

8. Following the Secretary-Assembly, MONUSCO issued Information Circulars to its entire staff on 6 and 9 March 2015, 14 April 2015, and 20 April 2015, with regard to the proposed budget, the establishment of a Comparative Review Panel (CRP), and the review criteria.

9. Under the proposed new structure for the Mission, which was approved by the General Assembly, the military force in Bukavu was to be reduced by one battalion and Kinshasa would no longer be an operational base. As a result, LA posts in Kinshasa and Bukavu were abolished. This meant that a budgetary reduction of 80 LA posts in the 2015/2016 budget cycle for MONUSCO was done.

10. The Applicant, who was an LA in Bukavu, was affected by the abolition. A memorandum from the MONUSCO Director of Mission Support (DMS) informed him of this development. He was also informed through a memorandum from the Chief Civilian Personnel Officer (CCPO), Ms. Xaba-Motsa.

11.

15. Shortly thereafter, the Applicant was offered an Individual Contractor (IC) contract by the United Nations Office for Project Services (UNOPS) for the position of LA within MONUQ0PETBT1 0 0 1 995.9 T5/574 706.9 TmQ.A I238(C)-2n ontract wasf

The purported abolition of the Applicant's post was in fact a conversion of his fixed-term contract into an IC contract.

i. The functions of the fixed-term appointment that the Applicant had been encumbering are identical to those of the IC contract that he was offered by UNOPS.

j. By hiring the Applicant on an IC contract following the purported abolition of his post, the Organization enjoys the benefit of obtaining exactly the same services from him that he had previously provided to the Organization under his fixed-term appointment. This state of affairs contravenes the provisions of section 3.7(b) of ST/AI/2013/4 (Consultants and individual contractors).

*Unequal treatment of similarly situated staff membpx**TB**1 0 0 1 4(px**TB** b1 4(px**TB** b120 0 f)-2s**TB**f sim)7h*

b. Pursuant to art. 2.1(a) of its Statute, the Dispute Tribunal lacks jurisdiction to review the matter of the abolition of the post the Applicant encumbered and the recommendation of the Secretary-General to the General Assembly that led to the abolition of the post. These claims are not receivable and should be rejected.

c. The only reviewable administrative decision before the Dispute Tribunal is the decision not to renew the Applicant

improper purposes. The Applicant bears the burden of proving that the discretion not to renew his or her appointment was not validly exercised.

A comparative review was not required and the outsourcing of the LA functions was proper in the circumstances.

h. There was no requirement for the Mission to subject the Applicant and others similarly placed to a comparative review process. The Department of Field Support Downsizing Guidelines provide that locally recruited staff must be comparatively reviewed by duty station. Since all LA posts in the Bukavu and Kinshasa duty stations were abolished, a comparative review was unnecessary.

i. Due to the need for LAs to be more mobile and to effectively interact and liaise with the local population by providing linguistic support during their engagement, it was agreed to engage LAs through individual contractor agreements to be administered by UNOPS.

j. As a result, it was no longer viable to use national General Service posts to provide for LA positions to a force that is highly mobile, that deploys at short notice, and sometimes requires a surge in its numbers for a limited duration. Additionally, there is no suitable allowance for the travel of national staff.

k. MONUSCO decided to outsource the provision of LA functions in response to the recommendation of the Civilian Staffing Review (CSR) report.

l. MONUSCO already outsources a number of services and considers

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Case No. UNDT/NBI/2015/160

Judgment No. UNDT/2016/167

(Signed)

Judge Nkemdilim Izuako

Dated this 23rd day of September 2016

Entered in the Register on this 23rd day of September 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi