

9. The General Assembly, in its resolution 66/264 (Cross-cutting issues) of 21 June 2012, emphasized the need for the Secretary-General to conduct a

reduction in staff and recommended the nationalization of one P-4 post during the 2014/2015 budget year.

20. On 8 December 2014, the Field Budget and Finance Division of the Department of Field Support (FBFD/DFS) shared the proposed staffing changes for the 2015/2016 budget period with Ms. Farley and the Applicant. DFS indicated that the CSR report had been used as a guide in determining the functional titles of the 24 posts to be nationalized and the 48 posts to be abolished. The document indicated that one post of P-4 Finance and Budget Officer from the Financial Management Section would be nationalized and converted into a National Professional Officer (NPO) post. The Applicant forwarded the DFS document to Ms. Fraser on 9 December 2014 for a response.

21. Sometime in 2014, UNIFIL established an Ad-Hoc Committee to oversee the retrenchment processes recommended by the CSR and ensure they were conducted in a fair and transparent manner. The Committee was comprised of representatives from the Office of the Head of Mission, Administration, the National Staff Union and the Field Staff Union (FSU).

22. On 12 December 2014, the UNIFIL Head of Mission, Major General Luciano Portoleno, held a town hT Q q BT /F-22(h)19(e)19(o7(e)-16(n)19(de)3(d)-290(e(e)-16(

stated that the Applicant had the lowest total points and therefore “would be the first candidate for consideration to non-renewal/separation due to a reduction of relevant posts.”

26. On 17 April 2015, the Applicant was elected Vice President of the FSU.

27. By memorandum dated 21 April 2015 but received by the Applicant the next day, 22 April 2015

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rights was not raised in her management evaluation request. The Tribunal accordingly finds that it is not receivable.

Was the nationalization of the Applicant's post ill-motivated? Was there abuse of authority in the implementation of the CSR recommendations as it concerned the Applicant?

40. In *Matadi et al.* 2015-UNAT-592, the United Nations Appeals Tribunal (the Appeals Tribunal) recognized the Organization's power to restructure some or all its departF1 12.0 Tf 0.0 0.0 departF1 12.0 Tf 0.0 0.0 departF1 12.00re Tf 0.0 0.0atadi .84 Tm

the decision to conduct a comparative review between the Applicant and the newly recruited P-4 budget and finance officer, Mr. K. A., was made by her.

44. Documents available to the Tribunal⁶ show that in accordance with the General Assembly resolution 66/264 of July 2012 about conducting a comprehensive review of peacekeeping missions, a CSR was carried out between 23 and 27 September 2013 in UNIFIL to ensure that the Mission's staffing composition was appropriate for implementing its current mandate and to meet other objectives, strategies and priorities.

45. Oral evidence tendered by the three witnesses that testified before the Tribunal established that after the CSR in September 2013, certain recommendations were made. The said CSR recommendations provided for reducing staffing levels through the nationalization and abolition of certain identified posts in the Mission for the next three budget cycles: 2014/2015, 2015/2016 and 2016/2017.

46. The Applicant was at the time a P-4 budget officer at the Mission. The Secretary-General's report 67/747 of 25 February 2013 on UNIFIL's budget for 1 July 2013 – 30 June 2014, proposed that the P-5 post of Chief Budget Officer be abolished and that the Budget and Finance sections be merged in the 2013/2014 budget cycle. This merger of the two sections into one thus took effect on 1 July 2013.

47. Before the merger of the Budget and Finance sections, the Budget section was headed by a P-5 Chief Budget Officer who supervised the Applicant and reported to the Director of Mission Support (DMS). The Finance Section on the other hand was headed by a P-5 Chief Finance Officer who supervised a P-4 Finance Officer and reported to the Chief of Administrative Services.

48. A merger of the two sections meant that one P-5 post in the merged sections was to be abolished. The then Chief Budget Officer decided to take an early termination package since his retirement date was close. That being the case,

⁶ UNIFIL staffing Review 2013 report, produced upon request to the Tribunal on 18 July 2018.

the then Chief Finance Officer, Ms. Farley, who had been recruited in October 2012 assumed headship of the newly merged Budget and Finance Section.

49. This meant that less than a year after joining the Mission, Ms. Farley became the Applicant's supervisor as from 1 July 2013. There are testimonies from both the Applicant and Ms. Farley that their working relationship soon became problematic and unfriendly and that mediation efforts by the Ombudsman did not resolve their problems.

50. It is not rebutted that at the time of the CSR in September 2013, the newly merged Budget and Finance Section had only one P-5 staff member, namely Ms. Farley and one P-4 officer, the Applicant. The P-4 post which previously had the title of Finance Officer was vacant. Ms. Farley then proceeded to initiate a recruitment to fill the said post and it was advertised in Inspira from 9 October to 24 October 2013.

51. In April 2014, Mr. K. A. was recruited to the said P-4 post as Budget and Finance officer.

52. The Tribunal is mindful of the fact that in September 2013 when the CSR process was taking place in UNIFIL, the Mission's staffing table would have been submitted to the CSR team. Evidently, the staffing table that was made available to the CSR team did not indicate that one P-4 post was vacant in the Budget and Finance section but rather showed that there were thirty-three posts in the section made up of one P-5 post, two P-4 posts, one P-3 post and other Field services posts, National officers and General staff posts.⁷

53. In a summary of conclusions and recommendations, the CSR report⁸ stated:

The Review recommends that changes to the staffing composition and size to the extent possible should be implemented through natural processes, such as attrition, retirement and re-assignment as well as agreed terminations and the move of displaced personnel to growing Missions.

⁷ See page 24 of UNIFIL CSR 2013 report

⁸ Ibid p.13

54. While reviewing the nationalization of posts at UNIFIL, the CSR report also recommended that the Mission:⁹ “Review newly vacant posts, in a continuous process, to determine the potential for nationalization.”

55. It is clearly the case that Ms. Farley disregarded the recommendations that were made by the CSR team and went ahead to hire a new P-4 officer.

56. In defending the decision by HRMS to conduct a comparative review between the Applicant and Mr. K.A., Ms. Fraser testified that in line with the CSR recommendations, the Budget and Finance functional titles and rosters had been brought under the same occupational group of Budget and Finance as they were found to be interchangeable.

57. Also in a confidential memorandum of 28 April 2015, Ms. Golub of UNIFIL HRMS explained that the CSR report did not provide specifics on the post or title of the P-4 post to be nationalized. She further explained that since the Secretary-General’s report was based on the DFS’ submission of the UNIFIL budget for 2015/2016, which had used the functional title of Budget and Finance officer, the said Secretary-General’s report stated that one P-4 post of Budget and Finance officer was to be nationalized.

58. The said report¹⁰ of the Secretary-General had indeed proposed that one P-4 post of “Finance and Budget Officer” be nationalized in UNIFIL for the budget year starting 1 July 2015 and ending 30 June 2016. The General Assembly adopted this proposal on 25 June 2015.

59. The Applicant additionally testified and provided undisputed documentary evidence that on 2 June 2014, two months after the recruitment of Mr. K. A., UNIFIL HRMS sent a request to Ms. Farley for the extension of the Applicant’s contract. Ms. Farley recommended an extension of contract for the Applicant for the next budget year of 2014/2015. On the request document for the Applicant

⁹ Ibid p.11.

¹⁰ A/69/731 dated 19 Jan. 2015

that Ms. Farley sent back to the Human Resources office, she stated as follows:
“Note the CSR recommendation to nationalize this position in the next budget.”¹¹

60. The Applicant then wrote to Ms. Fraser on 23 June 2014 and complained that the notation made on the request for her extension of contract document by Ms. Farley was aimed at targeting her in the down-sizing exercise at UNIFIL.¹² In reply, the Officer-in-Charge of the Human Resources section stated that the notation was irrelevant and should be ignored by the Applicant.¹³

61. It is also the Applicant’s case that Ms. Farley recruited the new P-4 officer into the merged Budget and Finance section in April 2014 in pursuit of an agenda to bring her employment in the Mission to an end due to disagreements between them and a working relationship that was far from cordial.

62. Under cross-examination, Ms. Farley admitted that she had had disagreements and differences with the Applicant which led to mediation efforts by the Ombudsman. She added that the

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65. In its review of the evidence regarding the nationalization of the Applicant's post, the Tribunal finds it curious that Ms. Farley would place a note in the HRMS's request for extension of the Applicant's contract for the 2014/2015

composition, to the extent possible, should be implemented through natural

80. In the present matter, the Applicant sought reinstatement from 1 July 2015 and compensation for loss of earnings and for moral damages.

Reinstatement and loss of earnings

81. In *Cohen* 2011-UNAT-131, the Appeals Tribunal highlighted the right of staff to an effective and equitable remedy once the Dispute Tribunal has concluded that an administrative decision is unlawful. The Appeals Tribunal opined that:

In general, in keeping with the principle of the right to an effective remedy enshrined in article 8 of the Universal Declaration of Human Rights, the rescission of the illegal decision to dismiss a staff member implies, for the Administration, that it must both reinstate the staff member and pay compensation for loss of salaries and entitlements not related to actual service performance after deducting any salaries and entitlements that the staff member received during the period considered.

82. Here, the Tribunal has concluded that the decision to separate the Applicant was discriminatory, constituted abuse of authority and was unlawful.

83. The Applicant's un rebutted evidence was that the impugned administrative decision had the following ramifications for her:

- a. A break in service, which has negatively affected her eligibility for after service health insurance coverage and conversion of her appointment from an FTA to a continuing appointment.
- b. Loss of earnings.

84. Noting the gravity of the ramifications on the Applicant's contractual status with the Organization and her eligibility for after service health insurance, the Tribunal finds that the most effective remedy under the circumstances is for the Applicant to be reinstated in service for the approximately 7-week period she was separated from service. This will ensure her continuity of service when decisions are being made about her eligibility for a continuing appointment and after service health insurance.

85. Additionally, the Applicant should be compensated for the earnings she lost between the date she was wrongfully separated from service and the date she was appointed to UNMIL.

Moral damages

86. The Appeals Tribunal has consistently held that the Dispute Tribunal shall not award compensation for moral damages when there is no evidence whatsoever to sustain such harm or prejudice.¹⁷ Further, the Appeals Tribunal has held that¹⁸:

The mere fact of administrative wrongdoing will not necessarily lead to an award of compensation under Article 10(5)(b) of the UNDT Statute. The party alleging moral injury (or any harm for that matter carries the burden to adduce sufficient evidence proving beyond a balance of probabilities the existence of factors causing harm to the victim's personality rights or dignity, comprised of psychological, emotional, spiritual, reputational and analogous intangible or non-patrimonial incidents of personality.

87. The Applicant gave evidence during the hearing that her separation from UNIFIL caused financial strain for her and her family and emotional stress for her. She explained during the examination-in-chief that because of her separation she had no money and could not pay her mortgage, buy food for her children or pay her children's school fees. Two of her children withdrew from college because she was no longer entitled to education grant and she sto(t)-22 [(a20(l)17(l)17(e)

separated, she would not have been entitled to payment of the education grant entitlement during the 7-week period because the 2015 school year had ended. She became eligible for education grant again upon her appointment to UNMIL on 23 August 2015. It is worth noting that the Applicant's son chose not to return to school and her daughter had to wait a year to return to school because she was unable to gain admittance to the state colleges.

89. The Applicant's evidence on the emotional distress she suffered was very general and did not give the Tribunal a clear picture of the harm she allegedly suffered. Further, she did not adduce any documentary or additional evidence to bolster her request for moral damages.

90. The Tribunal finds that the Applicant's testimony was not compelling enough to serve as the evidentiary basis for an award of moral damages under the amended art. 10.5(b) of the UNDT Statute.

JUDGMENT

91. The decision not to renew the Applicant's appointment and separate her from service as of 30 June 2015 is rescinded.

92. The Respondent is ordered to reinstate the Applicant in service from 1 July to 22 August 2015 and pay her net base salary and entitlements for the period 1 July to 22 August 2015.

93. The compensation shall be paid within 60 days of this judgment becoming executable. Interest will accrue on the total sum from the date of recovery to the date of payment. If the total sum is not paid within the 60-day period, an additional five percent shall be added to the US Prime Rate until the date of payment.

(Signed)

Judge Nkemdilim Izuako

Dated this 31st day of July 2018

Entered in the Register on this 31st day of July 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi