

UNITED NATIONS DISPUTE TRIBUNAL

Case No.:

1/055

Date: 17 May 2021

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

v.

SECRETARY-GENERAL
OF THE DISPUTE TRIBUNAL

from MINUSMA, the Tribunal agrees with her that there is no significant difference between her situation with regard to retention of a lien of service, and the situation of a staff member who has been seconded to another agency. It is for this reason that she retained a lien on the P-3 Human Rights Officer post that she encumbered in MINUSMA during the two-year assignment, and later, a provision relating to her relinquishing it (which the Applicant rightly argues was limited to her post) was incorporated in the MOU.

24. The Applicant is not contesting the enforceability of the MOU, but rather its import; she in particular raises issues as to whether she contracted herself out of what she claims to be her general right to be re-absorbed in MINUSMA on completion of her assignment with the DPO. In this regard, she raises sub-issues of whether she still has a general right to return to MINUSMA and whether the mission is under any obligation to find alternative suitable positions for her. On the basis of settled jurisprudence (*Nguyen, supra*) the Tribunal finds that the Applicant retained a general service lien in MINUSMA.

Whether such a service lien obligates the releasing organization to assist a staff member to find alternative posts upon conclusion of his/her secondment.

25. The Appellate jurisdiction¹⁰ has on occasion answered this question in the following terms;

the seconded staff member will be reabsorbed, and it does not suggest that it entails further conditions like that of the staff member having to secure a vacant position at his/her releasing organization

entitlement to mandatory re-absorption, it entails, at the very least, not less than what is due to a staff member holding a permanent appointment in case his post is abolished (under staff regulation 9.3), that is, the Organization must make good faith efforts to identify a post for the staff member.

¹⁰ *Tran Nguyen*, paras. 42 and 47.

