



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/032

Judgment No.: UNDT/2020/162

Date: 2 September 2020

Original: English

Before: Judge Francis Belle

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ATUYA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Edwin Nhliziyo

Counsel for the Respondent:

Nicole Wynn, ALS/OHRM

Rosangela Adamo, ALS/OHRM

The Application and Procedural History

1. The Applicant served as an Administrative Assistant at the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”), on a fixed-term appointment at the FS5 level and was based in Bangui.
2. On 20 March 2019, the Applicant filed an application at the United Nations Dispute Tribunal in Nairobi to challenge the Respondent’s decision to not renew her appointment with the Mission beyond 31 December 2018.
3. The Registry received the Respondent’s reply to the application on 23 April 2019.

Facts

4. On 7 March 2018, the Secretary-General proposed the abolishment of 223 posts in MINUSCA for the 2018-2019 period.
5. On 27 April 2018, MINUSCA’s Chief Human Resources Officer (“CHRO”) informed the Applicant that a Comparative Review Process (“CRP”) would be conducted for staff members encumbering posts affected by the proposed abolishment. This included the Applicant; as she encumbered one of two Administrative Assistant posts at the Mission Support Centre (“MSC”) and only one post was to be retained as of 1 July 2018.
6. In preparation for the comparative review, staff members were encouraged to update their Personal History Profiles (“PHP”) in *Inspira*. The Applicant did as much.
7. On 2 May 2018, MINUSCA’s Director of Mission Support (“DMS”) informed all MINUSCA staff members that a Panel was being established for the comparative

review exercise.

8. In the review of the two staff members encumbering the two Administrative Assistant posts, the Applicant scored fewer points than her colleague.

9. On 25 May 2018, the Department of Field Support (“DFS”) endorsed the results of the CRP.

10. On 29 May 2018, the CHRO informed the Applicant that she would be separated from service of the Organization as of 30 June 2018.

11. On 21 June 2018, the Applicant asked the CHRO to consider extending her appointment to 31 December 2018 so that she attains the retirement age of 62, and therefore maximises her pension benefits and other entitlements as applicable.

12. Pending receipt of approval of the Mission’s 2018-2019 budget proposal by the General Assembly all appointments affected by the downsizing exercise including the Applicant’s were extended through 31 July 2018.

13. On 28 June 2018, the Applicant requested management evaluation of the decision not to renew her appointment beyond 31 July 2018.

14. On 5 July 2018, the General Assembly approved the proposed budget.

15. On 18 July 2018, MINUSCA informed the Applicant that her appointment would not be renewed beyond 31 July 2018.

16. Following further discussions between the Applicant and MINUSCA, the Respondent exceptionally agreed to renew the Applicant’s appointment until 31 December 2018.

17. To this end, the Applicant was temporarily placed on an FS-5 Human Resources Assistant post from 1 August 2018 until expiry of her appointment on 31 December 2018.

18. On 5 October 2018, in response to her management evaluation request of 28 June 2018, the Management Evaluation Unit (“MEU”) dismissed her request for review as moot.

19. On 8 October 2018, a personnel action (“PA”) notification was raised providing documented notice of the extension of the Applicant’s appointment to 31 December 2018.

20. On 4 December 2018, MINUSCA HR sent the Applicant a letter regarding the separation procedure. On the same day, the Applicant requested management evaluation of the decision to separate her on 31 December 2018 and filed an application for suspension of action (pending management evaluation) at the UNDT. The Tribunal issued Order No. 190 (NBI/2018) denying the application.

21. The Mission began separation formalities on 5 December 2018, and the Applicant was separated from service of the Organization on 31 December 2018 when her contract expired.

Deliberations

22. The background to this case involves a retrenchment exercise affecting staff members of MINUSCA.

23. The Applicant argues that pursuant to the said exercise, staff members of MINUSCA were advised that a budget was approved, and extensions were granted for the next 12 months to 30 June 2019. But the Applicant alleges discrimination because she was not included in this extension to 30 June 2019.

24. It is noted that the Applicant's appointment was for a fixed term and there was therefore no expectation of an extension beyond the expiry date of that fixed-term appointment.

25. The Applicant's case is based on a number of allegations which are as follows:

- a) The administration was trying to accommodate someone else.
- b) MINUSCA does not meet the gender balance requirement.
- c) Medical history was used to get her out of Bambari. But another application has been made on this issue.
- d) There was an attempt to avoid keeping her in service until her original retirement date of 31 December 2018.
- e) There was an attempt to deny her the right to retire at age 65.

26. The Applicant wants the impugned decision reversed and her status clarified.

27. The Applicant wants a new retirement date of 31 December 2021 applied to her to allow her to retire at age 65.

28. The Applicant submits that the context of the Administration's discrimination is its mishandling of her health issues.

29. Based on the Respondent's reply the Applicant further submitted that there has been an order suspending the decision to retrench her on 30 June 2018.

30. The Applicant argued that she secured a management evaluation in spite of the suspension of action granted to her. She also argued that there was no genuine agreement to accept retirement on 31 December 2018 since the suspension of action

was ordered to permit her to contest that decision.

31. The Applicant argued that she could not have been genuinely evaluated for the period 2017 to 2018 since she was not in Bambari at that time. The Applicant was also on sick leave for about a month.

32. The Respondent separated his response into two parts dealing with two decisions.

33. The Respondent argues that the first decision was the non-extension of the Applicant's appointment. In the Respondent's view, the Applicant's contract had already been extended by the time the application was filed, to 31 December 2018. The application was therefore moot on this issue. This was because the parties embarked upon informal communications between MEU and the Counsel for both sides and the request for management evaluation was withdrawn. There was therefore no management evaluation because of the settlement.

34. The Applicant had been informed of the decision not to renew her appointment beyond 31 December 2018 in July 2018. The Applicant did not request management evaluation of the decision not to renew her appointment beyond 31 December 2018.

35. The application based on the letter dated 4 December 2018 is not in response to an administrative decision but a human resource notification of the separation formalities that needed to be complied with prior to 31 December 2018.

36. The 60-day period for appealing the original decision of July 2018 had already passed and an agreed extension had been granted.

37. The application is therefore not receivable *ratione materiae*.

38. The factual background is that the Applicant was appointed to the position of

Administrative Assistant FS4 on 1 May 2014.

39. The administration decided to abolish 223 posts for the budget year of 2018. The proposal was to abolish 3 FS level Administrative Assistant positions in MINUSCA in 2018.

40. After informing the Applicant that her appointment would not be renewed, discussions took place between the officers of MINUSCA HR and the Applicant on the Applicant's request to have her appointment extended to allow her to retire at the age of 62. The request was granted on an exceptional basis.

41. The Respondent explained that the post against which the Applicant had been placed was temporarily vacant due to a temporary assignment of the incumbent of the post outside the mission.

42. As a result of this agreement between the Respondent and the Applicant, the management evaluation request was deemed closed and the Applicant was placed against a temporarily vacant post from 1 August to 31 December 2018. Consequently, the present application is not receivable.

43. An application is only receivable if it is filed within 90 calendar days of management's response to her proposal or within 90 calendar days of the expiry of the relevant response period for a management evaluation if no response to the request was provided.

44. Even if the Applicant had not been transferred from Bambari to Bangui, the Applicant would have been included in the CRP because the process was conducted across all duty stations of MINUSCA.

45. The Applicant's application filed on 20 March 2019 appealing the decision of July 2018 made to extend the date of retrenchment would therefore be time barred,

since the Applicant was first notified of this decision in July 2018.

46. The Applicant also challenges the decision not to allow her to go on home leave for the month of November 2018, but there too has not sought review of the decision by MEU. This Court therefore has no jurisdiction to deliberate on the merits of that challenge, and all the other allegations made by the Applicant.

ORDER

47. The application is DISMISSED.

(Signed)

Judge Francis Belle

Dated this 2nd day of September 2020

Entered in the Register on this 2nd day of September 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi