examine allegations of harassment.

36. The holding in *Messinger* confirms that an applicant who wishes to appeal a decision concerning the terms of his/her appointment or the contract of employment is not required to exhaust any measures under ST/SGB/2008/5. Conversely, an aggrieved individual who is pursuing corrective measures under section 5 of ST/SGB/2008/5, as well as the alleged offender, may appeal the

outcome of the procedure on corrective measures under section 5.20 to UNDT (e.g., *Nwuke* 2010-UNAT-099). The latter, however, is a remedy particular to the avenue of proceedings pursuant to section 5 of ST/SGB/2008/5 and decisions issued thereunder, which does not render these proceedings an obligatory stage for every application under art. 2.1(a) of the UNDT Statute which would allege harassment, discrimination or abuse of authority.

37. Third, the Tribunal considers that an application must be interpreted *bonae fidei*, in a reasonable effort to give it a sense consistent with the applicant's presumed intention and legal interest. Picking on particular expressions used, in particular when originating from an unrepresented applicant, with no regard to the overall context, is not *bonae fidei* interpretation. In the case at hand, notwithstanding that the Applicant utilizes the terms "harassment", "abuse of authority" and "retaliation", the application is clearly directed against concrete administrative decisions affecting the applicant's conditions of service and not directed at effecting corrective measures under section 5 of ST/SGB/2008/5.

38. In conclusion, bringing ST/SGB/2008/5 into the argument on receivability had no legal or factual basis.

39. Moving to the argument that in her requests for management evaluation the Applicant "did not allege harassment or abuse of authority", the Tribunal considers that harassment or abuse of authority are legal descriptions of the prohibited acts, which denote a reprehensible intent and unlawful effect. In this connection, the Tribunal recalls that, pursuant to art. 8 of the UNDT Rules of Procedure, the requirements for initiating the review of administrative decisions alleged to be in noncompliance with the terms of appointment or the contract of employment are quite rudimentary and do not include a requirement to develop legal argument. Clearly, there is no authority to support the view that an applicant would be estopped in providing his/her own legal classifications and interpretations before the UNDT. The Applicant's arguments of such nature are to be heard and weighed, as long as the identity of the impugned administrative decision and the claim remain undisturbed and an applicant does not purport to broaden the claim.

40. In the case at hand, the Tribunal notes that the Applicant consistently alleged that the Administration acted with a malicious intent, moreover, the Respondent's reply is inaccurate because Applicant actually did expressly allege harassment and abuse of authority in her management evaluation request of 5 January 2016 (Respondent's Annex 1, page 6). In accordance with the aforesaid, this allegation falls to be evaluated as a factual circumstance relevant to the motives underlying the impugned decision; however, it has no qualitative impact on receivability or otherwise procedural effect of the claim.

Submissions on merits

Applicant's case

41. For more than 10 years, while in her substantive post of Team Assistant, she has discharged her functions as producer of the *Litani* magazine with a high level of professionalism, efficiency, competence and discretion.

42. In February 2015, UNIFIL's acting DDMS, Mr. Fabio Bendinelli, verbally ordered her to change the process for the vetting and approval of the *Litani* magazine, including the approval by the Chief Special Staff Colonel Marucci.

43. 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 routing slip for printing. The mistake in the magazine was in the materials submitted by HoM&FC's photographer and was overlooked by the DDMS. The HoM&FC called her to his office and unfairly blamed her for the mistake.

44. On 30 June 2015, she received a phone call from the Chief of Special Staff informing her that the production of the *Litani* magazine had been moved to another section and that the June edition of the magazine would be the last issue she would produce. Since July 2015 to date, no further issues of the *Litani* magazine have been produced or published.

45. On 11 August 2015, using the excuse that the production of the *Litani* magazine had been moved from the J1 Branch, the Chief of the LSU moved her out of the J1 Branch.

46. On 10 November 2015, the CHRO approved the Chief of LSU's decision to "reassign" her to a post of Team Assistant in the Office of the Chief of the LSU. The decision was taken very quickly and applied hastily and on very short notice. The decision maker took advantage of her absence from work on sick leave to relocate her without consulting her. 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.

47. She was framed and unlawfully accused of making mistakes by DDMS Mr. Bendinelli to cover mistakes made by the staff of the HoM&FC and to disgrace her before the HoM&FC. She was used as a scapegoat for these mistakes. Her Performance Appraisal for 2014-2015 is proof of her achievements and the great job she was doing. All the actions taken towards her show that there has been "a clear abuse of authority and harassment". Specifically, the decision by the Chief LSU to re-assign her in his office came immediately after MEU confirmed her function as Team Assistant and the decision not to move her to the Italian Battalion; it had no operational basis and was meant to harass and retaliate against her.

48. 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. These actions will seriously and irrevocably harm her career.

Respondent's case

49. Pursuant to staff regulation 1.2(c), the Secretary-General is vested with broad discretion to reassign staff members to different functions. This broad discretion to reassign staff in accordance with operational needs has been

consistently affirmed by the United Nations Appeals Tribunal (UNAT) in its jurisprudence (*Hepworth* 2015-UNAT-503; *Gehr* 2013-UNAT-329; *Rees* 2012-UNAT-266).

50. The Applicant was assigned to different functions due to the operational changes that resulted from the movement of the *Litani* magazine production to the Public Information Office. Consequently, the Applicant could not continue to perform functions that no longer existed in her office. Further, her post, grade and level remained the same and her proposed new tasks would be in accordance with her job description.

Considerations on merits

Applicable standard

51. In evaluating whether the impugned decision gave rise to compensation the Tribunal has to determine as a preliminary issue whether the decision was unlawful. In this regard, the United Nations Appeals Tribunal has consistently affirmed that the reassignment of staff members' functions comes within the broad discretion of the Organization to use its resources and personnel as it deems appropriate and that such decisions may be set aside on limited grounds. (*Gehr* 2012-UNAT-236; *Kamunyi* 2012-UNAT-194; *Allen* 2011-UNAT-187; *Kaddoura* 2011-UNAT-151; *Hepworth* 2015-UNAT-503, *Rees* 2012-UNAT-266). On a general note, in the seminal case of *Sanwidi* 2010-UNAT-084, UNAT stated:

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse.

52. Based on the UNAT jurisprudence, this Tribunal frames the following questions for determination:

Whether mandatory rules have been violated

53. Staff regulation 1.2(c) provides that “[s]taff 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”.

54. Looking into more specific norms, the Tribunal notes that administrative issuances ST/AI/2016/1 and ST/AI/2010/3, which regulate staff selection and mobility, including re-assignment, expressly exclude from their purview staff in the category of General Services (GS) below GS-5 level and national staff. The Applicant’s case, therefore, falls to be determined based on the general norm in staff regulation 1.2(c), which expresses large discretion vested with the Secretary-General in deciding assignments on the one hand, and, on the other hand, in consideration of the character of the post, that is, national staff in a United Nations mission, with an inherent lien to the host country and thus a limited mobility.

55. In weighing these two factors, the Tribunal took into account, in particular, that the Applicant has not been re-assigned to a different position but rather her activities were changed within the same unit, the same duty station, the same generic job profile and the same grade. It considers, moreover, that neither a limited mobility of national staff nor excellent performance at given function could create on the part of the Applicant an entitlement or a reasonable expectation to remain interminably at the same function. The Tribunal therefore finds that staff regulation 1.2(c) has not been violated.

Whether the decision is rational as opposed to absurd or capricious

56. The Tribunal recalls that the decision to re-assign the Applicant from the J1 Branch to the Office of the Chief LSU was premised on the removal of the *Litani* magazine from the J1 Branch to the Public Information Office. As demonstrated by the Applicant’s performance appraisal documents, working on the *Litani* magazine constituted at least an even share with her other responsibilities, which was general administrative assistance. The Tribunal finds

that moving the Applicant to another office once at least half of her responsibilities disappeared, was not irrational or capricious.

57. As held by UNAT in *Rees* 2012-UNAT-266, an accepted method for determining whether the reassignment of a staff member to another position was proper is to assess whether the new post was at the staff member's grade; whether the responsibilities involved corresponded to his or her level; whether the functions to be performed were commensurate with the staff member's competence and skills; and, whether he or she had substantial experience in the field. Considering, again, that the Applicant has not been re-assigned to a different position but remained in the same unit, at the same duty station, with the same generic job profile at the same grade, the test applied in *Rees* is largely met by default.

58. Whereas the Applicant characterizes her new assignment, which is administrative and coordination support, as denigrating, this is impossible to accept considering that she has always been rendering administrative support, including at the J1 Branch, this kind of activity fell squarely under her job description and, upon her own admission, was concurrently performed also by higher ranking General Service staff. Should the Applicant believe that due to her experience with the *Litani* magazine she acquired skills and qualifications that go beyond her current assignment, she is not prevented from applying for other positions. The Tribunal notes, moreover, that UNIFIL had been making an effort to retain her in LSU and was also exploring different solutions that took into account her experience and expertise. Possibilities to closer define the Applicant's tasks within the current office placement in a way that could meet her genuine qualifications and reasonable expectations were not foreclosed.

59. In summation, the impugned decision does not disclose irrationality, absurdity or capriciousness.

Whether the decision has been issued in accordance with due process

60. The Applicant complains that the decision-maker took advantage of her absence from work on sick leave to relocate her without consulting her.

61. The Tribunal recalls that the impugned decision did not terminate the Applicant's employment, was not performance-related and did not involve a change of position. There is no formal procedure to follow and, specifically, there is no legal proscription against changing staff member's office placement during sick leave. Neither is there a requirement for a formal consultation process. The "due process" standard here is determined by rationality and lack of arbitrariness.

62. In the case at hand the Applicant's sick leave lasted several months. The managers are not reasonably expected to postpone their decisions on work assignments for such a long period. Regarding the absence of consultation, it is noted that the UNIFIL Administration engaged in dialogue with the Applicant in writing; withdrew upon the Applicant's objection from its initial plan to re-assign her as a language assistant; explored, albeit with a negative result, whether there was an option for her to become a personal assistant to the Chief of the J1 Branch; and, finally, announced that her taking up the duties at the Office of the Chief of LSU would be "adjusted" dependent on her health condition and that the work distribution would be discussed and apportioned equitably among the staff at the time (Application, unnumbered Annex A). Overall, the Administration listened to the feedback from the Applicant and made a reasonable effort to accommodate her preferences.

63. In summation, the Tribunal does not find that the impugned decision violated the Applicant's due process.

Whether the decision was issued for improper motivations

64. The Applicant alleges harassment and abuse of authority committed through the sequence of the three decisions that she impugns and implicates several persons: HoM&FC, DDMS, Chief LSU and Chief HRO. Although the

application has been found receivable only to a limited extent, an analysis of the sequence of impugned decisions is needed for a proper determination.

65. The Tribunal understands that the Applicant may be disappointed and frustrated due to the fact that, after 10 years of apparently satisfying and well appreciated work at the J1 Branch consisting in the preparation of the *Litani* magazine, she was to be moved out of her work niche in what she perceives as a punitive action. Yet, the Applicant seems to take a very subjective and self-centered view on the matter. The Applicant disregards the fact that the production of the *Litani* was not taken *from her*. It was taken from the military pillar/J1 Branch and its commander and transferred to another unit of the mission. This decision does not target the Applicant.

66. The decision of the HoM&FC that “all this type of UNIFIL media” be placed under the responsibility of the Director of Political and Civil Affairs/ Public Information Office, is not a punitive measure; rather, it must be seen as an organizational correction, which is by all means reasonable. The Public Information Office is an entity competent to deal with publications, it is expected to possess relevant expertise both in editing work and in public relations, and, as such, to be equipped to take full responsibility for the content and form of the issuances. Placement of the *Litani* magazine at the J1 Branch, no matter how hitherto successful, is less appropriate. As demonstrated in this case, in the absence of an editor there was no designated person to own responsibility for the magazine, including mistakes.

67. The decision to re-assign the Applicant from the J1 Branch to the Office of the Chief LSU – as well as the preceding, unimplemented decision to re-assign her as Language Assistant – was taken in direct consequence of the transfer of the edition of the *Litani* magazine to the Public Information Office. As discussed above, there was a valid reason for these decisions and not, as the Applicant presents it, an excuse. Allegations of improper motivation on the part of the Chief LSU and Chief HRO are moreover belied by their efforts to accommodate the Applicant, their helpful attitude transpiring from email correspondence

(Application, Annex 7, unnumbered Annex A) and the high rating accorded to the Applicant in e-PAS documents by the Chief LSU (Applicant Annex 9.6-9.9).

68. The accusation of retaliation on the part of Chief LSU has no basis; insofar as the Applicant suggests such retaliation followed her submission for management evaluation, the impugned decisions are chronologically earlier than the request for management evaluation. In any event, as held by UNAT in *Rees*, “The staff member reserves the right to seek redress through informal or formal complaint procedures pursuant to ST/SGB/2008/5.[...] having failed to do so, her insistence on different reporting lines is without merit.”

69. Considering the aforesaid, the Tribunal sees no *prima facie* indications of harassment, abuse of authority or retaliation against the Applicant.

Conclusion

70. The Tribunal finds that the following claims put forth by the Applicant in her application are not receivable:

- a. To rescind the decision on attempted change of her functional title from Team Assistant to Language Assistant.
- b. To rescind the decision to “remove responsibility for the *Litani* magazine from her to the UNFIL Public Information Office”.
- c. To rescind the decision about removing the Applicant from the J1 branch to the Office of the Chief of LSU.

71. The Tribunal finds, however, that the Applicant’s claim for compensation for the decision to reassign her from the J1 Branch to the LSU Office cannot succeed because the Administration did not exceed its discretion. Onerousness of the impugned decision is purely subjective. The Applicant cannot insist on a restructuring of the Organization to suit her wishes. The impugned decision did not violate the terms of the Applicant’s appointment and she did not meet her burden of proving her allegations of harassment.

JUDGMENT

72. The Application is dismissed in its entirety.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 13th day of February 2017

Entered in the Register on this 13th day of February 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi