Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

DUA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON APPLICATION FOR SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Jorge Ballestero, UNICEF

Introduction

1. On 25 September 2012, the Applicant, a former staff member of the United Nations Children's Fund ("UNICEF") in India, filed an application for suspension of action, identifying the contested decision as "the manner of [his] separation from UNICEF … and events following [his] separation … , which caused [him] significant mental distress" (emphasis omitted). The Applicant states that the contested decision was made on 17 April 2012.

2. The Applicant alleges that his separation from UNICEF was the result of "long standing, chronic problems that were not addressed by [the Country Representative], UNICEF India [Country Office,] despite the issues having been brought to her notice by [the Applicant]". The Applicant also refers to a note for the record about his alleged poor performance, which was allegedly prepared after his separation from UNICEF and which prompted the Applicant to file the present application with the Dispute Tribunal.

3. The Respondent submits that the present application is not receivable and should be dismissed. The Respondent states that the Applicant was separated at his own request and "the manner of [his] separation" is not an administrative decision violating his terms of employment. The Respondent further submits that, under art. 2.2 of the Tribunal's StatTJ8er of [hTJCEF a

the Registry transmitted the application to the Respondent, directing him to file a reply by 12 p.m., Wednesday, 3 October 2012.

Background

5. In view of the conclusions arrived at below, the Tribunal need not include an extensive background section. The following background information is based on the parties' written submissions and the record.

6. The Applicant received his initial two-year fixed-term appointment with UNICEF in April 2009. Two years later, his contract was extended for one year, until 30 April 2012. It appears that, throughout his employment with UNICEF, the Applicant remained on loan from the Government of Rajasthan, India.

7. On 8 March 2012, the Applicant's supervisor, Chief of UNICEF Office for Rajasthan sent an email to the Human Resources Officer, UNICEF India Country Office, recommending "the extension of [the Applicant's] fixed-term appointment contract up to 31 December 2012". This email was copied to several senior managers and the Applicant was requested to submit a "No Objection Certificate" from the Government of Rajasthan to "facilitate the extension of the contract".

8. Between 8 and 10 April 2012, the Applicant followed-up with the Government of Rajasthan regarding the extension of his release to UNICEF.

9. On 12 April 2012, the Chief of UNICEF Office for Rajasthan sent an email, apparently to several recipients, including the Applicant, discussing, *inter alia*, some managerial matters and reporting lines. The Applicant responded on the same day that he wished to "express serious dissatisfaction and reservations" regarding parts of the Chief's email. The Applicant further stated that "with this background, [he did] not wish [his] contract to be extended beyond 30 April 2012". The Applicant also forwarded his email to the Human Resources Officer, UNICEF India Country Office,

administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The Tribunal can suspend the contested decisions only if all three requirements of art. 2.2 of its Statute have been met.

18. However, in the instant case, there is presently no case pending before management evaluation. Thus, it is clear to the Tribunal that this is not an application in terms of art. 2.2 of the Tribunal's Statute. Furthermore, the Applicant's separation was effected on 30 April 2012 and is therefore not capable of being suspended.

19. Therefore, the present application, considered under art. 2.2 of the Tribunal's Statute, stands to be dismissed.

Consideration under article 10.2 of the Statute

20. In terms of art. 10.2 of its Statute, at any time during the proceedings, the Tribunal may order an interim measure, which is not appealable, to provide temporary relief to either party, where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

21. However, interim measures under art. 10.2 of the Statute may be ordered only if the Tribunal is seized of an applicati

Orders

27. The application for suspension of action is dismissed.

28. The Applicant's application under art. 2.1 of the Tribunal's Statute, if any, shall be re-filed by 5 November 2012, using form UNDT/F.1E.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 5th day of October 2012

Entered in the Register on this 5th day of October 2012

(*Signed*)

Hafida Lahiouel, Registrar, New York