



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/047

Judgment No.: UNDT/2023/076

Date: 24 July 2023

Original: English

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**Before:** Judge Francesco Buffa

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

NASSIR

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**

Self-represented

**Counsel for the Respondent:**

Clémentine Foizel, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant is a former Information Analyst, Political Affairs, a National Professional Officer at the Level-C (“No-C”) with the United Nations Assistance Mission for Iraq (“UNAMI”).
2. On 2 June 2022, the Applicant filed an application contesting the decision not to renew her Fixed-Term Appointment (“FTA”) beyond 31 December 2021.
3. On 1 July 2022, the Respondent filed his reply contesting the receivability of the application.
4. By Order No. 103 (NBI/2023) dated 9 June 2023, on case management, the Tribunal directed the parties to file closing submissions on or before Friday, 30 June 2023.
5. Both parties complied with the directions in Order No. 103 (NBI/2023) on 30 June 2023.

## **Facts**

6. On 25 October 2018, the Applicant was interviewed for vacancy No. 027/2018-Information Analyst, Political Affairs, NO-C Basra with UNAMI, for which she had been shortlisted.<sup>1</sup>
7. Following the interview, an FTA was offered to the Applicant with effective date 1 January 2019 at UNAMI in Basra where she remained for three years in accordance with the terms of her contract.<sup>2</sup>
8. On 16 December 2020, the Applicant accepted another FTA as Information Analyst, Political Affairs with an effective date of appointment of 1 January 2021.<sup>3</sup>

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<sup>1</sup> Application, section VIII, page 6, para. 1.

<sup>2</sup> *Ibid.*, para. 2.

<sup>3</sup> *Ibid.*, section VIII, page 6, para. 2. Annex 941812 (Applicant’s Letter of Appointment).

9. On 31 October 2021, the Head of the Joint Analysis Unit informed the Applicant of the redeployment of the post financing her position from the Basra to the Erbil duty station.<sup>4</sup>

10. On 3 November 2021, the Head of the Joint Analysis Unit informed the Chief Human Resources Officer (“CHRO”) of the post movement from the Basra to the Erbil duty station in the next budget and of the non-renewal of the Applicant’s FTA effective 1 January 2022.<sup>5</sup>

11. On 22 November 2021, the Chief of Mission Support (“CMS”) notified the Applicant of the non-renewal of her FTA with UNAMI beyond 31 December 2021 as the post she was encumbering was approved by the United Nations General Assembly (“General Assembly”) for redeployment from Basra to Erbil in the 2021 budget.<sup>6</sup>

12. With COVID-19 measures and budgetary constraints resulting in a recruitment freeze for regular budget vacancies, UNAMI did not immediately implement the decision to redeploy the post financing the Applicant’s position.<sup>7</sup>

13. On 1 January 2022, the Applicant separated from UNAMI.<sup>8</sup>

14. The CMS notified the Applicant that her separation entitlements would be subject to applicable rules for local staff and that the Applicant would be informed “throughout the course .”<sup>9</sup>

15. On 27 February 2022, the Applicant started to work for Mercy Corps.<sup>10</sup>

16. During settlement negotiations with UNAMI on 4 April 2022, an offer was made to the Applicant who accepted it.<sup>11</sup>

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<sup>4</sup> Reply, page 5, para. 13.

<sup>5</sup> *Ibid.*, at annex R/5. Application, page 4, para. 13.

<sup>6</sup> Application, section VII, page 5, para.1. Application, annex titled *Memo- non-renewal of FTA Nassir*.

<sup>7</sup> Reply, page 5, para. 12.

<sup>8</sup> *Ibid.*, para. 15.

<sup>9</sup> Application, section VII, page 5, para.1. Application, annex titled *Memo non-renewal of FTA Nassir*.

<sup>10</sup> Reply, annex R/2.

<sup>11</sup> Application, section VII, page 5, para. 5.

17. On 17 May 2022, the CHRO contacted the Applicant by emails and calls with an alternative proposal.<sup>12</sup> He referred to their conversation on UNAMI's offer to reinstate the Applicant in the Erbil duty station and took note of the Applicant's refusal of the position.<sup>13</sup> During their conversation, the Applicant advised the CHRO that she did not want to move to the Erbil duty station because she had no knowledge of the Kurdistan language and culture.<sup>14</sup>

18. The CHRO noted that the Applicant opted for financial compensation *in lieu* of her reinstatement and outlined that a confidential settlement agreement including: (1) compensation equivalent to her net base salary as from 1 January 2022 through 17 May 2022; and (2) the Applicant's agreement to withdraw all claims and appeals pending against the Organization and to refrain from filing any further claims or appeals against the Organization arising from her separation from UNAMI was being prepared.<sup>15</sup>

19. The UNAMI Human Resources Section ("HRS") wrote to the Applicant on 18 May 2022, requesting a response within two days to confirm her interest in pursuing the settlement offer conveyed by the CHRO on 17 May 2022.<sup>16</sup> The Applicant wrote to the Management Evaluation Unit ("MEU")<sup>17</sup> to inform them about the situation.

20. On 19 May 2022, MEU recommended that the Applicant contact the Office of Staff Legal Assistance ("OSLA") and to submit an application to the United Nations Dispute Tribunal by 3 June 2022, to preserve her rights in this case.<sup>18</sup>

21. The Applicant declined UNAMI's offer of reinstatement to the Erbil duty station on 20 May 2022.<sup>19</sup> She also declined UNAMI's settlement offer<sup>20</sup> and wrote an

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<sup>12</sup> *Ibid.*, para.6.

<sup>13</sup> *Ibid.*, annex titled *Correspondence Helal Rezwi, Chief of UNAMIS 's HR.*

<sup>14</sup> Reply, page 4, para. 16.

<sup>15</sup> Application, annex titled *Correspondence Helal Rezwi, Chief of UNAMIS 's HR.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*, section VII, page 5, para. 9.

<sup>18</sup> *Ibid.*,

<sup>19</sup> Reply, page 5, para. 16. Application, annex titled *Correspondence Helal Rezwi, Chief of UNAMIS 's HR.*

<sup>20</sup> Application, section VII, page 5, para. 8.

email to the UNAMI CHRO and to the HRS informing them that she would submit an application to the United Nations Dispute Tribunal to preserve her rights.<sup>21</sup>

## **Issues**

22. The Applicant's post was initially published by HRS UNAMI in Basra. The duty station was specified as Basra as indicated in the Applicant's FTA. The issue for determination is whether changing the terms (duty station) of a contract without consulting with the other party is a violation of the values of transparency and justice in the United Nations work environment.

### *The Applicant's submissions*

23. The official language in the Erbil duty station is Kurdish whereas the Applicant's mother tongue is Arabic with English as a working language. Moreover, such change would result in the loss of the Applicant's livelihood as she cannot work in the Erbil duty station not being familiar with the local political and social norms.

24. The Applicant claims that UNAMI's decision not to renew her FTA affected her livelihood causing material and psychological damages, which contradicts the rule of "do no harm". She worked with the United Nations for at least 10 years in different posts with good conduct and respect for the United Nations standards and values, which resulted in high-rated performance.

25. In arguing that the Administration did not act fairly in this situation, the Applicant relies on *Hersh* 2014-UNAT-481.

26. The Applicant claims that she played an effective role in supporting and empowering Iraqi women in the southern Governorates of Iraq and requests that justice and human rights laws be applied to her case in accordance with the high principles of the United Nations.

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<sup>21</sup> *Ibid.*, annex titled *Correspondence Helal Rezwi, Chief of UNAMIS 's HR*.

27. As the Administration did not act fairly with transparency, the Applicant seeks compensation for the material and psychological damages caused by the contested decision.

*Respondent's submissions*

The Respondent's principal contentions are:

28. The Applicant did not demonstrate that the contested decision was unlawful and has no legal entitlement to the renewal of her FTA. An FTA does not carry any expectation of renewal and shall not be converted to any other type of appointment with the United Nations. There is no proof that there was a legitimate expectation of renewal or that the non-renewal of the Applicant's FTA was arbitrary or motivated by bias, prejudice, or improper motive. Where the Administration gives a reason for the exercise of its discretion not to renew an appointment, it must be legitimate and supported by the facts.

29. As there was no post to finance the Applicant's position in the Basra duty station, UNAMI notified the Applicant on 22 November 2021 that her FTA would not be renewed.

30. The Applicant has not produced any evidence of harm and has been working for Mercy Corps since 27 February 2022.

31. UNAMI reversed the decision to separate the Applicant from service and offered to reinstate her with an FTA in the Erbil duty station.

32. Furthermore, the Applicant does not contest an administrative decision as she is challenging the redeployment of her post from Basra to Erbil. Therefore, the application is not receivable as it challenged the redeployment of UNAMI's Information Analyst post from Basra to the Erbil duty station.

33. The redeployment of the Basra post is not a Secretary-General's administrative decision. The General Assembly decided to redeploy the Applicant's post when it

approved UNAMI's Proposed Budget on 29 May 2020. The Organization can restructure some or all of its departments and units even if it results in a loss of employment for its staff members.

34. The Applicant was informed on 31 October 2021 by the Head of the Joint Analysis Unit of the redeployment of the post financing her position. On 3 November 2021, he informed HRS on the post movement in the next budget with non-renewal of the Applicant's FTA effective 1 January 2022.

35. After the COVID-19 and budgetary constraints eased, UNAMI implemented the General Assembly's redeployment decision.

36. The Applicant had no term of appointment which would prevent the Organization from restructuring, let alone one which would extend beyond the expiration of her FTA.

37. The Applicant was holding an FTA with no legal expectation of renewal. Her FTA shall not be converted to any other type of appointment within the Organization. The Administration gave a reason for the exercise of its discretion not to renew the Applicant's FTA which was legitimate and supported by facts.

38. National Professional Officers are locally recruited and governed by staff rule 4.4 with no entitlement to travel or relocation related expenses under staff rule 4.5(a). "As such, the Organization does not reassign them to another duty station even if it is the same mission or country. Locally recruited staff members may be considered for vacancies in other duty stations only through the process whereby they apply along with other candidates and personally absorb travel and relocation expenses."

39. The application should be dismissed as the Applicant failed to establish that the contested decision was unlawful.

### **Consideration**

40. The application is not moot. The Tribunal is aware that on 17 May 2022, UNAMI offered to reinstate the Applicant to an FTA [A/App Correspondence Helal

Rezawi], but that was an offer of settlement of the dispute, more than an administrative decision, and a different place (Erbil) from the previous one (Basra) was offered to the Applicant, who on 20 May 2022 declined the offer (saying that she did not wish to move to Erbil because of her unfamiliarity with the Kurdistan language and culture).

41. For the purposes of receivability, the Applicant contests the administrative decision not to renew her FTA; the application is receivable.

42. The contested decision is lawful. The Applicant's appointment expired in accordance with its own terms on 31 December 2021 and the Applicant has no legal entitlement to the renewal of her appointment.

43. An FTA does not carry any expectation, legal or otherwise, of renewal, and shall not be converted to any other type of appointment. The onus is on the staff member to show a legitimate expectation of renewal or that the non-renewal of her appointment was arbitrary or motivated by bias, prejudice or improper motive.

44. In this case, under the presumption of regularity, the Applicant, who had the burden of proving that the contested decision was unlawful, did not demonstrate that.

45. Instead, the Administration gave a reason for the exercise of its discretion not to renew an appointment, this reason is legitimate and supported by the facts.

46. On 29 May 2020, the General Assembly approved the 2021 budget submission which included the redeployment of the post of Information Analyst from Basra to Erbil "to reinforce the operational oversight of resurgent ISIL activities in Ninawa and Kirkuk."

47. In particular, in the 75th session, item 141 of the preliminary list, A/75/6 (Sect. 3)/Add.6, the General Assembly adopted the Proposed program plan for 2021 and program performance for 2019.

48. This program recalled that Iraq was emerging from an intense conflict that resulted in the military defeat of the Islamic State of Iraq and the Levant ("ISIL"), and the nation was working to transition towards sustainable development. In a post-



conflict environment in which needs are manifold, requests for assistance and strategies for development must be coordinated, substantiated, and not duplicated. At the same time, Iraq was falling behind in its infrastructure, capacity to deliver services, and socioeconomic indicators owing to civil unrest and lack of investment.

49. In its resolution 1483 (2003), the Security Council requested the Secretary - General to appoint a Special Representative for Iraq to assist the country in its political transition and in meeting its humanitarian, reconstruction, and development needs. Subsequently, by adopting resolution 1500 (2003), the Security Council decided to establish UNAMI to support the Special Representative in the fulfilment of the aforementioned mandate. The Council reviewed and expanded the mandate through further resolutions and the mandate was extended until 31 May 2020.

50. The objective, to which this Mission contributes, is to achieve sustainable peace, security and development while reaffirming the independence, sovereignty, and territorial integrity of Iraq.

51. As to the strategy, to contribute to the achievement of sustainable peace and security in Iraq<sup>22</sup>, the Mission was charged with promoting inclusive political dialogue, including through broad engagement with institutional stakeholders and the provision of advice and recommendations on key policy issues and mechanisms for implementation, which is expected to result in the broad consensus to implement political and other reforms that strengthen public confidence in the State, increase accountability and improve governance. The Mission had to work closely with the legislative and executive institutions to support the formulation, adoption and implementation of legislative and constitutional reforms that will underpin longer-term political and socioeconomic development. The Mission was tasked in particular to continue to support enhanced dialogue between the Federal Government and the Kurdistan Regional Government, and advocate for the implementation of laws crucial to the consolidation of the relationship between Baghdad and Erbil. Past results in this area included the implementation of the 2019 Federal Budget Law and the

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<sup>22</sup> Reply, annex R/3. United Nations, General Assembly A /75/6 (Sect. 3)/Add.6.

implementation of the Reform Bill as adopted by the Parliament of the Kurdistan Region; the Mission's facilitation of negotiations among key stakeholders to help them restart the process for the development of recommendations concerning the implementation of article 140 of the Constitution of Iraq, on disputed boundaries; and the Mission's development and submission of recommendations, including best practice examples, to national authorities, at their request, on the national constitutional review.

52. It results from para. 18 of the Programme, constructive negotiations and dialogue among Kurdish political actors took place with the contribution of the Mission's good offices and assisted in the formation of an inclusive regional government in the Kurdistan Region. UNAMI, through technical expertise in governance and constitutional matters, examined issues affecting the relationship between Baghdad and Erbil, especially those relating to the implementation of Article 140 of the Iraqi Constitution, and presented the findings to the Iraqi authorities for further considerations. Baghdad and Erbil pursued enhanced security cooperation, especially in disputed territories, where ISIL was resurgent; and the Mission continued to advocate for better cooperation in the security sector between Baghdad and Erbil and to support the implementation of the joint security mechanism.

53. The program had many consequences in staffing requirements: to support the Mission's strategic and operational priorities planned for 2021, the Mission planned to strengthen its capacity in areas such as logistic coordination, information technology security, occupational safety and staff welfare, largely by reprioritizing existing resources through reassignment, redeployment and reclassification. For 2021, many staffing changes were envisaged and, among others, one position of Information Analyst (National Professional Officer) in the Joint Analysis Unit was redeployed from Basra to Erbil.

54. UNAMI had initially decided not to reassign the Applicant to Erbil because she was a National Professional Officer in Basra. National Professional Officers "are

not expected to be mobile, rather it is anticipated that they will leave the organization upon the completion of their term within the common system”.

55. As there remained no post to finance the Applicant’s position in Basra, UNAMI notified the Applicant that her FTA would not be renewed beyond 31 December 2021 and, accordingly, the Applicant was separated from service on 1 January 2022.

56. The Tribunal is aware that the Applicant was offered a contract with the duty station in Erbil. This offer was determined by the developing context as above mentioned and by the operational priorities planned for 2021, notably with reference to the Kurdistan region; as mentioned, the offer was not accepted by the Applicant, who did not wish to move to Erbil because of her unfamiliarity with the Kurdistan language and culture.

57. The Applicant’s claim that UNAMI unlawfully changed the terms of her appointment (and in particular, when it offered Erbil as the new place for her contract to be renewed, the place of the performance by the staff member) is without merit.

58. In the Tribunal’s view, the offer by the Administration for work in Erbil was fully justified -given the circumstances and the General Assembly decisions- and it would be difficult to find it unlawful or unreasonable even if it would have caused a change in the duty station of the staff member concerned.

59. However, the Tribunal notes that UNAMI did not change the Applicant’s terms of appointment; rather, the Applicant’s FTA expired in accordance with its own terms on 31 December 2021; the offer to keep working in the duty station of Erbil was only an offer to settle the dispute with the Applicant and that, if accepted, would have led to a new and different contract.

60. The *Hersh* case (2014-UNAT-433), cited by the Applicant, is not on point. In that case, an internationally recruited professional staff member was willing to change duty stations. Here, the Applicant is neither an internationally recruited professional

staff member, nor willing to change duty stations, and there was no administrative decision to change the duty station of the FTA when it was yet in force.

61. Also, the Applicant's claim that the Administration did not act fairly, justly and transparently in dealing with her is baseless. Her First Reporting Officer advised her on 31 October 2021 of the redeployment of the post financing her position from Basra to the Erbil duty station, well in advance of the decision.

62. The Applicant has presented no evidence that the contested decision was tainted by extraneous considerations. On the contrary, the evidence attached to the application establishes that the Applicant's supervisors had a favorable view of her performance.

**Conclusion.**

63. In light of the foregoing, the application is dismissed.

*(Signed)*

Judge Francesco Buffa

Dated this 24<sup>th</sup> day of July 2023

Entered in the Register on this 24<sup>th</sup> day of July 2023

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi