
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2021/071

Judgment No.: UNDT/2022/105

Date: 7 October 2022

Original: English

Introduction

1. The Applicant, then Chief of Service at the United Nations-African Union Hybrid Operation in Darfur (UNAMID) holding

submission would imply my agreement or acceptance of the termination of my appointment.

31. Finally, it is worth noting that on 14 September 2021 the Chief Client Service Delivery Pillar of the United Nations Regional Service Centre Entebbe wrote:

As a result we have rescinded the decision to handle your separation as a retirement and reverted to the original separation that had been communication by the Mission which is abolition of post.

32. As to the merits, the Applicant is among the 1,026 UNAMID staff members

- a. The Administration is bound to demonstrate that all reasonable efforts have been made to consider the staff member concerned for available suitable posts;
- b. The Administration is bound to consider the redundant staff members only for suitable posts that are vacant or likely to become vacant in the future;
- c. While efforts to find a suitable post for the displaced staff member rest with the Administration, the person concerned is required to cooperate fully in these efforts, showing an interest in a new position by timely and completely applying for the position;
- d. Simply advertising posts and requiring the concerned staff member to apply and compete for the same does not discharge the burden of the Administration;
- e. The Administration is bound to assign the affected staff members holding continuing or indefinite appointments on a preferred basis in the order of preference prescribed in Staff Rule 9.6;
- f. If the redundant staff member is not fully competent to perform the core functions and responsibilities of a position, the Administration has no duty to consider him or her for this position;

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and within the same functional group as per the position title, but also all the lower available suitable posts in the same duty station, for which the staff member had expressed interest by way of application thereto. For the Professional level staff members, the entire parent organization, including but not limited to the duty station of assignment.

36. These principles are confirmed too by jurisprudence of the former United Nations Organization

38. The former UNAdT further noted in its Judgment No. 679, *Fagan*

43. Although there are limited appropriate posts available at the D-1 level, the Respondent avers in para. 19 of the reply that the Organization did advertise vacant (owing to his decision to retire).

44. The record shows that the Applicant holds roster memberships for various D-1 posts. Roster membership means that he meets the requirement or possesses the specific qualifications for the related job opening; it does obviate the requirement to express interest in available positions, but not necessarily applying to them but also responding favourably to offerings by the Administration.

45. The Applicant was diligent in applying to vacant posts, within the relevant time frame; such as the vacant D-1 Chief of Staff position and post number 152064, Deputy Director, D1, Western Africa Division, DPPA (Deputy Director post).

49. While no indication has been provided by the Administration with reference to this moment, the Applicant, on this point, demonstrated that, far from the recruitment process being frozen as stated by the MEU, the recruitment was proceeding as the Applicant received an e-mail convoking him for an interview for the impugned post on 15 June 2021.

50. This proves that hiring for the post was no longer frozen and that the selection process was no more on hold, nor that it only became available after the retirement became effective.

51. The present case is

56. It clearly results from art. 10.5(a) of the Dispute Tribu
consistently interpreted by UNAT, that compensation *in lieu* is not compensatory
damages based on economic loss, but only the amount the administration may
decide to pay as an alternative to rescinding the challenged decision or execution

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