



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

SIDDIQUE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Tamal Mandal, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a staff member of the United Nations Economic and Social Commission for Asia and the Pacific (“ESCAP”), contests the decision to abolish the post he encumbered and, consequently, not to renew his fixed-term appointment beyond 30 June 2023 (“the contested decision”).
2. For the reasons stated below, the Tribunal finds that the contested decision is lawful and rejects the application.

Facts

3. The Applicant joined ESCAP in December 2010 and served as an Information Systems Officer at the P-3 level with the Information Management, Communications and Technology Section (“IMCTS”), Division of Administration, under a fixed-term appointment.
4. From September 2021 to January 2023, the Division of Administration underwent a restructuring process to ensure that all functions were aligned with the United Nations Secretariat Cloud Strategy.
5. Between September 2021 and August 2022, ESCAP held three town hall meetings with all staff members of the Division of Administration, including IMCTS, concerning the restructuring process.
6. At a meeting held on 19 October 2022, the Chief of IMCTS informed the Applicant that, due to the restructuring of IMCTS, his position would become redundant effective 31 December 2022 and his fixed-term appointment would be exceptionally extended until 31 May 2023 for a project assignment with the Facilities Management Unit (“FMU”).
7. At a meeting held on 26 October 2022 upon the Applicant’s request, the Director, Division of Administration, ESCAP, (“Director, DA”) confirmed the information provided by the Chief, IMCTS to the Applicant about the abolishment of his post and further informed him that his fixed-term appointment would be extended for one additional month up to 30 June 2023. The Director, DA, further

confirmed that the Applicant's contract would not be extended beyond 30 June 2023 due to budget constraints.

8. On 28 October 2022, the Applicant's fixed-term appointment was extended until 30 June 2023.

9. On 15 December 2022, the Applicant requested management evaluation of the contested decision.

10. On 31 December 2022, the Applicant's position was made redundant and ESCAP discontinued it.

11. By letter dated 27 January 2023, the Applicant was informed of the outcome of his request for management evaluation. The Under-Secretary-General for Management Strategy, Policy and Compliance ("USG/DMSPC") decided to uphold the contested decision.

12. On 28 April 2023, the Applicant filed the present application challenging the contested decision.

13. On 5 June 2023, the Respondent filed his reply.

14. On 30 June 2023, the Applicant was separated from service.

15. On 3 July 2023, the Applicant filed his rejoinder.

16. On 27 February 2024, the present case was assigned to the undersigned Judge.

17. By Order No. 44 (GVA/2024) of 1 May 2024, the Tribunal ordered the parties to file closing submissions by 14 May 2024, which they did.

Consideration

Scope of judicial review

18. The main issue for the Tribunal's consideration in this case relates to whether the abolishment of the Applicant's post leading to the non-renewal of his fixed-term appointment was lawful.

19. In this respect, the Tribunal recalls that 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.

20. The United Nations Appeals Tribunal (“Appeals Tribunal”, or “UNAT”) has held that the Organization has the right and power to restructure some or all of its departments or units where it considers it necessary to meet organizational needs and priorities. Such restructuring may justify the termination of employment on grounds of operational requirements. The abolition of a post resulting from a reorganization exercise usually constitutes a valid reason for not renewing a staff member’s fixed-term appointment (see *Nastase* 2023-UNAT-1367, para. 24).

21. There is, however, a duty for the Administration to act fairly, justly, and transparently in dealing with staff members during a restructuring exercise (see *Abdeljalil* 2019-UNAT-960, para. 19).

22. Although fixed-term appointments carry no expectation of renewal under staff rule 4.13(c), a non-renewal decision may be challenged on the grounds that a staff member had a legitimate expectation of renewal, the existence of a procedural irregularity, or that the decision was arbitrary or motivated by bias, prejudice, or improper motive (see *Nastase*, para. 24; *Hossain* 2023-UNAT-1359, para. 55).

23. Where restructuring is the reason for non-renewal of a fixed-term contract, the role of the Dispute Tribunal is to review whether the administrative discretion to restructure was conducted in accordance with relevant procedures, whether it was properly motivated, and whether the staff member was afforded due process rights. During this process, the Dispute Tribunal is reminded not to

...[i]nterfere with an organizational restructuring exercise unless there is evidence that the discretion was exercised unreasonably, unlawfully or without due process. In this regard, there is always a presumption that effective official acts have been regularly performed. The presumption of regularity is however rebuttable. If the Administration is able to minimally show that the staff member was given full and fair consideration, then the evidentiary burden

shifts to the staff member to show that he or she was subject to an act of unreasonableness or unfairness (see *Nastase*, para. 25).

24. In light of the foregoing, and having reviewed the parties' submissions to date, the Tribunal defines the issues to be examined in the present case as follows:

- a. Whether the restructuring was genuine;
- b. Whether the reason provided for the non-renewal decision was lawful and supported by the facts;
- c. Whether the alleged procedural irregularities rendered the non-renewal decision unlawful; and
- d. Whether the Applicant is entitled to any remedies.

Whether the restructuring was genuine

25. The evidence on record shows that the restructuring was done within the framework of the UN Secretariat-wide transition of Enterprise Information and Communication Technology ("ICT") services to the cloud. ESCAP made strategic changes to implement this new approach, leading to the restructuring of IMCTS.

26. In his submissions, the Respondent indicates that following a review of all functions within IMCTS, ESCAP identified, *inter alia*, the following points:

- 1) The Secretariat-wide transition of enterprise ICT services (including MS Teams, Telephony, SharePoint, and Emails) to cloud-based platforms had led to increased redundancy in the enterprise network functions.
- 2) The enterprise network's function had significantly transformed. Formerly, the enterprise network's primary role was to facilitate connectivity between ICT services hosted in ESCAP data centers, as well as enabling communication between ESCAP, its regional offices and the UN Global Service Centers. The focus had since shifted towards providing Internet-based services, reflecting the changing needs of the Organization. In addition, due to the flexible working space layout under the Seismic Migration Project, the primary network connectivity for staff and clients would transition from the legacy network cable connections (i.e., wired connections) to wireless systems. This transition would further

contribute to a simplified on-premises network infrastructure, as the legacy network cable connections were no longer needed to support the required staff mobility on the campus.

3) As ESCAP transitioned its ICT services to the cloud in accordance with the UN Secretariat Cloud Strategy, the need for maintaining extensive on-premises infrastructure in Thailand, South Korea (disaster recovery center) and Asia Pacific Regional Offices would decrease. As ESCAP moved more of its applications and services to the cloud, it would reduce onsite equipment, simplifying network architecture and leading to less physical maintenance. Instead of storing and accessing these applications from physical data centers, they would be accessed over the Internet from the cloud. The scope of enterprise network functions that supported ESCAP's data centers would be further reduced as a result.

27. It is not contested that the Applicant encumbered an extra-budgetary (XB) funded position, not an established regular-budget post. Therefore, the discontinuation of such a position was not governed by the General Assembly budgetary process (see *Nouinou* 2019-UNAT-902, para. 61).

28. The Respondent clarifies that the extrabudgetary resources for the Applicant's position were generated by recovery of cost in the provision of administrative IT services to entities with whom ESCAP entered into service-level agreements, and were managed by the Division of Administration.

29. The evidence on record shows that the Director, DA, has the delegated authority to manage the XB-funded positions and that, exercising this authority, he decided to eliminate the Applicant's position following a restructuring of IMCTS to implement the Secretariat-wide transition of ICT services to the cloud.

30. The Applicant submits that his position was abolished although his functions were not affected by the Cloud Strategy. He argues that he was specifically targeted as his functions were assigned by the Chief of IMCTS to other staff members to subsequently justify the decision to abolish his post.

31. In particular, the Applicant claims, on the one hand, that his Information Technology (IT) Security functions were given to a staff member who is the Chief's compatriot and, on the other hand, that his role of IT cost recovery focal point was given to an Administrative Assistant.

32. In this respect, the Respondent indicates that the Applicant's claims concerning his responsibilities are incorrect.

33. First, the Respondent notes that the Applicant did not lead IT security projects and that the responsibilities related to IT security were previously dispersed across three IT units in ESCAP. He further clarifies that the Applicant's IT Security functions were limited to supervising a G-7 staff who implemented network security policies, while the Team Leads of other IT units were responsible for all other IT security functions.

34. Second, the Respondent claims that the Applicant did not have exclusive responsibility for IT cost recovery functions. IT cost recovery is the joint responsibility of the Division of Administration and the Financial Resources Management Section of ESCAP. He indicates that the Applicant's responsibilities in IT cost recovery were limited to a) input of monthly data for network connections in the ICT cost recovery sheet, and b) conducting on-demand network surveys.

35. The Tribunal thus considers that the decision of the Chief of IMCTS to assign the Applicant's former functions associated with IT security and IT cost recovery to other staff members at the General Service level was not arbitrary.

36. Concerning the Applicant's involvement in the process, he argues that there was a lack of transparency as he was not consulted in the restructuring process. In this respect, the Appeals Tribunal clarified in *Hossain* para. 70, that the Administration is not under a legal obligation to consult with individual staff members who may be affected by the abolition of a post prior to reorganization or restructuring of the units in which they serve. Hence, in the present case, the Administration was not obliged to consult with the Applicant during its restructuring exercise.

37. Nevertheless, the Applicant was aware of the restructuring exercise as he refers in his application to the 18 August 2022 announcement of the entire IMCTS restructuring in an online MS Teams meeting.

38. Accordingly, the Tribunal finds that the Applicant failed to demonstrate that the restructuring was not genuine or improperly motivated.

Whether the reason provided for the non-renewal decision was lawful and supported by the facts

39. The Applicant claims that he was given two different reasons for the abolishment of his post, namely, “redundancy of the functions” and “budget constraints”.

40. Based on the evidence on record, the Tribunal finds that the Applicant’s appointment was not renewed due to the abolishment of his post as conveyed to him by the Chief of IMCTS at a meeting held on 19 October 2022 and, in writing, on 20 October 2022. The record shows that the rationale for the abolishment of the Applicant’s post was the redundancy of his functions due to the UN Secretariat-wide transition of ICT services to the Cloud Strategy. This was consistently shared with the Applicant and particularly clarified to him by the Director, DA, ESCAP, in his 16 December 2022 email.

41. In this respect, the Tribunal recalls that 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 *Fernandez Carrillo* 2021-UNAT-1163, para. 35; *Hossain*, para. 62).

42. The record shows that in the course of the restructuring, the Administration deemed the Applicant’s position redundant and determined that it was not required beyond 31 December 2022. However, considering the Applicant’s personal circumstances, the Administration decided to create a temporary project assignment with FMU for the Applicant from 1 January 2023 through 30 June 2023. The Applicant’s fixed-term contract was consequently renewed until 30 June 2023 when he was separated from service.

43. The record shows that the budget constraints referred to by the Applicant relate to the extension of his appointment with FMU, not to his position with IMCTS. In this respect, the Tribunal notes that during a meeting held on 26 October 2022, the Applicant was informed by the Director, DA, ESCAP, that his new position with FMU would not be renewed beyond 30 June 2023 due to budget constraints.

44. In light of the foregoing, and considering the particular circumstances of the present case, the Tribunal finds that the reason provided for the non-renewal decision was legitimate and supported by the facts.

Whether the alleged procedural irregularities rendered the non-renewal decision unlawful

45. The Applicant points to several alleged irregularities, which in his view render the non-renewal decision unlawful.

46. In this regard, the Tribunal recalls that it is incumbent on an applicant to prove that procedural irregularities played a role in the non-renewal decision (see *Porras* 2020-UNAT-1068, para. 24; *Nouinou*, para. 47). Moreover, procedural irregularities in the decision-making process do not necessarily result in a subsequent finding of the 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).

47. The Tribunal will proceed to examine the Applicant's allegations in this respect.

48. First, the Applicant claims that the Administration failed to meet its obligations to make good-faith efforts to place him in other vacant positions. He submits that he was not given priority or a fair chance to be retained in service.

49. In this respect, the Tribunal clarifies that the present case is not a case of termination, but a case of non-renewal of the Applicant's fixed-term appointment beyond 30 June 2023. As such, the obligation under staff rule 9.6(e) to make

reasonable efforts to retain staff members whose appointments are terminated as a result of the abolition of a post or the reduction of staff does not apply to the Applicant.

50. In *Nouinou*, para. 32, the Appeals Tribunal ruled, in its relevant part, that

separation as a result of termination initiated by the Secretary-General in cases of abolition of posts or reduction of staff (Staff Rule 9.6(a) and (c)) differs substantially from the separation as a result of expiration of a fixed-term appointment, which takes place automatically, without prior notice, on the expiration date specified in the letter of appointment (footnote omitted).

51. Nevertheless, the Tribunal notes that the Administration, although not obliged to do so, engaged in reasonable efforts to consider the Applicant for available suitable posts. The Administration conducted a desk review of the Applicant's profile against the two remaining P-3 positions in IMCTS, namely 1) a vacant Information Systems Officer position reclassified as a Data Analyst position ("Position A"), and 2) an Information Systems Officer position in IT Business Solutions in the Digital Transformation Unit that was temporarily encumbered ("Position B").

52. The Administration considered that Position A fell under a different job family of Programme Management and supported deliverables that are "fundamentally distinct from the Applicant's expertise in network and hardware". It also considered that Position B significantly differed from the functions that the Applicant performed or his skillset as he, *inter alia*, did not demonstrate "proficiency in all aspects of programming and analysis". The Administration thus determined that the Applicant could not be placed on either of these two positions.

53. Concerning the desk review, the Applicant claims that he was suitable for at least one of the above-mentioned positions as a roster candidate. However, the Tribunal recalls that membership of a roster does not create an expectancy or entitlement for selection to a given post (see *Krioutchkov* 2016-UNAT-707, para. 29). The Applicant still had to fully meet the requirements for the alternative position to be selected for it.

54. In any event, the Tribunal notes that the Applicant's non-selection for the alternative positions is beyond the scope of the present case, which deals with the non-renewal of his fixed-term appointment. Had the Applicant had the intention to contest his non-selection for the alternative positions, he should have requested management evaluation of the respective decisions. Since he did not do so, any challenge against the non-selection decisions in the present case is not receivable.

55. Second, the Applicant claims that his post was not abolished but replaced with a National Officer (NOC) post effective 1 January 2023. In this respect, the Administration noted that the Applicant's post no longer exists and that the Service Desk and Operations Team Lead (NOC) post is a new position, following the consolidation of Service Desk and Operations functions of IMCTS.

56. Third, the Applicant argues that the Administration made significant changes to the organizational chart following his 8 January 2023 request for management evaluation. In this respect, the Administration admitted that while additional changes were made to optimize the IT Security, Cloud Computing, Service Desk and Operations functions, those changes were unrelated to the Applicant's request.

57. Fourth, the Applicant claims that the decision to abolish the post was discriminatory in nature and tainted by favouritism towards other colleagues. In this respect, the Tribunal recalls that it is for a party who alleges that ulterior motives tainted a decision to substantiate this claim by way of evidence (see *Ross* 2019-UNAT-944, para. 25; *Morsy* 2013-UNAT-298, para. 23). In the present case, the Tribunal found no evidence to support the Applicant's contention.

58. Accordingly, the Tribunal concludes that the Applicant failed to demonstrate that the contested decision was unlawful.

Whether the Applicant is entitled to any remedies

59. In his application, the Applicant requests the Tribunal to order a) rescission of the contested decision, b) reinstatement and extension of his fixed-term appointment until 31 December 2023, c) compensation for moral damages in the amount of 18 months net base salary, d) that the Applicant be included in the

continuing appointment exercise scheduled to take place in 2023, and
e) compensation until the Applicant reaches his early retirement age.

60. Having found that the Applicant failed to demonstrate that the contested decision was unlawful, the Tribunal finds no basis for the remedies pleaded for in the application. The Applicant's request for remedies is consequently rejected.

Conclusion

61. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Sun Xiangzhuang

Dated this 21st day of June 2024

Entered in the Register on this 21st day of June 2024

(Signed)

René M. Vargas M., Registrar, Geneva