

Case No.: UNDT/NBI/2019/028

OrderNo.: 036(NBI

TRIBUNAL

Introduction

1. On 12 March 2019, the Applicant filed the current application for suspension of action, pending management evaluation, with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi to suspend the decision to place her on Administrative Leave with Full Pay (ALWFP) effective 6 March 2019.

2. The Respondent filed a reply on 18 March 2019.

3. The Applicant filed an application on the merits of her claim on 15 March 2019.

Background facts

4. The Applicant is serving as a Senior Field Coordinator, in Tripoli, Libya, with the United Nations High Commissioner for Refugees (UNHCR).

5. Between May and December 2018, the Applicant submitted complaints alleging serious irregularities by senior management to the UNHCR Inspector General's Office (IGO) and was interviewed by investigators from the IGO and the Office of Internal Oversight Services (OIOS).

6. Between July and December 2018, the Applicant alleges that she was harassed and mobbed by senior management and other UNHCR staff. Consequently, she submitted a request for protection against retaliation.

9. The Head of Investigation Service in the IGO subsequently sent a memorandum entitled "Placement of Staff on Administrative Leave [the Applicant] to the Director, Division of Human Resources (D/DHR). The memorandum highlighted the allegations against the Applicant and the complainants' fear of retaliation by the Applicant. In light of the foregoing, the IGO informed the D/DHR that it believed there were reasons to believe that the continued presence of the Applicant in her current function in the office might pose a risk to the Organization and that she could retaliate against complainants and witnesses involved in the investigation, destroy, conceal or otherwise tamper with evidence, or interfere with the investigation as per paragraph 4.12.1 of UNCR/OG/2016/04 (Operational Guidelines on Conducting Investigations and Preparing Investigation Reports).

10. On 6 March 2019, the Applicant received a letter dated 4 March 2019 from D/DHR, informing her that: (i) DHR had received initial reports of alleged misconduct against her and that the allegations are of a serious nature; and (ii) due to the allegations, the D/DHR had decided to place her on ALWFP with effect "as

art. 2.2 of the Statute of the Dispute Tribunal and art. 13 of the Tribunal's Rules of Procedure. Article 2.2:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, f3aom [(9)] TJ E9(g)-570(t)(o)23(7(s16(nc)-16(y)39()-5737(

and July 2018 and the retaliation she started facing as a result thereof; or
(iii) aware of the complaints she filed with the IGO and the Ethic's Office.

- b. The decision to place her on ALWFP was issued on 4 March while the first interview with the IGO is scheduled for 19 March 20

20. When considering an application for urgent injunctive relief, the Tribunal is not required to make a conclusive finding but merely to apply the statutory test by forming and expressing an opinion based on the material presented in support of the application¹

21. The Tribunal notes that staff rule 10.4 is phrased broadly. It allows the Secretary General to place a staff member on administrative leave “at any time after an allegation of misconduct and pending completion of a disciplinary process”. The one requirement under this rule is that a staff member should be provided with a written statement of the reason(s) for such leave and its probable duration. Further, administrative leave shall be with full pay except when the Secretary General decides that exceptional circumstances exist which warrant placement of a staff member on administrative leave with partial pay or without pay.

22. Additionally, UNHCR/AI/2018/18 on misconduct and the disciplinary process allows the D/DHR, in consultation with the IGO where appropriate, to place a staff member on administrative leave with pay at any time following a report of suspected misconduct if certain factors exist, including: “Continued service by the staff member would create a risk that he/she could destroy, conceal or otherwise tamper with potential evidence, or interfere in any way with the investigation or disciplinary process, including by retaliating against individuals protected under UNHCR’s retaliation policy”

23. In the present matter, the Applicant was placed on ALWFP almost three months after the nine complainants submitted their joint claim to the IGO and about a month after the IGO started investigating the allegations. The letter of 4 March 2019 from the D/DHR sets out the reasons for her placement on ALWFP and informs her of the probable duration i.e. until 16 May 2019 or until completion of an investigation and any disciplinary process, whichever is earlier.

24. It appears that the IGO is faced with serious allegations of harassment, abuse of authority, intimidation and discrimination against the Applicant from

¹ *Kebede* Order No. 211 (NBI/2017).

nine staff members. The Tribunal notes that the decision to place the Applicant on ALWFP was not made in a vacuum but was made because of interviews the IGO had with the complainants in February 2019. The IGO ascertained during these interviews that the complainants are scared and fear retaliation from the Applicant. Under these circumstances, the Tribunal cannot find that the Respondent acted unlawfully by making best efforts to protect the complainants during the pendency of the investigation.

25. It is evident from the record that the Applicant has made allegations of misconduct to the IGO against managers in her office and has sought protection from retaliation from the UNHCR Ethics Office. While the facts of these two events may be intertwined with the facts of the allegations against her, the procedures for the complaints and request for protection that she has made are separate and distinct from the process that resulted in her placement on ALWFP.

26. Having examined the documentary evidence provided by the parties, the decision to place the Applicant on Administrative Leave with Full Pay (ALWFP) does not, without more, give the appearance of an unlawful or otherwise impermissible exercise of discretion on the part of the Respondent.

27. Based on the facts before it, the Tribunal concludes that the Applicant has not made out a case *prima facie* of unlawfulness.

28. Since the threefold test is cumulative, it is not necessary for the Tribunal to examine whether the other two limbs of the test for a successful application for suspension of action have been met.

29. Lastly, the Tribunal notes that the Applicant filed a substantive application only nine days after submitting a request for management evaluation although a response is not due on her request for another 36 days. In the circumstances, her notes that stnth-22()-50(h10 rg 0.9998 0.0 0.0 1..0 Tf 0-90(l)6)19(5.8 0.0 0.0 1.Tm [(B)6(a)3

ORDER

30. The application for suspension of action is accordingly ~~refused~~

(Signed)

Judge Nkemdilim Izuako

Dated this 19th day of March 2019

Entered in the Register on this 19th day of March 2019

(Signed)

Abena KwakyeBerko, Registrar, Nairobi