

UNDT/2013/062, Hersh

UNAT Held or UNDT Pronouncements

Classification - There is no evidence that the procedure for a re-classification of the Broadcast Technology Officer ("BTO") post encumbered by the Applicant in UNMIS was ever undertaken. As already pointed out, the Chief of radio took it upon herself to re-write the competencies of the post to which in January 2010, the Applicant had been competitively recruited before she came on board as Chief of radio, perhaps in order to make the Applicant who was encumbering the post, less eligible.

Delegated Authority - The termination decision was taken without the requisite delegated authority notwithstanding the fact that all posts within UNMIS were necessarily to be abolished as a result of Security Council Resolution 1997 (2011).

Due Process - Even if it could be argued that the profile of the BTO P-4 post had changed due to the drafting of new terms of reference by, the only viable course of action in the circumstances for the purposes of filling it would have been a regular, competitive selection process and not a comparative review as happened in this case. The so-called comparative review between the Applicant and Mr. Tobgyal for the only post of BTO in the new mission was manifestly fraudulent in the circumstances.

The Tribunal ordered rescission of the administrative decision to separate the Applicant from service and ordered the Respondent to reinstate the Applicant. The Tribunal awarded compensation. The case was referred to the Secretary-General under art. 10.8 of the Statute of the Tribunal.

Accountability referral: the present case starkly demonstrates that managers can easily have their mistakes and misdeeds buried with the careers of those staff members which have been ruined thereby. The Tribunal exercises its power of referral under art. 10.8 of its Statute and refers this case to the Secretary-General for the purpose of considering what action should be taken in respect of the conduct of Ms. Herman in deliberately, recklessly and illegally re-classifying the P-4 BTO post in the new mission by re-writing its terms of reference without authority, and

wrongfully subjecting the Applicant to a comparative review process to her detriment.

Decision Contested or Judgment/Order Appealed

On 7 October 2011, the Applicant filed an Application contesting the termination of her fixed-term appointment with the United Nations Mission in Sudan (“UNMIS”) upon the closure of UNMIS on the grounds that, inter alia, the decision was a breach of the process by which staff members of UNMIS were transferred to the United Nations Mission in South Sudan (“UNMISS”).

Legal Principle(s)

N/A

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Hersh

Entity

UNMIS

Case Number(s)

UNDT/NBI/2011/61

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

27 Mar 2013

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Classification (post)

Due process

Separation from service

Referral for accountability

Applicable Law

Administrative Instructions

- ST/AI/1998/9

Information Circulars

- UNMIS IC 218/2011
- UNMIS IC 327/2011

UNDT RoP

- Article 18.5

UNDT Statute

UNRWA DT Statute

- Article 10.8

Related Judgments and Orders

UNDT/2011/192