UNDT/2016/156, Kasaku

UNAT Held or UNDT Pronouncements

With respect to receivability, the Applicants could not challenge the abolition of their posts by a decision of the General Assembly which by itself is akin to a country's constitution, the higher norm, and the supreme organ of the Organization. The Applicants lacked the capacity to challenge the non-renewal of their appointments in so far as the non-renewal decision was properly implemented in consequence of the General Assembly's decision to abolish their posts. Unequal treatment did not occur in the implementation of the Mission's restructuring which led to the abolition of 80 language assistants' posts, including the Applicants'. Five languages assistants had encumbered borrowed posts from other sections at the time of the abolition of the 80 language assistant posts and were therefore not affected by the abolitions. One of them although identified as a language assistant was actually serving as a supply assistant. Lastly, one of the language assistants successfully applied and was laterally transferred to the post of administrative assistant. The provisions of section 3.7(b) of ST/AI/2013/4 were not contravened by the hiring of the Applicants under individual contractor contracts after the abolition of their posts because the posts they previously encumbered as language assistants had ceased to exist at the time they were offered the new contracts as individual contractors at the Mission.

Decision Contested or Judgment/Order Appealed

The Applicants contested the decision not to renew their fixed-term appointments and to separate them from service on the grounds of abolition of their language assistant posts.

Legal Principle(s)

An administrative decision taken as a result of the decisions of the General Assembly is lawful; thus, the Secretary-General cannot be held accountable for

executing such a decision. A decision of the General Assembly is binding on the Secretary-General who has a duty to implement it. Section 3.7(b) of ST/AI/2013/4 does not envisage a situation of post abolishment. This section contemplates a situation where the post formerly encumbered by a former or retired staff member continues to exist and the separated staff member is reengaged as a consultant or individual contractor to continue to perform the same functions. The mischief that this section seeks to avoid is the continued indirect encumbrance of a post under the guise of a consultancy or individual contract by a staff member who by reason of retirement or other form of separation has left the Organization.

Outcome

Dismissed on merits

Outcome Extra Text

The Tribunal found that the Applicants' claims regarding the non-renewal of their fixed-term appointments was not receivable. Further, their claims regarding their recruitment under individual contractor contracts and lack of equal treatment had no merit.

Full judgment

Full judgment

Applicants/Appellants

Kasaku

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2015/149

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

22 Sep 2016

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post
Administrative decision
Separation from service
Expiration of appointment (see also, Non-renewal)

Applicable Law

Administrative Instructions

- ST/AI/2013/4

Related Judgments and Orders

2017-UNAT-750
2017-UNAT-751
2017-UNAT-752

2017-UNAT-753
2017-UNAT-754
2017-UNAT-755
2017-UNAT-756