

1. The Applicant's Case

1.1 The applicant commenced duty on 7 May 2009 on a temporary duty contract (TDY) in MONUC. She had previously worked in the country in 2007/8. During this period she had developed a network of community and political contacts. She was asked to reactivate these initiatives. Having done so, it is her opinion that the Special Representative of the Secretary-General (SRSG)

would not be extended. She received written confirmation of this on 5 February 2010.

contract would not be renewed. She received written confirmation on 5 February 2010. A week later, on the 12th, she filed her application for suspension of action. On the first working day, with the weekend intervening, the respondent was served with the papers, on the 15th

4.6 The respondent's next argument is that the applicant's allegation of a breakdown in the relationship between her and the SRSG provides a basis for non-renewal. The respondent expresses concern that the applicant has revealed a lack of respect for the SRSG thereby justifying a non-renewal or extension of appointment on the grounds that it would adversely affect the efficient functioning of the mission.

4.7 Whilst these arguments may well be relevant to a substantive hearing on the merits of the decision not to extend or renew her contract, they do not really address the primary requirement that has to be satisfied namely that the decision being challenged "appears prima facie to be unlawful". Whilst a fixed-term contract cannot of itself carry an expectation of renewal, it is material to consider whether the reason for the non-renewal is genuine or whether it appears, on the basis of the available evidence, to suggest the possibility of being based on improper or unlawful motives. At this stage the Tribunal is not in a position to express a concluded factual finding but merely forming an assessment based on the available material as to whether the decision

tomorrow, the respondent makes the point that had she acted in a timely manner, the application would not have had the urgency that it now has. Furthermore, the respondent says that the appointment had never been other than a fixed-term appointment, a fact which was always known to her and it gave her sufficient time to prepare for that eventuality.

4.10 I have to consider the application as it is presented albeit at the last minute. This is a case of particular urgency and a decision on the application has to be made today. In considering this aspect of the three pronged test under article 2 of the statute of the United Nations Dispute Tribunal and article 13 of the Tribunal's rules of procedure, an applicant who willfully delays in submitting the application should expect the Tribunal to factor into the equation any information or evidence that might call into question the applicant's motive. Where the application is insubstantial in relation to the element of unlawfulness and irreparable harm, it would be reasonable to give more weight to unexplained delay in presenting the application. In this case, I do not have any explanation for the delay nor do I find in the documents before me any indication that the delay was a deliberate act designed in some way to force the hand of the Tribunal. In the circumstances, I am satisfied that the test of particular urgency in this case has been made out.

c) Irreparable harm

4.11 The respondent asserts the fundamental principle that where an applicant can be fully compensated by a monetary award, a suspension of action should not be granted. The respondent acknowledges that at the suspension of action stage, no determination is being made on the merits. In consequence thereof, there would be cases where a staff member will continue on full pay which cannot be recouped in the event of a judicial determination on the merits going against that member. In brief the respondent quite properly makes the point that monetary loss does not, without more, constitute irreparable harm. The respondent's further argument is that the applicant has not alleged that there would be any harm to her career prospects or reputation.

Case No.: UNDT/NBI/2010/046

Order No.: UNDT/NBI/O/2010/023

(Signed)

Judge Vinod Boolell

Dated this 16th day of February 2010

Entered in the Register on this 16th