
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/095
UNDT/NBI/2021/007
Judgment No.: UNDT/2021/142
Date: 30 November 2021
Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: Nairobi 4f 0.0 60.54T0.0 -61L.0.9981 0.0 0.0 1.0 240R(. q BT /F1 12.0 Tf 0.0

Counsel for the Applicant:

Monika Ona Bileris

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Maureen Munyolo, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is the Chief of Section, Logistics, Transportation and Movement Integrated Control Centre (“TMICC”), at the Regional Service Centre Entebbe

7. On 26 January 2021, the parties filed a joint motion to join cases UNDT/NBI/2020/095 and UNDT/NBI/2021/007. By Order No. 181 (NBI/2021), the Tribunal granted the parties' joint motion and the two cases were joined.

8. By Order No. 247 (NBI/2021), the Tribunal directed the Respondent to file submissions in response to the Applicant's rejoinder. The Respondent complied and filed the submissions on 8 November 2021.

Facts

9. The Applicant joined the Organization on 20 February 2007 as a Logistics Officer, P-3. She subsequently served in different missions and rose through the ranks. As of 1 October 2016, the Applicant became Chief/CS, UNGSC.³

10. In 2017, the Applicant and some other management-level staff received threatening messages, including an envelope containing a bullet. The threats were allegedly related to the transformational changes at Brindisi involving the Civilian Staffing Review ("CSR").⁴

11. The envelopes containing a bullet were addressed to the Applicant and another staff member, who was serving on a temporary appointment as Deputy Direveirni7.0 1.0 146.4 480.24 T

temporary mitigation measure.⁷ The other staff member later telecommunicated from his home country, the Netherlands, until his separation from the Organization at the end of his temporary appointment in January 2019.⁸

14. With regard to the Applicant, further in September 2018, the Administration made a decision to temporarily assign her to the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), Kinshasa, as Chief, Operations Resource Management, D-1, on Temporary Duty (“TDY”) for three months effective 1 October 2018.⁹ On 15 January 2019, the Applicant, through a competitive process, was appointed temporarily to the position of Chief, Operations Resource Management, D-1. Her contract, which was initially to run until 30 June 2020, was extended to until 31 August 2020.¹⁰ Through all of this time, she retained a lien to her position in Brindisi.

15. In May 2020, the Applicant contacted the Director, UNGSC and the Office of Internal Oversight Services (“OIOS”) over the lack of information on her return to her post in Brindisi at the end of her temporary assignment with MONUSCO.¹¹ In reply, the Director, UNGSC informed the Applicant that her return was contingent upon the completion of the second PSRA. The Deputy Director of OIOS informed the Applicant, among others, that the “OIOS investigation should not have any bearing on her return to her duty station, and that her return was purely a matter of management and UNDSS,

bullet to her if she ever returned from “the jungle”.¹³ Further, in June 2020, the Applicant confidentially informed the Acting Director, UNGSC that she had received other threats by email in the preceding weeks.¹⁴

17. On 19 June 2020, prior to the Applicant’s end of assignment in MONUSCO, UNDSS conducted a second PSRA. In the report, it is indicated that no perpetrators of the threats were identified and that the Applicant’s risk level remained high. The PSRA, therefore, discussed two options: reassigning the Applicant from Brindisi which appeared “more practicable” or allowing her return if measures were implemented to attenuate the risk.¹⁵

18. On 3 August 2020, via a video conference, the Applicant met with, the Assistant Secretary-General for Supply Chain Management (“ASG-SCM”) and the Director, UNGSC to discuss her return to Brindisi following her temporary assignment in MONUSCO. During the meeting, the ASG-SCM informed the Applicant of his plan to place her in the position of Chief of Section, TMICC, RSCE.¹⁶

19. On 10 August 2020, the Applicant sent an email to both the ASG-SCM and the Director, UNGSC protesting the proposed reassignment. She indicated that the proposed position is not commensurate with her skills, training, qualifications and experience.¹⁷

20. On 11 August 2020, the ASG-SCM replied to the Applicant’s email insisting that, “I can see how you will bring added value to the post of Chief TMICC in Entebbe,

Respondent's submissions

33. With regard to the Applicant's first argument, the Respondent submits that the USG/DOS acted on the recommendations of the 29 August 2018 and 30 June 2020 PSRAs to reassign her from Brindisi, where there was a high risk to her personal safety, to Entebbe. Although the 30 June 2020 PRSA recommended some preventive and mitigative measures that could be taken should the Applicant return to Brindisi to work for UNGSC remotely, it determined that the risk to the Applicant's safety would remain high. Based on the recommendations, the Secretary-General used his broad discretion to reassign the Applicant to Entebbe to lower the risk to her personal security.

34. On her second argument, the Respondent denies that the contested decision is tainted with procedural and substantive irregularities. The Respondent states that the Applicant was reassigned to a position at the same grade and level commensurate with her skills and competencies. By Inter-Office-Memorandum dated 18 August 2020, the USG/DOS reassigned the Applicant to another P-5 position, allowing her to maintain her current grade, level and contract status. Whereas the Applicant alleged that she lacked the professional experience in supply chain and logistics as required for the TMICC post in Entebbe, her Personal History Profile ("PHP") confirms that she has over 31 years' experience working within the United Nations system in different capacities dealing with logistics, administration and supply chain management. The Applicant's PHP further indicates that she possesses the three main logistical areas for the TMICC position in Entebbe, namely, support to movement of goods and personnel in the region, management of the section's performance, and building partnerships. The TMICC position in Entebbe is thus commensurate with her skills and competencies.

35. Further, the Respondent denies the allegation that the contested decision is tainted with personal prejudice and malice, ill-will, bias or discrimination. Contrary to her allegations, the Applicant was consulted about the TMICC position. On 3 August 2020, she met with the ASG-SCM at which time the Applicant expressed her views

and engaged in a substantive dialogue on the matter. Her disagreement with the reassignment decision did not preclude its implementation. Relying on *Hepworth*,²⁸ the Respondent opines that her consent was not required. The Appeals Tribunal has held that it is for the Organization to determine whether a reassignment is in its interest or not. It was not for the Applicant to substitute her judgment for that of the Administration. Neither should the Dispute Tribunal substitute its judgment for that of the Secretary-General.

36. Contrary to the Applicant's allegation that the Organization did not to treat her with respect and dignity, the Respondent submits that the reassignment was reasonable and in accordance with the Organization's duty of care to the Applicant. There were documented risks against the Applicant, given that they were envisioned to be

42. There is well settled jurisprudence that the reassignment of a staff member's

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to the Applicant and

49. The second PSRA was conducted to assess the risk to the Applicant if she returned to Brindisi. In September 2018, the UNGSC released the Applicant to MONUSCO where she served on temporary assignment until August 2020.⁴⁸ On 19 June 2020, prior to the end of her assignment, UNDSS conducted a second PSRA in anticipation of the Applicant's return to the duty station. The second PSRA was not in response to the Applicant's suspension of action application. That application was not filed until later in August 2020 after the PSRA had already been issued.⁴⁹

50. Contrary to the Applicant's allegations that there were no fresh threats to her between the first and second PSRA; the Applicant is aware of the threats because she is the one who reported them.⁵⁰ On 8 July 2019, she forwarded to the Acting Director, UNGSC an email warning her against returning to Brindisi and threatening to send another bullet directly to her if she ever returned from "the jungle." (Presumably, the perpetrator was referencing the Applicant's two-year assignment in MONUSCO in the Democratic Republic of Congo).⁵¹

51. In addition, in June 2020, the Applicant confidentially informed the UNGSC Acting Director that she had received other threats by email in the preceding weeks, the last threat being on 25 June 2020.⁵²

52. In view of the continued threats against the Applicant, OIOS continued with its investigations until November 2020. However, the investigation was unable to identify any person(s) responsible for the anonymous missives and threats that targeted the

53. The Applicant was not treated differently than the staff member who was similarly situated. To the contrary, in September 2018, both she and the other staff

treated them as such. The Organization was obliged to take reasonable measures to ensure the Applicant's safety given its duty of care towards her.

57. The Applicant has not met her burden to show that the contested decision was ill-motivated or in bad faith. Mere assertions and innuendo are insufficient.⁶⁰

58. Contrary to the Applicant's assertions, she was consulted and given sufficient notice of the reassignment decision. However, the Appeals Tribunal has held that consultation does not mean that the staff member must consent to the reassignment.⁶¹

59. On 13 July 2020, the UNGSC Acting Director discussed with the Applicant the various options that UNGSC was exploring, including extension of her temporary appointment in MONUSCO, reassignment to an alternative position in the United Nations Support Office in Somalia ("UNSOS"), and resumption of her duties in UNGSC under a telecommuting arrangement.⁶² The Applicant responded that she was not interested in staying in MONUSCO or in taking up the position in UNSOS given her long permanence in Africa and her health situation.⁶³ She also indicated that reassignment to UNGSC with a telecommuting arrangement was not a workable option because the nature of the job did not allow remote working and because she anticipated to encounter a toxic environment.⁶⁴

60. The Applicant was also consulted during the 3 August 2020 meeting with the ASG-SCM.⁶⁵ She expressed her views and engaged in a substantive dialogue with the new ASG-SCM. Her disagreement with the reassignment decision did not preclude its implementation. It is for the Organization to decide the threat/personal risk to the Applicant and to determine whether to reassign her in her own and in the

⁶⁰ *Nouinou* 2019 UNAT-902, paras 64-65.

⁶¹ *Hepworth* 2015-UNAT-503, para. 26.

⁶² Reply, annex 7.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Reply, annex 18.

Organization's best interest. Staff regulation 1.2(c) requires that the Secretary-General assign staff with due regard to their safety and security.⁶⁶

64. Staff Rule 5.3 (f) provides:

In exceptional cases, the Secretary General may, at his or her initiative, place a staff member on special leave with full or partial pay or without pay if he or she considers such leave to be in the interest of the Organization.

65. The Secretary-General has delegated the authority to place a staff member on special leave with full or partial pay or without pay to the Heads of Entities, in this case, the ASG/DOS.⁷⁴

The contested decision

68. The Director of UNGSC reached out to the Applicant with alternative reassignment options but the Applicant turned them all down.⁸¹ There was therefore, no other assignment on which the Applicant could temporarily have been placed pending the outcome of management evaluation. The Administration was obliged to comply both with the Dispute Tribunal's Order suspending the implementation of the reassignment decision and its duty of care towards the Applicant.⁸² It was also not practical to reassign the Applicant to another location during this short period of time.

69. The Appeals Tribunal in *Lauritzen*⁸³ held that it is permissible to place a staff member on SLWFP while in between assignments provided that such placement is only for a limited duration. The Applicant was placed on SLWFP for two months pending management evaluation.⁸⁴ She contests one month of that two-month period.

70. Staff rule 11.2(d) allows 45 days for management evaluation. However, placing the Applicant on SLWFP for the full two months was no less reasonable than for the first month especially since the staff rules allow for more than one month for management evaluation.⁸⁵ Following the management evaluation outcome upholding the reassignment decision, the Applicant was reassigned to Entebbe, effectively ending her placement on SLWFP.⁸⁶ Given that the Applicant was placed on SLWFP only for the period required to evaluate her management evaluation request, the length of time taken was

Applicant's personnel record reflects that she was