



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TURK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

Introduction and procedural history

1. The Applicant was a P-4 Political Affairs Officer (“PAO”) with the United Nations Assistance Mission for Iraq (“UNAMI”).
2. On 7 January 2022, he filed an application with the Dispute Tribunal, followed by addenda on 26 July and 5 August 2022, contesting the decision to not renew his fixed-term appointment (“FTA”) beyond its expiration date of 31 December 2021.
3. The Respondent filed a reply on 9 February 2022.
4. There were multiple and overlapping filings from the Applicant on every procedural step, including motions for interim measures, whereby the Applicant sought to be reinstated in the United Nations, to be paid basic salary in full, to be placed on administrative leave, to have the vacancy for the post 30048407 in UNAMI put on hold and, again to be paid his salary from the date of the non-renewal of his appointment until May 2022. The first motion was refused by the Tribunal’s order No. 020 (NBI/2022); subsequently, following a round of clarifications sought from the Applicant through correspondence with the UNDT Registry and a case management discussion held on 6 July 2022, another motion was refused by Order No. 077 (NBI/2022); finally, the last motion was refused by Order No. 128 (NBI/2022).
5. The parties stated that they did not require a hearing. Pursuant to the Tribunal’s directions, the Respondent and Applicant filed additional submissions on 15 and 26 July 2022 respectively.

Undisputed facts

6. The Controller required of UNAMI to reduce the 2022 budget by 0.7%.¹ On 21 May 2021, the Secretary-General submitted to the General Assembly a proposed programme budget (“Proposed Budget”) for UNAMI for the fiscal year

¹ Reply, annex R/21.

2022 which included the reclassification of one P-4 PAO post to P-3.² On 1 October 2021, the Advisory Committee on Administrative and Budgetary Questions (“ACABQ”) approved the portion of the budget regarding the reclassification of one of the P-4 PAO post.³

7. On 27 October 2021, in anticipation of the General Assembly’s approval of the Proposed Budget, UNAMI, in consultation with the staff representatives, prepared the Terms of Reference (“ToRs”) for a Comparative Review Panel (“CRP”). The ToRs provided that the CRP would review lists of posts and staff members provided by the Human Resources Section (“HR”), where staffing by section/unit, occupational group, functional title, category, and the level was greater than the proposed number of posts in the revised mission structure in the Proposed Budget. Since the Proposed Budget resulted in one less P-4 PAO position in the Office of Political Affairs (“OPA”), the 10 P-4 PAOs in that office were subject to a comparative review. The CRP was comprised of members nominated by both management and the Field Staff Union⁴ and did not include staff members from the OPA.⁵

8. On 28 October 2021, the UNAMI Chief Human Resources Officer (“CHRO”) informed the Applicant that he would be subjected to the comparative review process and shared the ToRs. The CHRO also requested him to submit his updated Personal History Profile (“PHP”) and performance evaluations for the previous two performance cycles.⁶

9. The request for classification by UNAMI to the Department of Management Strategy, Policy and Compliance (“DMSPC”), dated 31 October 2021, identified the post to be downgraded by its number, No 30048407, i.e., the post occupied by the Applicant.⁷

10. On 24 November 2021, the Panel compared the P-4 PAOs, including six

² *Ibid.*, para. 8 and annex R/22.

³ Respondent’s response to Order No. 067 (NBI/2022), at para. 11, referencing A/RES/76/246/X, *Estimates in respect of special political missions, good offices and other political initiatives authorized by the General Assembly and/or the Security Council (Adopted on 24 December 2021)*.

⁴ Reply, at para. 9 and annex R/2.

⁵ *Ibid.*, at para. 14.

⁶ *Ibid.*, annex R/4.

⁷ Applicant’s Motion for interim measures dated 12 September 2022, annex 1.

of them who were serving on FTAs. Of the six staff members compared, the Applicant scored the lowest. Consequently, the CRP identified the Applicant for retrenchment.⁸

11. By letter dated 30 November 2021, the UNAMI Chief of Mission Support informed the Applicant that he had been identified for retrenchment in the comparative review process and as a result his appointment would not be renewed beyond 31 December 2021 in line with staff rule 9.4.⁹

12. On 7 December 2021, the Applicant sought management evaluation of the decision not to extend his appointment.¹⁰

13. The proposed budget was adopted by the General Assembly on 24 December 2021.¹¹

14. By letter dated 28 December 2021, the Management Evaluation Unit decided to uphold the decision to not renew his FTA with UNAMI beyond 31 December 2021.¹²

15. On 19 June 2022, UNAMI advertised a P-4 PAO post¹³ as well as a P-3 PAO post No.¹⁴

Applicant's case

16. The Applicant's case is that the non-extension his FTA beyond its expiration date of 31 December 2021 was unlawful because the whole motive behind downgrading his post was motivated by OPA's malicious and hostile intention to separate him from service. This, according to the Applicant, transpires from the following facts:

⁸ *Ibid.*, at annex R/5.

⁹ *Ibid.*, at annex R/6.

¹⁰ Application, annex 3.

¹¹ Reply, para. 13, referencing A/RES/76/246 / X, *Estimates in respect of special political missions, good offices and other political initiatives authorized by the General Assembly and/or the Security Council* (Adopted on 24 December 2021) and A/76/6(sec. 3) Add.6, *United Nations Assistance Mission for Iraq Proposed Budget Programme for 2022*.

¹² *Ibid.*, at annex 4.

¹³ Respondent's annexes R/17 and R/19, the rubric "Umoja position number".

¹⁴ *Ibid.*, annex R/20, the rubric "Umoja position number".

a. No rational reasons were given for initiating the process of downgrading his post. While the number of P-4 positions in OPA are 10, eight of these positions were filled and two positions remained vacant. Downgrading a position does not necessarily lead to saving in the allocated budget because of the different steps in the pay scale. A job opening in June 2022 for a P-4 position under his former post number, No. 30048407 is evidence that UNAMI's decision was not taken with good motive.

b. There also were two vacant P-3 positions in OPA's Baghdad office, according to the OPA organizational chart.

c. In the request for classification (downgrading), his position was identified by the post number even before the comparative review panel was formed.

d. The CRP scores were manipulated to favour other staff members. One comparator staff member was not even with UNAMI. UNAMI HR directed the CRP members to deliberately accept all years of experience outside the United Nations as relevant experience. Specifically, the Applicant indicates that the score of another comparator, Mr. NN, was unduly inflated in this way. By contrast, his score of relevant experience was improperly lowered because the CRP did not consider as relevant his employment as Development Officer (2002-2004) with the Yemeni Development Foundation and News Editor at Ihlas Media Center in Turkey (1994-1997).

e. His score for the core value of respect for diversity was not properly recorded because of a technical malfunction, whereas it should be "outstanding".

f. To protect themselves from legal proceedings, UNAMI management dated the letter of non-renewal as 30 November 2021 although, in reality, it was prepared and sent to him on 2 December 2021

providing him only with a few days' notice before his fixed-term appointment was due to expire.

g. UNAMI management did not notify him of its intention of downgrading his post when the UNAMI budget proposal was sent to the Headquarters in May 2021. They did not offer him employment even at a lower grade, at the P-3 level, neither did UNAMI management make any efforts to reassign him within or to another mission.

h. The discrimination against him had also been manifested by the fact that during COVID-19 pandemic, he had been forced to work from home. Yet, other colleagues were allowed to work from their offices, purportedly as essential staff, even though they were newly appointed staff members. Further evidence of discrimination against him is demonstrated by the refusal by UNAMI's medical section to grant him certified sick leave during his last weeks of service.

17. The Applicant requests the Tribunal to grant him the following reliefs.

a. That the decision not to renew his appointment be rescinded.

b. That the implied administrative decision not to make good faith efforts to find an alternative position for him be rescinded and that he be provided with an FTA.

c. That he be adequately compensated for the damage to his reputation, to his morale and physical health. The Applicant request the Tribunal to grant him damages beyond the two years' net base salary foreseen by art. 10.5(b) of the Tribunal's Statue, because of the malicious actions of UNAMI.

Respondent's case

18. The Respondent's case is that the impugned decision was lawful.

a. The non-renewal of the Applicant's appointment was a direct result of the Controller's direction to reduce expenses in the 2022 budget. In

anticipation of approval by the General Assembly, UNAMI conducted a downsizing exercise. The Proposed Budget was adopted by the full General Assembly. The non-renewal of the Applicant's appointment beyond 31 December 2021 implemented the General Assembly resolution.

b. The downgrading of one of the P-4 PAO post had already happened in the previous budgetary year, the difference being that then it concerned an unencumbered post and, as such, did not entail a loss of employment. However, there were no vacant P-4 PAO posts at the time of the exercise in question, rather, one of the P-4 PAO remained on loan with the United Nations Support Mission in Libya ("UNSMIL").¹⁵

c. It is not true that post No. 30048407 has been filled as P-4 following the Applicant's separation. The post advertised under No. 30048407 was the one reclassified as P-3. The P-4 PAO post advertised from 19 June to 3 July 2022 was post No. 30050635, vacated only in 2022, as a result of the incumbent having been selected for a P-5 post at UNSMIL.¹⁶

d. The reason for identifying the Applicant's post number in the request for classification was that the UNAMI human resources officer based the request on the most recent Entry on Duty ("EOD") date. Amongst all the P-4 PAOs on an FTA, the Applicant had the most recent EOD of 19 April 2015 compared to 1 September 2000, 15 August 2005, 6 January 2009, 1 December 2010 and 6 October 2013 for other P-4 PAOs on FTAs. In any event, the identification of that post number did not determine which staff member would be retrenched. Post incumbency would have been changed, if necessary, depending on the CRP outcome. Any of the budgeted P-4 PAO posts could have financed the Applicant's appointment had he been retained.

e. The CRP was lawful. The process included the development of

¹⁵ Reply, annex R/3.

¹⁶ Respondent's response to Applicant's motion for interim measures, annex R/18.

ToRs in consultation with staff representatives¹⁷, the appointment of an independent panel, clear communication to the affected staff members, and a review process based on clear criteria. The Applicant was provided with the information he had requested regarding the other staff members to be included in the review. The claim of abuse of process by his supervisor cannot be substantiated as no one from OPA was on the Panel

f. The Panel correctly calculated the scores for each staff member based on their PHPs and performance evaluations. Based on this scoring framework, the Applicant had the lowest score.

g. There is no merit to the Applicant's claims in relation to UNAMI HR providing the initial data on professional experience to the Panel. The ToRs provided that UNAMI HR could pre-complete the data based on the already available information which the Applicant himself had provided.¹⁸ The information was not subjective. The Panel verified each data point that HR provided.¹⁹

h. UNAMI HR provided to the Panel the Applicant's most recent PHP which he had uploaded on Inspira because it contained more up to date information and was more favorable to the Applicant.²⁰ The version submitted by the Applicant on 21 November 2021²¹ was outdated and was apparently from Galaxy, the defunct recruitment platform that preceded Inspira. The Applicant's experience as News Editor and Development Officer, listed in the Galaxy PHP was not included on the Inspira PHP. However, even if those two roles had been considered as relevant experience for argument's sake, their inclusion would not have changed the outcome of the CRP. The Galaxy PHP indicated three years of experience as a News Editor and one year, nine months as Development Officer, totaling four complete years and resulting in four additional

¹⁷ Reply, annex R/2.

¹⁸ *Ibid.*, annexes R/4 and R/10.

¹⁹ *Ibid.*, annex R/12.

²⁰ Respondent's response to Order No. 067 (NBI/2022), annex R/15.

²¹ *Ibid.*, annex R/16/

points.²² Since the difference in scores between the Applicant and the next ranked individual was 11 points, the Applicant would have still ranked the lowest and would still have been retrenched. Had the Panel used the PHP uploaded by the Applicant on the *Galaxy* portal, the Applicant's score would have been even lower and the score difference between the Applicant and the next ranked individual would have been not 11, but 21 points.

i. The Applicant's relevant scores for the core value of respect for diversity were properly recorded. As per the CRP's ToRs, the Panel scored the performance evaluations for the previous two performance cycles, i.e., the 2019-2020 and 2020-2021 performance only. The alleged inaccuracy of the Applicant's evaluation on the score of respect for diversity pertained to the 2018-2019 performance evaluation. It had no bearing on the comparative review.

j. The two-day lag in sending the Applicant the formal notification of the decision not to renew his appointment did not breach his rights. Inasmuch as it is normal practice to give 30 days' notice, the Applicant was not prejudiced by the 28 days' notice.

k. The Applicant's appointment expired. It was not terminated as he claims. Therefore, the issue of alternative placement under staff rule 9.6(e) does not arise. The Applicant had no right to be retained or reassigned to another post as he claims nor did he have a right to 30 days' notice of the contested decision.

l. There is no merit to the claim that UNAMI was biased because the Applicant worked from home under the Alternative Working Arrangement ("AWA") while other staff members worked from the office. The Applicant's telecommuting arrangement had no bearing on the contested decision or the CRP. No points were awarded or deducted based on working arrangements.

²² Reply, annex R/9.

19. Finally, the Applicant has not produced evidence of harm in causal link between the contested decision. According to the Applicant's own treating physician, the cause of his injury is inconclusive and most likely due to his physical activity. There is no evidence that the injury was related to the contested decision.

20. The Respondent submits that the Applicant is not entitled to the requested remedies and requests the Tribunal to dismiss the application.

Considerations

21. Based on the Applicant's grievances, the Tribunal frames the following questions for consideration: (a) lawfulness and reasonableness of downgrading one of the P-4 posts at POA; (b) whether the downgrading was a genuine exercise or a scheme aimed to re-advertise it; (c) procedural fairness of the comparative process; (d) substantive correctness of the outcome; and (e) various allegations of discriminatory treatment.

(a) Lawfulness and reasonableness of downgrading one of the P-4 posts at OPA.

22. The Respondent indicates that the Controller instructed UNAMI to propose a budget that was within or below the maximum budget level and avoid top-heavy staffing structures. UNAMI determined that the OPA had a top-heavy staffing structure with fewer P-3 posts than the workload demanded. A large portion of the office's workload was within the normal duties of a P-3 PAO, including monitoring events and regular reporting.²³ The structural imbalance meant that some P-4 PAOs regularly performed the P-3 level functions, pointing out to a need to assign those functions to a P-3 post. These reasons were set forth in the Secretary-General's budget proposal to the General Assembly and his answers to questions from the Advisory Committee on Administrative and Budgetary Questions.²⁴ The restructuring is an on-going process. UNAMI also eliminated a P-4 PAO position in the prior 2021 budget year when one P-4 PAO

²³ Respondent's submissions pursuant to the Tribunal's case management directions of 6 July 2022, annex R/22.

²⁴ *Ibid.*, annex R/23.

post was classified downward to P-3²⁵, the difference being that since that P-4 post had been vacant, there was no loss of employment, unlike in 2022.

23. At the outset, the Tribunal points out that once approved by the General Assembly, the decision to downgrade a post is placed outside the Tribunal's jurisdiction. There can be no issue of restoring this position and the Applicant as its incumbent. The only question that could be entertained by the Tribunal is whether, in proposing the budget, the administration acted lawfully, or, as it is alleged, engaged in a conspiracy against the Applicant to mislead the General Assembly.

24. In the light of the explanation and documents submitted by the Respondent²⁶, the Tribunal finds that the Secretary-General's recommendation to downgrade one of the P-4 posts was lawful. The Tribunal recalls that concerning the restructuring of a mission, even when it results in loss of employment for staff, the Secretary-General has a wide, albeit not unfettered, discretion.²⁷ Cutting expenses is a legitimate goal, especially considering the difficult financial situation of the Organization. Where the outputs required by the General Assembly are attainable through staffing on a lower level, it is legitimate to pursue downgrading of posts. Where the retrenchment does not entail termination, but, as in this case, is coordinated with the expiration of the appointments at the end of their terms, the interests, at least *prima facie*, are properly balanced. That there could have been alternative ways of saving, does not render the chosen solution "absurd or perverse", in violation of the limits of the Secretary-General's discretion.²⁸ The Applicant's allegations that there were vacant P-4 positions at the time of the CRP are baseless; conversely, the Respondent demonstrates that all 10 of them were encumbered.²⁹ Finally, the Tribunal notes that downgrading of a P-4 post in OPA already in the 2021 budget year and proposing the same solution for the 2022 budgetary year as early as in May 2021, i.e., six months before the identification of the Applicant's post for entrenchment, and that a similar

²⁵ *Ibid.*, annex R/24.

²⁶ *Ibid.*, annexes R/21-24.

²⁷ *Gehr*, 2012-UNAT-236, para. 25; *Adundo et al.*, UNDT/2012/118, para. 68; *Rosenberg* UNDT/2011/045, para. 14

²⁸ See for example *Kanbar* 2021-UNAT-1082.

²⁹ Reply, annex R/3.

retrenchment was proposed regarding a P-4 position of Coordination Officer³⁰, indicate that it was an established *modus operandi* and not an *ad hoc* solution devised to target the Applicant.

(b) *Whether the downgrading of the post occupied by the Applicant was a genuine exercise or a scheme to re-advertise it.*

25. It has been sufficiently documented that post No. 30048407, to which the Applicant refers as “his”, had been classified³¹ and, in June 2022, advertised as P-3.³² The Applicant’s negation of this fact lacks rational basis.

26. As concerns a contemporaneous job opening for a P-4 PAO position, the Tribunal is satisfied that UNAMI advertised post No. 30050635³³, and not the post previously held by the Applicant. The Tribunal required the Respondent to explain and prove the facts giving rise to the relinquishment of this post by the incumbent. In particular, the Respondent was requested to demonstrate whether a decision of selection, a transfer request or similar information initiating the process regarding post No. 30050635 had become known to the Mission before or after the separation of the Applicant. The Respondent has documented that the incumbent of post 30050635 was selected for the P-5 Senior Information Analyst position in UNSMIL on 16 February 2022, of which UNAMI was notified through the request for release on 7 March 2022³⁴, and the process was finalized through a personnel action only in April 2022.³⁵ The emergence of the facts that occasioned the P-4 PAO vacancy was thus posterior to the separation of the Applicant.

27. In accordance with the aforesaid, the Tribunal is satisfied that the downgrading of post No. 30048407 was a genuine reorganization exercise.

³⁰ Respondent’s submissions pursuant to the Tribunal’s case management directions of 6 July 2022, annex R/23.

³¹ Respondent’s response to Order No. 067 (NBI/2022), annex R/13.

³² Respondent’s response to the Applicant’s motion for interim measures, 7 July 2022, annex R/20,

³³ *Ibid.*, annexes R/17 and R/19.

³⁴ Respondent’s response to Order No. 091 (NBI/2022), annexes R/25 and R/26.

³⁵ Respondent’s response to the Applicant’s motion for interim measures, 7 July 2022, annex R/18.

(c) *Procedural fairness of the comparative review process.*

28. Based on the material before it, the Tribunal endorses the Respondent's arguments captured above under paras. 18(e) and (g). It also finds that the Respondent has rebutted the Applicant's allegation that one of his comparators is assigned to the United Nations Interim Force in Lebanon ("UNIFIL") and not UNAMI³⁶; and documents that that staff member was reassigned to UNAMI on 24 February 2019.³⁷ The Applicant's claim that another comparator, Mr. NN, should not have enjoyed a retention preference as a continuing appointment holder is also incorrect.³⁸ The Respondent demonstrates that NN had been granted a continuing appointment effective 2 June 2015.³⁹ and as per staff rules 9.6(e) and 13.1(d), the Mission rightly preferred him for retention. This fact also relieves this Tribunal from considering the Applicant's claim about irrelevance of Mr. NN's professional experience. Altogether, the Tribunal finds that the Applicant's allegations concerning these two individuals are baseless.

29. The comparative review process criteria included: relevant United Nations and outside United Nations work experience; performance ratings for the core values of professionalism, integrity and respect for diversity; the overall performance rating for the last two performance cycles; and seniority, based on EOD to the United Nations.⁴⁰ The Tribunal notes that a comparative review process, just as it is the case with recruitment processes, is not an exact science. The criteria for appraisal are devised conventionally in order for them to be objectively measurable. The Tribunal finds, in any case, that the criteria employed for the exercise in question were rational and mirrored what is routinely applied in similar comparative processes in the Organization.⁴¹ Among them, attaching points for seniority in service with the employer is a criterion widely applied in the public as well as the private sector. The Tribunal sees no basis for impeaching this criterion.

³⁶ Application, sec. VII, para.9.

³⁷ Reply, annex R/8.

³⁸ Application, sec. VII, paras. 6-8.

³⁹ *Ibid.*, annex R/9.

⁴⁰ Reply, at para. 10 and annex R/1.

⁴¹ See for example, *Barud* 2022-UNAT-1204; *Mbogol* UNDT/2021/080.

30. The Tribunal further notes that the fact that the UNAMI Human Resources on their own motion furnished the Panel with the Applicant's more updated PHP (from Inspira) than the one that he himself had uploaded (from Galaxy), proves that the Human Resources acted towards objectivity and accuracy of the comparative review process.

31. As regards the identification of the Applicant's post number in the request for classification before the results of the CRP were established, the Tribunal is not entirely satisfied with the explanation provided. The EOD in the United Nations system was only one of the criteria for the review and it is not explained why the Human Resources Officer would have chosen it as determinative for the classification request. Rather, the Tribunal is prepared to accept that, in all appearances, the Human Resources had had a "dry run" of the comparative review and determined for themselves the results. While this practice is largely responsible for the present dispute and, by and large, is to be discouraged as usurpation of competence which is damaging to the appearance of fairness, there is, however, no indication that it could have had any impact on the comparative review process outcome.

(d) Substantive correctness of the CRP outcome.

32. Regarding the alleged inaccuracy of the Applicant's evaluation on the score of respect for diversity, the email from his then First Reporting Officer attesting to the impossibility of correcting the score to "outstanding", pertained to the 2018-2019 performance evaluation.⁴² The Tribunal is satisfied that it had no bearing on the result of the comparative review.

33. Regarding the score for the relevant professional experience, the Tribunal must note, first, that no one else but the Applicant was responsible for uploading into the system the two inaccurate and conflicting PHPs. The Galaxy PHP goes back to 1994 and lists three employments, two of which are now claimed to be relevant by the Applicant: Development Officer (2002-2004) with the Yemeni Development Foundation, and News Editor (1994-1997) at Ihlas Media Center in

⁴² Applicant's annex titled "Official addendum to Mr. Turk's 2018-2019 e-PAS evaluation", being an email from Ms. Lawrence Liu from 13 May 2019.

Turkey. That PHP ends with the posting as a Secretary at the Jordanian Embassy to the United States of America (“USA”) at an unspecified time after 2010. The Inspira PHP, in turn, starts listing the relevant employment in 2004, i.e., presumably after the Applicant’s engagement with the Yemeni Development Foundation as Development Officer, but continues beyond the Embassy of Jordan to the USA, until the most recent post with UNAMI. There are, moreover, differences in dates and duration of employments declared in both documents; these are ranging from weeks to years. The most serious discrepancies concern the Applicant’s employment as a Secretary at the Jordanian Embassy to the USA, which, according to the PHP from Galaxy began on 1 August 2010 and ended on 1 January 2079, the latter figure being obviously an error, whereas according to the PHP from Inspira, it began on 1 September 2011 and ended on 9 January 2012.

34. The Tribunal stresses that the credibility of either document is low in the face of the Applicant’s apparent nonchalance in completing them. The Tribunal does not find that experience as a news editor, consisting in editing and translating news, is *prima facie* relevant for a P-4 PAO post. It notes, moreover, that the employments as Development Officer (2002-2004) with the Yemeni Development Foundation and News Editor (1994-1997) at Ihlas Media Center in Turkey had not been considered relevant by the Applicant himself when he filed the PHP on Inspira. Were the Applicant to be retained in service of the United Nations, the matter of truthfulness and relevance of the alleged employments would most likely mandate an inquiry. Importantly for the issue at hand, however, even in accepting as relevant all the declared employment from both documents, the Applicant’s score could only be improved by five points, thus leaving him six points behind the next ranked individual. As such, the use of one or the other PHP had no impact on the overall outcome of the CRP.

(e) *Various allegations of discriminatory treatment.*

35. Regarding the sweeping averment of improper purpose, i.e., that there was a preconceived plan to eliminate the Applicant, the Tribunal recalls that, in accordance with the presumption of regularity, the staff member has the burden of

proving that improper factors played a role in the administrative decision.⁴³ In this regard, the Tribunal finds that the events cited by the Applicant, even if taken as true, are incapable of proving discriminatory or otherwise improper intent on the part of the author of the impugned decision. They either do not at all concern the decision-maker (refusal to approve sick leave; approval by the General Assembly of the post reclassification; 28 days' notice of the decision not to renew the Applicant's appointment compared with normal practice of 30 days' notice; vacation of a P-4 post after separation of the Applicant), or they concern incidents unrelated to the comparative review process (isolated performance issues that apparently have not affected his performance appraisal; a decision not to consider the Applicant essential staff during the pandemic; the fact that UNAMI did not notify the Applicant of its intention of downgrading his post when the budget proposal was sent to the Headquarters in May 2021). The mere fact that there were workplace disagreements do not amount to proof of improper motives, neither do these alleged facts suffice to establish a causal link of motives with the issuance of the challenged administrative decision.⁴⁴

36. The Tribunal, moreover, endorses the Respondent's argument regarding the lack of his obligation to secure an alternative placement for the Applicant. It notes, in any event, that the Applicant, on his own admission⁴⁵, chose not to apply for either the P-4 or the P-3 PAO posts advertised in June 2022.

37. Based on the aforesaid, the Tribunal finds that the impugned decision was not unlawful. This renders moot the issue of compensation.

JUDGMENT

38. The application is dismissed.

⁴³ E.g., *Liu* 2016-UNAT-659; *Assale* 2015-UNAT-534; *Said* 2015-UNAT-500; *Pirnea* 2013-UNAT-311.

⁴⁴ See, e.g., *Kanbar* 2021-UNAT-1082 para. 40.

⁴⁵ At the case management discussion on 6 July 2022.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 2nd day of November 2022

Entered in the Register on this 2nd day of day of November 2022

(Signed)

Kwaky-Berko, Registrar, Nairobi