



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

AWOYEMI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Daniel Trup, OSLA

**Counsel for Respondent:**

Steven Dietrich, ALS/OHRM, UN Secretariat

Alister Cumming, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant contests the decision not to extend her temporary reassignment to the position of Legal Officer, Office of the Director, United Nations Logistics Base/United Nations Global Service Centre (“UNLB/UNGSC”).

2. She requests as remedy that the impugned decision be set aside.

## **Facts**

3. The Applicant initially served as a Procurement Officer (P-3) with the United Nations Mission in Liberia (“UNMIL”) on a fixed-term appointment.

4. Effective 2 July 2014, she was temporarily reassigned to UNLB/UNGSC as Legal Officer, Office of the Director. This position (“the post”) had become vacant following the temporary reassignment of its incumbent (“the incumbent”) to New York.

5. In March 2015, the incumbent’s temporary reassignment to New York was extended until 30 June 2015, and so was the Applicant’s temporary reassignment with UNLB/UNGSC. Subsequently, the incumbent’s temporary reassignment to New York was further extended until the end of 2015.

6. By email of 11 June 2015, the Director, UNLB/UNGSC, informed the Applicant that he did not intend to extend her temporary reassignment beyond 30 June 2015. In the same email, he offered a further extension until no later than 15 July 2015, in case she needed some additional time to check out.

7. By email of 25 June 2015, the Director, UNLB/UNGSC, informed the Applicant that he had agreed to extend her temporary reassignment to 30 August 2015 to enable her to settle her personal affairs, and take some leave prior to her departure.

8. On the same day, the Applicant requested the Director, UNLB/UNGSC, to “provide an official reason for not extending [her] post as the post [was] budgeted for and the position [was] vacant”. She received no reply.

9. The Applicant requested management evaluation on 7 August 2015. By letter dated 28 August 2015, she was informed of the Management Evaluation Unit’s (“MEU”) determination that the decision was not in accordance with her terms of appointment, and of its recommendation to award compensation for moral damage in the amount of USD3,000.

10. The instant application was filed on 30 August 2015. A motion for interim measures under art. 14 of the Tribunal’s Rules of Procedure was filed simultaneously, seeking the suspension of the implementation of the contested decision. This motion was rejected by Order No. 165 (GVA/2015) of 31 August 2015, on the grounds that the irreparable damage requirement stipulated under art. 10.2 of the Statute was not met.

11. In September 2015—i.e., after her temporary reassignment had come to an end—the Applicant’s e-PAS for the period 2014-2015 was finalised. Her overall rating was “Successfully meets expectations”. The e-PAS stated that the Applicant could work “with a minimum of supervision” and had been “robust and diligent in addressing a backlog of legal issues”, while noting, on the communication competency, “her reluctance to interact with and seek input from others”, and also that she would benefit from developing “collaborative and productive working relationships with other Units”.

12. Between 1 September and 31 December 2015, the post was repurposed to temporarily hire an Umoja Site Coordinator, a position first advertised on 3 July 2015 under a temporary vacancy announcement (“TVA”), which was corrected and re-advertised on 24 July 2015. A staff member from the United Nations Support Mission in Libya (“UNSMIL”) was hired for it, while keeping a lien against his post with UNSMIL. From 1 January to 17 April 2016, the post remained vacant, although it was advertised on 14 January 2016 as a Legal Officer (P-3) post, and filled effective 18 April 2016.

13. The Respondent filed his reply to the application on the merits on 12 October 2015.

14. By Order No. 202 (GVA/2016) of 11 October 2016, the Tribunal instructed the Respondent to file further information, which he did on 24 October 2016.

15. A case management discussion was held on 27 October 2016. Further to it, the Tribunal, by Order No. 212 (GVA/2016) of 31 October 2016, requested the Respondent to provide additional information, and invited the Applicant to comment thereon, which they did on 2 November 2016 and 11 November 2016, respectively.

### **Parties' submissions**

16. The Applicant's principal contentions are:

a. The Applicant was not provided with any explanation, let alone objectively verifiable reasons, as to why her temporary reassignment would not be extended. The duty on the Administration to act fairly, transparently, and justly in its dealings with staff members entails making reasoned decisions;

b. While the renewal of a temporary assignment depends on a number of factors—i.e., availability of the position, availability of funds, good performance of the staff member and the interests of the Organization—none of these grounds were put forward. By analogy with the holding in *Assale* UNDT/2014/034 that a reason should be given for the non-renewal of fixed-term appointments, the reason for the end of her temporary assignment must be rationally explained and be completely justified;

c. Given that the reasons behind the contested decision lie exclusively within the knowledge of the Administration, it is for the Applicant to demonstrate *prima facie* that the decision was taken on illegitimate grounds, after which the burden falls to the Administration to prove the contrary;

d. In this connection, a number of inconsistencies support a *prima facie* case of unlawfulness, as a result of which the burden to show that the decision was not based on nefarious or capricious reasons shifts to the Respondent. To wit:

i. The incumbent's temporary reassignment to New York had been extended until 31 December 2015;

ii. Only one Legal Officer post exists within the Legal Office, UNGSC, and this post's responsibilities cannot simply be transferred to another unit;

iii. There appears to be no issue as to the funding of the Legal Officer post;

iv. As the Applicant learnt from the MEU response, it was only at the management evaluation stage that the Administration advanced poor performance as an explanation for the contested decision; and

v. As MEU raised, the reassignment to Umoja of the post is in and of itself unlawful;

e. The Standard Operating Procedure on Staffing Table and Post Management of UN Peace Operations ("SOP") is not applicable to UNLB. Albeit being an essential component of the Department of Field Support ("DFS"), UNLB is not a peacekeeping mission but rather a support structure used by the Department of Peacekeeping Operations ("DPKO"). Whilst part of DPKO, it retains its own budget and staffing structure, as well as its own unique functions and responsibilities, which should not be conflated with actual peacekeeping operations;

f. No specific rules exist permitting the reassignment or repurposing of a post to an unrelated function. An instruction by the Controller should not be confused in any way with an Administrative Instruction or other normative instrument. Such an instruction does not even feature in the legal hierarchy of the Organization's norms. Practice and behaviour should not replace

formal legal provisions and certainty. Moreover, the supposed repurposing of the post only took place after the Applicant was informed of the non-renewal of her reassignment and her apparent unrecorded performance issues;

17. The Respondent's principal contentions are:

a. The Administration has a general discretion to manage its resources. The Secretary-General enjoys broad discretion in the organization of work and the assignment of tasks to staff members, subject to only limited control by the Tribunal. The discretion to repurpose a post is part of the Administration's general discretion to manage itself;

b. Heads of Mission have the authority to temporarily loan posts within the mission for a period not exceeding the budgetary cycle. Under sec. 4.2.3.1 of the SOP, this can be used to meet urgent or critical operational needs;

c. The SOP is applicable to UNLB as it is not part of UN Headquarters ("UNHQ"). UNLB's budget is managed under the peacekeeping budgets, for which the Controller issues a separate budget instruction—whereas UNHQ's budget is part of the Biennium Programme Budget, managed by the Programme Planning and Budget Division of the Controller, which does not include UNLB. Accordingly, DPKO and DFS support, administer and manage UNLB in a similar manner to peacekeeping missions. Additionally, at its establishment, UNLB's posts were provided by peacekeeping missions, who pooled together posts in order to create a single Logistic Base;

d. Furthermore, para. 7 of annex IV to the Controller's instructions to UNLB for the preparation of the 2014-2015 budget provides that "while Missions have discretion to temporarily redeploy or reassign posts during budget implementation, in light of unforeseen operational requirements, such temporary redeployment/reassignment action is only valid until the end

of the current financial period, and the post ... should return to its original office by then”;

e. The contested decision was justified by the operational circumstances within UNLB/UNGSC. The post at stake was used after deciding to have an Umoja Site Coordinator to support the critical Umoja deployment. Without this measure, UNLB/UNGSC’s readiness to meet the Umoja 1 November 2015 deployment deadline would have been compromised, potentially jeopardising the entire Cluster 4 deployment. In his memorandum dated 4 June 2015, the Secretary-General directed all Heads of Mission to dedicate appropriate level of resources to Umoja deployment readiness. This direction was reiterated by the Assistant Secretary-General for Field Support by email of 8 June 2015. The Umoja Site Coordinator temporary post was filled as of 1 September 2015;

f. The Applicant wrongly argues that the burden is on the Administration to prove that the refusal to extend her temporary assignment was motivated by an improper reason. Instead, the burden rests with the Applicant to adduce evidence that the decision was improperly motivated or otherwise capricious. She has failed to proffer any such evidence; and

g. The Applicant has already been paid compensation in the amount of USD3,000 as MEU concluded that UNLB/UNGSC had not adequately substantiated that the Applicant had been afforded proper due process.

### **Consideration**

18. The Tribunal will first address the grounds for challenge pertaining to formal aspects of the impugned decision, i.e., matters of authority and the nature of the Applicant’s administrative link to the litigious post. It will later turn to substantive aspects, notably those concerning the reasons behind the impugned decision, that is, the failure to share with the Applicant the reasons for the end of her reassignment and the propriety of the motives thereto.

*The Applicant's administrative link to the Legal Officer's post*

19. Pursuant to staff regulation 1.2(c):

Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them;

20. It is undisputed that, under this provision, the Organization is entitled to assign its staff to different duties, as appropriate. This includes not only the authority to entrust them with certain functions upon initial recruitment but, especially, the prerogative to move any given staff member to a different position later on (see, e.g., *Kamunyi* 2012-UNAT-194). Also, the Secretary-General may reassign a staff member to different functions durably or on temporary basis only.

21. In the Applicant's case, she was reassigned from her original functions as a Procurement Officer with UNMIL to those of Legal Officer with UNLB. This movement was temporary, as it was effected to cover an interim vacancy; hence, the Applicant could not be permanently appointed against the interim vacant post.

22. The characteristic of such a temporary reassignment is its limited duration. From the outset, it is clear that it has an expiration date and that, unless renewed by a subsequent discretionary decision, it will come to an end naturally on the date specified for this purpose. As already emphasised in Order No. 165 (GVA/2015):

[T]he very nature of a temporary reassignment entails that, after a certain time, the concerned staff member will be placed anew against his or her original functions. Far from being abnormal, even less infamous, returning to one's initial duties is the natural outcome after a temporary assignment.

23. The Applicant, thus, had no entitlement or legal expectancy to have her temporary assignment extended. The decision not to extend her temporary reassignment was within the Administration's discretion and was therefore lawful unless it can be established that such discretion was abused (see generally *Assad* 2010-UNAT-021; *Sanwidi* 2010-UNAT-084; *Abbasi* 2011-UNAT-110).

*Authority to repurpose the Legal Officer post*

24. As it will be developed below (paras. 51 to 56 below), the Administration justifies—at least partially—the non-extension of the Applicant's temporary reassignment by the alleged need to repurpose the post against which she was serving for different functions.

25. The Applicant questions the legal power of UNLB/UNGSC's management to repurpose the post she formerly encumbered, while the Respondent claims that the Director, UNLB/UNGSC, was entitled to do so on a temporary basis under sec. 4.2.3.1 of the SOP.

26. The Tribunal cannot but agree that, generally speaking, posts set up under the regular budget are to be used for the aim and duties for which they were approved. However, this does not amount to say that the applicable framework completely rules out any possibility to assign a certain post to different functions as a transitory measure.

27. It is unclear to what extent the SOP can constitute a valid legal basis to repurpose a post within UNLB/UNGSC. Its para. B (Scope) reads:

This [SOP] defines and explains the guiding principles for the creation and management of staffing tables and the movement of posts. It is intended for use by staff at Headquarters (DFS) and in all peace operations.

28. Since this provision only spells out *who* is to apply the SOP, and *not to what entities, posts or staff* it is applied to, it is of no help to ascertain if the SOP is applicable to UNLB/UNGSC.

29. Whilst the title of the SOP explicitly alludes to “UN Peace Operations”, no definition of this term is provided. It is noticeable, nevertheless, that its text repeatedly refers to “missions” as its object/addressees. The Tribunal analysed at length the notion of “mission” in *Melpignano* UNDT/2015/075 and, while observing a regrettable lack of clarity in defining this concept, it concluded that UNLB was not to be considered as such. Relevantly, the Respondent himself claims that “the UNLB is supported, administered and managed in a *similar manner to peacekeeping missions*” (emphasis added), which implies a recognition that UNLB is not, properly speaking, a mission—although arguing that it is appropriate to apply to it the same rules by analogy.

30. Yet, the Glossary of Terms of the SOP expressly cites UNLB among the entities described as “established missions”. Thereby, the authority from which the SOP emanated, i.e., the O-i-C, DFS, unambiguously manifested his understanding that the SOP applied to UNLB and, hence, that he had intended to delegate to the Director, UNLB/UNGSC, the prerogative, among others, to loan a post within such entity. However, the SOP is simply a non-binding instrument issued by the Officer-in-Charge (“O-i-C”), DFS, carrying, at best, the legal value of mere guidelines. It is at the bottom of the hierarchy of the United Nations’ legislative system and, as such, cannot supersede nor prevail over Administrative Instructions or other duly promulgated administrative issuances (*Villamorán* UNDT/2011/126, *Korotina* UNDT/2012/178, *Diatta* UNDT/2015/054, *Melpignano* UNDT/2015/075).

31. In any event, it is an undisputed principle that the Secretary-General enjoys wide discretion in managing the Organization’s resources, including human resources. As repeatedly accepted by the Appeals Tribunal, “an international organization necessarily has the 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” (*Gehr* 2012-UNAT-236, para. 25; *Pacheco* 2013-UNAT-281, para. 22, *Simmons* 2014-UNAT-425, para. 31; *Hersh* 2014-UNAT-433, para. 16; *Bali* 2014-UNAT-450, para. 21; *Matadi et al.* 2015-UNAT-592, para. 16; *Simmons* 2016-UNAT-624, para. 12). The Appeals Tribunal further held that “the reassignment of staff members’ functions comes

with in the broad discretion of the Organization to use its resources and personnel as it deems appropriate” (*Hepworth* 2015-UNAT-503).

32. It is the Tribunal’s view that the decision to repurpose a vacant post for a short period clearly falls under the Organization’s general power to restructure some of its services, even though it is in fact a considerably less drastic and far-reaching measure than the abolition of posts.

33. In consequence, whether or not the SOP was an adequate legal basis for the operation, the Administration had in any case the authority to decide a temporary repurposing of the litigious post, by virtue of its wide discretionary powers concerning the organization of its departments and units.

*Failure to provide the reasons for the contested decision*

34. The Applicant contends that the Organization breached its obligation to provide her with the reasons for the non-extension of her reassignment.

35. On this matter, the Appeals Tribunal stated in *Obdeijn* 2012-UNAT-201:

36. [T]he obligation for the Secretary-General to state the reasons for an administrative decision does not stem from any Staff Regulation or Rule, but is inherent to the Tribunals’ power to review the validity of such a decision, the functioning of the system of administration of justice established by General Assembly resolution A/RES/63/253 and the principle of accountability of managers that the resolution advocates for.

37. It follows from the above that the Administration cannot legally refuse to state the reasons for a decision that creates adverse effects on the staff member ... where the staff member requests it or, a fortiori, the Tribunal orders it.

36. It follows that the Appeals Tribunal indeed upheld the existence of a duty on the part of the Organization to disclose the reasons for any decision “that creates adverse effects on the staff member”, although it did so only in the context of a “formal review process” and for the purpose of enabling judicial review.

37. Subsequently, in *Gehr* 2012-UNAT-236, the Appeals Tribunal affirmed that, if a staff member is transferred, the Administration must inform him or her of the reasons for this decision, as it endorsed the jurisprudence of the International Labour Organization Administrative Tribunal (“ILOAT”) that:

[T]he staff member is entitled to be informed of the reasons for the reassignment. In addition to ensuring transparency in decision making, providing the reasons for the reassignment permits a staff member to assess the courses of action that may be taken, including the lodging of an appeal, and it also permits a review of lawfulness of a decision on appeal. (ILOAT Judgments No. 3084 and No. 2839)

38. The Tribunal is of the view that the same grounds that led ILOAT and the Appeals Tribunal to uphold the duty to provide reasons to the affected staff member in transfer cases, apply to the present case.

39. It must be emphasised that the Administration has a general duty to act fairly, justly and transparently in its dealings with its staff (*Obdeijn* 2012-UNAT-201, para. 33; *Ahmed* 2011-UNAT-153, para. 45). In fact, not only has the Administration a duty to act in good faith, which is a general principle of law underpinning every legal system,<sup>1</sup> but it also has a duty of care towards its employees (*Pirnea* 2013-UNAT-311, *McKay* UNDT/2012/018, confirmed in *McKay* 2013-UNAT-287, *Allen* UNDT/2010/009). These duties dictate that a staff member must be timely informed of the reasons relied upon to take any decision that directly impacts him or her. All the more so whenever, like in the present case, the staff member unambiguously requested to know them.

40. In addition, it is an accepted principle that official acts by the Administration are presumed to be regular (*Rolland* 2011-UNAT-122). However, the other side of the same token necessarily is that the Organization must be open about the grounds for its actions and ensure that the staff concerned have every information allowing them to challenge the decision at stake, if they deemed it appropriate. Anything less would imply that the relation between the

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<sup>1</sup> See in particular for Public International Law, R. Kolb, *Good Faith in International Law*, Hart Publishing, 2017.

Administration and those subject to its authority would be deeply unbalanced and fundamentally unequitable.

41. In the case at hand, it is plain that the written communication(s) conveying the contested decision to the Applicant did not express any reasons therefor, and there is no evidence that she was otherwise informed about them, despite her clear request of 25 June 2015, until she received a reply to her request for management evaluation. To this extent, the Administration failed to fulfil its obligation to provide the Applicant, as the staff member affected by the decision at issue, with the reasons not to extend her temporary reassignment.

42. The Tribunal is mindful, nevertheless, that the Administration did reveal the reasons for not extending the Applicant's reassignment to UNLB/UNGSC when MEU requested it in the context of formal proceedings.

43. It is obvious that, from the Applicant's point of view, having to formally challenge the decision in question to find out the reasons affecting her assignment, despite having specifically asked for them, cannot but hinder her trust in her management. Having said that, in the specific circumstances of this case, the Administration's initial refusal did not prevent the Applicant from availing herself of her right to formally contest an administrative decision. She was able to submit a timely management evaluation, which allowed her to eventually learn the reasons for the end of her reassignment; later, she was able to use this information to make her case before the Tribunal.

44. Relevantly, the Appeals Tribunal has repeatedly found that where an irregularity was committed but it has no impact on the status of a staff member, there is no entitlement to rescission of the decision or to compensation (*Bofill* 2011-UNAT-174, para. 28; *Vagelova* 2011-UNAT-172, para. 19; *Dualeh* 2011-UNAT-175, para. 19; *Onana* 2015-UNAT-533, para. 48).

45. Against this background, the Tribunal considers that, although her supervisor indeed failed to his obligation to inform her about the reasons behind the decision, the Applicant suffered no harm stemming from such failure warranting compensation.

*Propriety of the motives alleged*

46. The Tribunal notes that the Applicant does not bring specific allegations of personal prejudice or other undue motivations. She rather suggests that the decision must have been based on improper grounds because there were no objective impediments (such as unavailability of the post or budget) for her to remain longer in UNLB/UNGSC, and argues that, as a result of the failure to provide her the reasons behind the decision, the burden to demonstrate that it was not ill-motivated shifts to the Administration.

47. In this respect, the above-referred *Obdeijn* judgment holds:

38. Whereas, normally, a staff member bears the burden of proof of showing that a decision was arbitrary or tainted by improper motives, the refusal to disclose the reasons for the contested decision shifts the burden of proof so that it is for the Administration to establish that its decision was neither arbitrary nor tainted by improper motives.

39. However, if the Administration does not comply with a Tribunal's order to disclose the reasons for an administrative decision as such, the Tribunal cannot automatically conclude that the decision was arbitrary. But it is entitled to draw an adverse inference from the refusal.

48. Since in this case the Administration has not refused to disclose to the Tribunal the reasons behind the decision at issue (see para. 42 above), the burden of proving that the decision was tainted by improper motives rests with the Applicant.

49. The Tribunal is mindful that, as the Applicant rightly points out, all details and records of the decision-making process are exclusively in the Administration's hands. Nonetheless, the Appeal's Tribunal ruled in *Rolland* (2011-UNAT-122)—a non-selection case, where also all related information typically lies with the Administration—that there is a presumption of regularity of official acts—although rebuttable—and went on to clarify that:

If the management is able to even minimally show that the [staff member]'s candidature was given a full and fair consideration, then the presumption of law stands satisfied. Thereafter the burden of

proof shifts to [that staff member] who must show through clear and convincing evidence that [he/she] was denied a fair chance of promotion.

50. In this context, it is appropriate for the Tribunal to examine the reasons alleged by the Respondent, bearing in mind the principle that when a justification is given by the Administration for the exercise of its discretion it must be supported by the facts (*Islam* 2011-UNAT-115).

51. Concretely, in the present case two different justifications have been put forward throughout the different litigation phases, namely:

- a. The need to temporarily hire a dedicated person to work on the deployment of Umoja by 1 November 2015 in UNLB/UNGSC (Umoja Site Coordinator); and
- b. Some performance shortcomings by the Applicant, notably in terms of consultation and cooperation with colleagues.

52. The Tribunal will consider each of them separately.

#### Need to secure an Umoja Site Coordinator

53. Umoja uncontestably went live Secretariat-wide for the staff at large in November 2015, and it is well-known that its deployment required significant preparation and had enormous repercussions on the Organization's functioning. Likewise, it is on record that the Secretary-General had specifically urged the Organization's management to take appropriate measures and allocate adequate resources to enable Umoja to be successfully deployed, an instruction that was later relayed and reiterated by the Assistant Secretary-General for Field Support.

54. In addition, the Respondent submitted material indicating that an Umoja Site Coordinator was indeed recruited shortly after the discontinuation of the Applicant's temporary reassignment. Although he served for a few months only, the short duration of this arrangement seems coherent with the circumstances of the case, since the deployment of Umoja to the staff at large was, by its very nature, a punctual exercise. Consistently, the appointment of an Umoja Site

Coordinator was presented from the outset as a transitory measure—notably, the position was advertised through temporary vacancy announcements—and it indeed lasted precisely from two months immediately preceding the Umoja deployment and two months immediately after it. From this perspective, the subsequent events tend to corroborate the Administration’s narrative, rather than casting doubt on it.

55. Moreover, the Respondent gives a plausible explanation as to why this particular post, rather than any other, was singled out to be repurposed as Umoja Site Coordinator. As a matter of fact, the post in question could easily become available for the key period when it was required, precisely because the Applicant encumbered it only on a temporary basis, and other members of the team possessed the expertise needed to discharge the Legal Officer’s functions for a limited time.

56. Therefore, the Tribunal finds that the need to temporarily hire a dedicated person for the then impending deployment of Umoja in UNLB/UNGSC stands as a reasonable motive and, based on the evidence available, appears to be supported by the facts.

#### Performance issues

57. It is worth highlighting that the Respondent’s pleadings before the Tribunal barely touch on the concerns with the Applicant’s performance, whereas it transpires from the MEU letter of 28 August 2015 that this was a major or, in fact, the main factor relied upon by the Administration at the management evaluation stage. At any rate, despite this apparent “re-scaling” of the weight given to performance issues, the Respondent confirms that the Director, UNLB/UNGSC, was not satisfied with her ability to interact with her peers, and does not deny that it was one of the motives leading to the contested decision. Accordingly, the Tribunal will consider performance at least as a concurrent reason for the contested decision.

58. As MEU rightly stressed, referring to the findings in *Rees* 2012-UNAT-266, where performance is the principal reason for a decision regarding the

reassignment of a staff member, the Administration has to “provide a performance-related justification for its decision” and, in reaching it, the Administration must respect the “rule of law and standards of due process in decision-making”. Further, MEU observed that the Applicant’s performance appraisal for 2014-2015 had not been completed at the time the impugned decision was made and even implemented. Furthermore, no record exists showing that she had been previously notified of the concerns with her performance and offered an opportunity to respond to them or to rectify her shortcomings before ending her reassignment.

59. In this view, MEU concluded that the Administration had not “adequately substantiated that [the Applicant] had been provided with proper due process regarding her performance-related concerns”. On this account, she received compensation in the amount of USD3,000.

60. After consideration, the Tribunal sees no good reason to disturb MEU’s finding and regards the amount of compensation granted as appropriate for the breach found.

61. First, by no means did MEU determine that the alleged performance issues were false or made up, but only that it was not recorded that due process was afforded by giving the Applicant timely warning and guidance to improve. Second, since the Applicant was on a temporary reassignment, entailing a finite duration as discussed above, she had no legitimate expectation that her reassignment would continue. Third, even in case the Applicant’s reassignment had been extended, she could not have expected to stay in UNLB beyond four more months, because the incumbent’s temporary assignment was to last until the end of 2015, and also because the Controller’s instructions for the 2014-2015 biennium budget—transmitted by memorandum of 17 July 2013 and which were ostensibly adhered to by UNLB management—excluded (at para. 7, Annex IV) that any temporary redeployment/reassignment go beyond the end of the ongoing financial period, which at the time was also 31 December 2015. Lastly, unlike for a non-renewal of appointment, the Applicant was not separated as a result of the contested decision; she kept her livelihood, remained in the employment of the

Organization and was assigned back to her original duties, which were appropriate for her in terms of background and grade. For this, it is not warranted to award her a higher compensation.

62. In conclusion, having scrutinised the two purported justifications for the non-extension of the Applicant's reassignment—i.e., performance shortcomings and use of the post for the duties of Umoja Site Coordinator—the Tribunal finds that although one (performance) was not properly documented, this shortcoming was already acknowledged and adequately redressed. As to the second one (repurposing), there is nothing to indicate that it is manifestly unreasonable or arbitrary, or else belied by the facts.

63. In this light, the Tribunal is satisfied that the Organization has minimally shown that the contested decision was not improperly motivated. Accordingly, the *onus* fell on the Applicant to demonstrate otherwise. However, the Applicant has not adduced any tangible evidence, let alone clear and convincing one, that the end of her reassignment was due to extraneous factors. The fact that the post was funded and its incumbent remained assigned to New York until the end of 2015 does not suffice to make an inference that the decision was capricious or ill-motivated.

64. This Tribunal is thus unable to find that the impugned decision was tainted by improper motives.

65. For all the above, the Tribunal finds that:

a. The Applicant's due process rights concerning her purported performance shortcomings were violated, but this breach was detected and redressed by the MEU; and

b. The Administration did not respect its duty to provide the affected staff member with the reasons behind the impugned decision, although it later mitigated its responsibility in this respect by disclosing such reasons at the management evaluation stage. Notwithstanding the initial breach of the afore-said obligation, inasmuch as she suffered no harm as a result of it, it is

neither warranted to rescind the decision nor to award additional compensation to the Applicant on this account.

**Conclusion**

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

The application is dismissed.

*(Signed)*

Judge Teresa Bravo

Dated this 6<sup>th</sup> day of February 2017

Entered in the Register on this 6<sup>th</sup> day of February 2017

*(Signed)*

René M. Vargas M., Registrar, Geneva