

UNDT/2014/132, Matadi, Johnson, Gaye, Doe J., Doe P.

UNAT Held or UNDT Pronouncements

Receivability: The Tribunal held that the Applicants had standing pursuant to art. 2.1 of its Statute and found the applications receivable. Merits: Was the restructuring genuine? The Tribunal found that, although the retrenchment exercise resulted in the non-renewal of the Applicants' appointments, the motivation for it was genuine as it implemented General Assembly resolution 66/264. Was the restructuring implemented through a fair and lawful process? Consultations: The Tribunal found that the Administration did not consult the staff or staff representatives about the posts to be abolished before the decision was made and that this constituted a breach of the Staff Rules and the relevant Secretary-General's bulletins. The procedural flaws in this case were of such nature as to warrant the rescission of the contested decision. Methodology: The Tribunal found that the methodology used was acceptable and fair. It mirrored the operational functioning of the mission and was consistent with the Guidelines. It was therefore lawful. Were the methodology and criteria correctly and fairly applied? The Tribunal considered that the staff movements were not designed to single out one or more of the Applicants in view of the retrenchment, nor were they manifestly detrimental for them. The Tribunal concluded that the new CRP conducted its review in accordance with the Guidelines and in a fair and objectively verifiable manner. The Tribunal noted that several errors occurred in the comparative review. However, having examined each of the errors detected, the Tribunal concluded that none of these mistakes had material repercussions on the final outcome. There was nothing to suggest that any of the inaccuracies identified were introduced intentionally, or with the purpose to favour or disadvantage any of the reviewed staff members. For these reasons, the mistakes found in the comparative review, while regrettable, were not of such nature as to invalidate the impugned decisions. Remedies: The decisions not to renew the Applicants' fixed-term appointments were in breach of the applicable rules and, as such, should be rescinded. As alternative compensation in lieu of rescission, the

Tribunal set: a) two months' net base salary for the three Applicants who held posts deemed "unique"; and b) one month's net base salary for those Applicants who underwent a comparative review. The Respondent was also ordered to pay one month's net base salary to each Applicant for moral damage.

Decision Contested or Judgment/Order Appealed

The Applicants, who served in various capacities at the GS-3 and GS-4 level in the United Nations Mission in Liberia ("UNMIL"), filed an individual application contesting the decisions not to renew their fixed-term appointments beyond 30 June 2013. These decisions were made following a restructuring exercise resulting in the abolition of over 100 posts at UNMIL.

Legal Principle(s)

Non-compliance with the duty to maintain consultations with staff representatives is reviewable in the context of assessing the legality of an administrative decision affecting the rights of an individual staff member (Allen UNDT/2010/009; Villamoran UNDT/2011/126). A proposal to restructure a mission that results in loss of employment for staff members falls within the Secretary-General's wide, but not unfettered, discretionary authority (Rosenberg UNDT/2011/045; Gehr 2012-UNAT-236 confirming Gehr UNDT/2011/142). It is not for the Tribunal to substitute its own views for those of the Secretary-General on matters such as how to organize work and meet operational needs, determining the review criteria, the methodology for applying the criteria or the evaluation of staff based on these criteria (Pacheco UNDT/2012/008). Decisions may be set aside only on limited grounds, such as breach of procedural rules, or if discretion was exercised in an arbitrary, capricious or illegal manner. The procedure must be fair and transparent (Chen 2011-UNAT-107; Adundo et al. UNDT/2012/118). Consultation and communication with staff and staff unions is an essential element of a fair process (staff regulation 8.1(a)). Where a retrenchment process involves a comparative review of staff, the review must be based on fair and objective criteria, and be carried out by means of an impartial and transparent process (see Rawat UNDT/2011/146). The decisions must be supported by the established facts and not be based on erroneous, fallacious or improper motivation. "[S]taff-management consultations are not only a preferable form of communication but ... an indispensable element of due process" (Allen

UNDT/2010/009). “[E]ach party to the consultation must have the opportunity to make the other party aware of its views” (UNAdT Judgment No. 518, Brewster (1991)). Consultation is not the same as negotiation and “it is not necessary for the Administration to secure consent or agreement of the consulted parties” (Rees UNDT/2011/156; Gehr UNDT/2011/142; Gatti et al. Order No. 126 (NY/2013); Adundo et al. UNDT/2012/118). Consultation must be full, effective and meaningful. Staff members are to be given proper notice, a say in the process and their interests have to be taken into consideration (Adundo et al. UNDT/2012/118; Gatti et al. Order No. 126 (NY/2013)). Consultations must be carried out in good faith and should generally occur before a final decision is made (Rees UNDT/2011/156; Chattopadhyay UNDT/2011/198; Gatti et al. Order No. 126 (NY/2013)). It is trite law that any Applicant alleging improper motives bears the burden of proving such claim.

Outcome

Judgment entered for Applicant in full or in part

Full judgment

[Full judgment](#)

Applicants/Appellants

Matadi
Johnson
Gaye
Doe J.
Doe P.

Entity

UNMIL

Case Number(s)

UNDT/GVA/2014/034
UNDT/GVA/2014/035
UNDT/GVA/2014/036
UNDT/GVA/2014/037

UNDT/GVA/2014/038

Tribunal

UNDT

Registry

Geneva

Date of Judgement

11 Nov 2014

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Compensation

Non-renewal

Reason(s)

Performance management

Performance evaluation

Remedies

Separation from service

Applicable Law

GA Resolutions

- A/RES/66/264

Secretary-General's bulletins

- ST/SGB/172
- ST/SGB/274

Staff Rules

- Rule 8.1(a)
- Rule 8.1(f)

Related Judgments and Orders

UNDT/2010/009

UNDT/2011/126

UNDT/2011/045

UNDT/2012/008

2011-UNAT-107

UNDT/2012/118

UNDT/2011/146

UNDT/2011/156

UNDT/2011/142

UNDT/2011/198

2014-UNAT-451

2012-UNAT-236