

UNDT/2022/065, Muratore

UNAT Held or UNDT Pronouncements

Whether there was a genuine restructuring process In the present case, there is no evidence that the restructuring exercise was not genuine. Instead, the evidence shows that there was a genuine, large-scale restructuring, and this resulted in numerous staff members and non-staff personnel being separated from service. The restructuring of WSSCC was in effect the shutting down of WSSCC and the establishment of the SHF. Moreover, the strong donor support shows that it was a genuine restructuring. As the donors have a fundamental objective to ensure that the funds they provide are appropriately spent, their strong support is a good indication that the decisions that had been made about the restructuring are not due to personal agendas. Also, while the Applicant alleges at some length that there were some irregularities in some Steering Committee meetings, the evidence on record shows that at the 21 July 2020 Steering Committee meeting, the Steering Committee approved the restructuring that had been extensively debated in the preceding days. Therefore, the abolition of the Applicant's post was part of a genuine large-scale organizational restructuring endorsed by the WSSCC Steering Committee and the donors to WSSCC. Whether the alleged procedural irregularities rendered the non-renewal decision unlawful The alleged conflict of interest on the part of the Executive Chair The Tribunal finds no merit in the Applicant's allegations in this respect. First, after a 27-week investigation, IAIG found the allegations regarding the conflict of interest on the part of the Executive Chair to be unsubstantiated. In this respect, the Applicant argues that no reliance may be placed on the findings of UNOPS' oversight to evidence that the payments and process were regular. However, apart from pointing out IAIG's failure to identify issues in relation to Sustainable Investments in Infrastructure and Innovation ("S3i", and previously "We Are The Oceans" ("WATO")) projects, the Applicant did not provide direct evidence to support his assertion. Second, there was no conflict of interest even when the key facts are considered. Contrary to the Applicant's suggestion, the functions of the Executive Chair are different from those of the ED. Indeed, the Terms of Reference ("TOR") of the Executive Chair and the Vacancy

Announcement for the WSSCC ED post show that the Executive Chair is to provide overall leadership and direction for the development and approval of the next Strategic Plan, whereas the ED is to ensure the successful implementation of WSSCC's strategic plan. Furthermore, as per her TOR, the Executive Chair should also communicate on a regular basis with the Steering Committee members on emerging issues. Such communications function cannot give rise to any conflict of interest. Moreover, the Applicant failed to establish that receiving of USD16,500 per month for part-time work as Executive Chair on a consultancy basis is in violation of WSSCC's governance rules. The UNOPS Director of Regional Portfolios approved the amount that the Executive Chair received. Even assuming arguendo that there was a conflict of interest, the Tribunal notes that sec. 3.5.3 of the WSSCC Governance Guidelines provides in its relevant part that "[d]epending on the nature of the conflict of interest, the Steering Committee will decide whether that member may continue to hold office or should stand down". In the present case, the Steering Committee agreed to their Chair becoming the Executive Chair at their 33rd meeting and agreed also that she "should be compensated for the time spent in the role of Executive Chair". Third, the Tribunal is not convinced by the Applicant's claim that the Executive Chair improperly influenced the Steering Committee. The evidence on record shows that the Steering Committee approved the restructuring after extensive debate and that such approval was endorsed by the donors. Accordingly, the Applicant failed to establish that there was a conflict of interest on the part of the Executive Chair in the restructuring process. Even if it is assumed that there was a conflict of interest on the part of the Executive Chair, if arguably not cured, it had no impact on the decision to restructure and, thus, no impact on the non-renewable decision. The alleged decisions made prior to Consultant's work The Applicant submits that decisions regarding the "top heavy" structure, i.e., the posts of the ED and the DED, were made before even hiring the Consultant who came to develop the organigram adopted. First, the staff table shared by the ED a.i. on 7 May 2020 shows that it sought to identify a "best case scenario" and a "realistic scenario" in terms of positions within SHF for the year 2021 considering the cost and, as such, it represents a series of projections about the number of posts. The table includes not only two D-level posts but also 20 P-level posts. Also, the Consultant was not bound by the staff table. Indeed, he had his own methodology and approach when developing the functional structure of the new SHF, which was documented and presented to the Steering Committee in a special background paper. Second, there is no merit in the Applicant's consequential claim that staff members are not being treated equally. Instead, the evidence on record shows that all WSSCC staff

members including the ED a.i., except for the Executive Director and a new staff member whose initial fixed-term appointment did not expire by the end of 2020, had been informed of the non-renewal of their contracts because the donors did not wish to continue funding the WSSCC project and it would be closed. Accordingly, the Applicant failed to prove any irregularities in relation to the alleged decisions made prior to the Consultant's work. The evidence on record shows otherwise. Indeed, the minutes of the Staff Forum meetings and Townhall meetings clearly show that the WSSCC/SHF restructuring was discussed with staff members. An email on record shows that even if one staff member was not available for the Staff Forum meeting, she was able to send her list of questions concerning the restructuring process to the staff representative by email. Furthermore, there is no indication that any staff forum representative stated that the Administration did not consult him/her. Moreover, the evidence on record shows that on 19 August 2020, the Applicant informed the staff representative that he did not wish to be represented by the staff forum representatives on any matters relating, inter alia, to the restructuring process. The fact that the Applicant did not want the staff forum representatives to represent him does not mean that there was no staff consultation. The internal affairs of staff representative bodies fall within "an area protected from [the Organization's] interference" (see, e.g., Kebede UNDT/2020/078, para. 17). As such, if staff members believed that their staff representatives were not performing up to the required standards, it is up to them to change their representatives. Therefore, the Tribunal rejects the Applicant's claim that there was a lack of consultation in the restructuring process. The alleged irregularities in the recruitment of new consultants Since the Steering Committee approved the restructuring after extensive debate and the restructuring was endorsed by the donors, any procedural irregularity resulting from the recruitment process, if arguably not cured, did not have any impact on the outcome of the restructuring and did not prejudice the Applicant's rights. In light of the above, the Applicant failed to demonstrate that the alleged procedural irregularities rendered the restructuring process and, consequently, the non-renewal decision unlawful. Whether the non-renewal decision was tainted by improper motives The Applicant did not present any evidence showing that the non-renewal decision was a result of discrimination against him. The evidence on record further shows that not only is the alleged discrimination unsubstantiated but it is contradicted by what the Applicant had written himself. Indeed, the emails from the Applicant on record show that at that time he described Ms. S.C. in very positive terms. Moreover, the Applicant does not dispute that the post that he was encumbering has actually been abolished. He does

not claim that a current post that was created during the restructuring exercise is substantially the same as the post that he was encumbering. Neither does he claim that the abolition of his post was unreasonable. Therefore, there is no evidence that the non-renewal decision was tainted by improper motives.

Decision Contested or Judgment/Order Appealed

The decision not to renew his fixed-term appointment beyond 31 December 2020.

Legal Principle(s)

A fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal under staff regulation 4.5(c) and staff rule 4.13(c), and expires automatically, without prior notice, on the expiration date specified in the letter of appointment pursuant to staff rule 9.4. The Administration is, nevertheless, required to state the reasons for a non-renewal to ensure that the Tribunal can judicially review the validity of the decision, and this reason must be lawful and supported by the facts (see, e.g., Nouinou 2019-UNAT-902, para. 50; He 2018-UNAT-825, para. 46; Obdeijn 2012-UNAT-201, paras. 33-39; Islam 2011-UNAT-115, paras. 29-32). The Organization enjoys a broad discretion to reorganize its operations and departments to meet changing economic conditions, including by abolishing posts (see, e.g., Russo-Got 2021-UNAT-1090, para. 32; Timothy 2018-UNAT-847, para. 25; Smith 2017-UNAT-768, para. 26). Therefore, the abolition of a post as a result of a genuine organizational restructuring is a legitimate and valid reason for not extending a fixed-term appointment (see, e.g., Russo-Got, para. 32; Islam, para. 30). While the Tribunal will not interfere in genuine organizational restructuring resulting in losses of employment by staff, “the Administration is obliged to act fairly, justly and transparently and without bias, prejudice, or improper motive in such exercises” (see, e.g., Russo-Got, para. 32; Timothy, para. 25; Smith, para. 26). It is incumbent on the staff member to prove that procedural irregularities played a role in the non-renewal decision (see, e.g., Porras 2020-UNAT-1068, para. 24; Nouinou, para. 47; He, para. 43; Said 2015-UNAT-500, para. 34). Procedural irregularities in the decision-making process do not necessarily result in a subsequent finding of unlawfulness of the contested decision and the determination of whether a staff member was denied due process or procedural fairness must rest upon the nature of any procedural irregularity and its impact (see Sarwar 2017-UNAT-757, para. 87). It

is for a party who alleges that ulterior motives tainted a decision to substantiate this claim by way of evidence (see, e.g., Ross 2019-UNAT-944, para. 25; Morsy 2013-UNAT-298, para. 23). When doing so, “[t]he mental state of the decision-maker usually will be placed in issue and will have to be proved on the basis of circumstantial evidence and inference drawn from that evidence” (see He 2016-UNAT-686, para. 39).

Outcome

Dismissed on merits

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

Muratore

Entity

UNOPS

Case Number(s)

UNDT/GVA/2021/22

Tribunal

UNDT

Registry

Geneva

Date of Judgement

1 Jul 2022

Duty Judge

Judge Hunter Jr.

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abolition of post

Reason(s)

Non-renewal

Applicable Law

Staff Regulations

- Regulation 4.5(c)

Staff Rules

- Rule 11.2
- Rule 4.13(c)
- Rule 9.4

UNDT Statute

- Article 8.1(c)

Related Judgments and Orders

2019-UNAT-902

2018-UNAT-825

2012-UNAT-201

2011-UNAT-115
2021-UNAT-1090
2018-UNAT-847
2017-UNAT-768
2020-UNAT-1068
2015-UNAT-500
2017-UNAT-757
2015-UNAT-592
UNDT/2020/078
2020-UNAT-992
2019-UNAT-936
2019-UNAT-944
2013-UNAT-298
2016-UNAT-686