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Introduction

1. The Applicant is a Human Resources Operations Manager with the Kuwait Joint Support Office (KJSO) for the United Nations Assistance Mission for Afghanistan and Iraq (“UNAMI”).

2. In his Application dated 5 September 2013, he is requesting the suspension of action of two administrative decisions pending management evaluation, namely,

- a. His removal from Post No. 64588 and placement on Post No. 54326, and
- b. His placement on a Performance Improvement Plan (PIP).

3. The Respondent filed a Reply to the Application on 10 September 2013 in which he argued, *inter alia*, that:

- a. The Application is not receivable;
- b. The actions complained of are not administrative decisions under art. 2.2 of the Tribunal’s Statute and specifically the implementation of a PIP is not an administrative decision; and
- c. The Applicant has failed to establish the elements required under art. 2.2 of the Tribunal’s Statute.

Facts

4. On 5 May 2013, Ms. Dorothy Mutune, a Human Resources Officer with KJSO, addressed an email to Ms. Padma Nandkumar, UNAMI’s Chief of Administrative Services (CAS). The email was copied to several other KJSO staff members including the Applicant. In the email, Ms. Mutune claimed that Ms. Nandkumar had “humiliated, demeaned, intimidated, harassed, belittled and bullied” her because of certain differences they had regarding the recruitment procedures for a Political Affairs Officer post and payment of Daily Subsistence

Allowances (DSA) to Auditors. Ms. Nandkumar responded to the email on the same day denying Ms. Mutune's assertions.

5. On 6 May 2013, Ms. Nandkumar wrote an email to Mr. Clifford Dias, the Chief Administrative Officer/Head of Office of KJSO who is the Applicant's First

12. On 15 July 2013, Ms. Haseena Yasin, Chief, Mission Support, UNAMI sent an email to the Applicant in which she informed him that there were problems with his management style and his communication. In the email, Ms. Yasin referred to a transcript of a teleconference conversation which she had had with the Applicant and which she considered to be threatening. The transcript is reproduced below:

Exhibit #1 for the record: Transcript of conversation

Teleconference--on 2/7/2013 at 20:17 between the CMS of UNAMI (Haseena Yasin) and KJSO HR Operations Manager (Thomas Y. Wilson III)

Haseena: I think there was an e-mail today again about (sic) asking for a Staff member's performance report before extension of contract and I believed this is what triggered my memory. We have had this discussion many times before that the request for extension form will give you what you need and there is no need for an e-performance document; and therefore I was a bit surprised to see your e-mail come in again for something we had already discussed.

Thomas: That is correct. We forwarded all communication from the mission to FPD informing them that we received specific instructions from the Mission to extend appointments using the request for contract extension form and spoke with Masaki who then informed Chaste. Our instruction from FPD is not to extend contracts for more than 90 days for administrative purposes until the e-performance is received.

Haseena:

appraised of his contractual status when his appointment expired on 31 October 2013.

16. On 31 August 2013, Ms. Jacinta Muhoho, the CCPO of UNAMI issued her End of Mission Assignment report. The relevant parts of her report which impact on the Applicant's case are summarized below.

- a. The impact of reassignment of international staff and change of duty stations in 2011 had adverse effect on some sections as a result of unexpected change of UNAMI posture and operation in 2012.
- b. At the beginning of 2012 the UNAMI HR sections was inundated with requests for within mission reassignments of staff from one location to another prior to completion of one year.
- c. This resulted in proration of assignment grants paid to staff members on initial reassignment and loss of points towards mobility.
- d. The UNAMI HR teams faced challenges due to inconsistent instructions from UNAMI management pertaining to HR actions which caused indecision and delays.
- e. The UNAMI Chief of Mission Support's instructions on implementation of certain HR actions were revised by the Officer in Charge of Mission Support throwing HR practitioners into dilemma and which in turn resulted in implementation delays. A case in point was the standard operating procedures on checking process and Iraqi visa issuance.
- f. There was constant fault-finding on HR activities and impolite communication by the CAS to HR individuals and team members which frustrated the overall HR activities, demoralized the HR teams and hampered provision of quality HR services to UNAMI HR clients.

17. On 1 September 2013, the Applicant was informed by Mr. Dias that the KJSO Steering Committee had decided that a Performance Improvement Plan be developed for him in order to address the concerns of UNAMI. The Applicant responded on the same day and stated as follows:

Thanks for the message. I will send a recap of our discussion today for the record. It is very clear from the information provided to me that the intend (sic) of this last minute action to justify the non-renewal of my contract and or UNAMI desire to take the Chief Contracts Management post which I had inquire (sic) about is a sad reality of the very principle of retaliation and abuse the UN Systems of administration of Performance Management was designed to prevent.

A Supervisor who writes a PIP because he is being pushed to do so by the SRO (CMS of UNAMI) and admits that he reluctantly accepted to do so to grant her wishes as she is one of the Clients is not only highly unacceptable but an abuse of authority.

If services were not provided as UNAMI suggest, where is the accountability for KSJO the Service Provider? When has KJSO become an individual? Why was this information not provided until today? What has been your role as my immediate Supervisor in providing the feedback from the Mission since you claimed the instruction to write a PIP came from one of the CMSes on the Steering Committee and not based on your personal observation. UNAMA CMS I will point out does not share the same views of the UNAMI CMS but I do provide similar services to both Missions.

How can you justify acting on the instructions of the CMS who works out of Baghdad when you as the FRO do not have the same observation. Performance improvement is a concerted effort on the part of a Supervisor to seek to improve the performance of a Staff and should not be used a punitive meshoulasutf-14?-4.7(e)-8.2(1(d)-iAe12.4(a)2..4(ovil)7t)7.412.4(a7l

temporarily on Post No. 54326 until 31 October 2013 and of the decision to place him on a PIP.

19. The Applicant filed the present Application for suspension of action of the decisions on 5 September 2013. The Application was served on the Respondent on 6 September 2013.

20.

- j. On 1 September 2013, he received a hastily prepared PIP which has the intention of downgrading his performance record in breach of Staff Rule 101.2 because the UNAMI CMS and CAS were using their power to intimidate Mr. Dias and to arbitrarily negatively influence his career and employment prospects. Mr. Dias had informed him that it was not his intention to place the Applicant on PIP but was coerced into doing so.

Irreparable damage

24. The Applicant submitted that if the PIP given to him by his supervisor under duress is allowed to stand, his career will be irreparably harmed. It will also cause him stress and damage his morale after all his efforts and excellent performance.

25. With respect to the change of his post number, the Applicant submits that the net result is that his contract is only being renewed for 18 days. He will suffer harm because he will only be able to access 80% of his current salary.

Urgency

26. The Applicant submitted that the action was initiated to remove him from his post and to end his career with the United Nations. The PIP was issued to negate his contract extension request. If the PIP is allowed to stand, he will be denied the opportunity to move to another mission and this will bring an end to his career with the United Nations.

27. For these reasons, the Applicant prayed that this Application for Suspension of Action be granted pending his Management Evaluation Request filed on 4 September 2013.

Respondent's submission

28. The Respondent submitted that the complaint concerning implementation of a PIP is not receivable since, pursuant to section 10.1 of ST/AI/2010/5 (Performance Management and Development System), when a performance

shortcoming is identified, the first reporting officer should proactively assist the staff member to remedy the shortcoming by implementing remedial measures such as a PIP.

29. The Respondent submits that the Applicant cannot seek the tribunal's intervention in the implementation of the PIP for three reasons:

- a. The implementation of a PIP is part of an on-going process. It is not a final administrative decision that impacts on the Applicant's terms of appointment.
- b.

clients in UNAMI, including issues of timely service and proper interpretation of UN policies and procedures.

b. The PIP was initiated in accordance with the rules. Ms. Yasin, CMS of UNAMI identified shortcomings in the Applicant's performance and made efforts to address the shortcomings with him.

c. Although UNAMI Management has raised concerns in regard to the Applicant's performance, UNAMI Management did not have input into the Applicant's Special Performance Report that was signed off in May 2013. For these reasons, the concerns expressed by UNAMI Management were not taken into account in this performance report. Instead, the report was prepared by the Applicant's FRO, Mr. Dias, and Mr. Stephanie Scheer, Chief of Mission Support for UNAMA.

d. On 28 August 2013, the Applicant's performance was discussed at a KJSO Steering Committee meeting and UNAMI Management suggested that remedial measures be put in place in order to address the issues with the Applicant's performance. At this meeting, the FRO was asked to develop a PIP for the Applicant intended to address the concerns and provide guidance for improvement in the Applicant's performance.

e. In accordance with these discussions, a PIP was implemented in accordance with section 10.1 of ST/AI/2010/5.

f. There is no basis for the Applicant's claim that he is being retaliated against. This is a matter of his supervisors assessing his performance as they are bound to do and ensuring that remedial action is taken where shortcomings are identified.

g. The source of funding for the Applicant's position was changed for operational reasons.

h. The Applicant was recruited as a Human Resources Operations Manager. Upon his recruitment, he was placed against Post No. 74588 which had been approved by the General Assembly for the position of

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for non-renewal, a staff member's appointment should be extended for the period

45. Sections 7.1, 7.2 and 10.1 of ST/AI/2010/5 provides that,

7.1 During the course of the year, the first reporting officer and the staff member should hold conversations and dialogue, formally and informally, and may have exchange of e-mails and/or other written communication on the progre

Steering Committee had no competence to involve itself in the performance appraisal of a specific staff member as such was the responsibility of the Applicant's FRO and SRO. The Tribunal finds, therefore, that the decision to place the Applicant on a PIP was unlawful.

(b) Removal of the Applicant from Post No. 64588 and placement on Post No. 54326.

47. The Applicant submitted that the decision by Ms. Yasin to remove him from the Chief Contracts Management Officer Post No. 74588 and temporarily place him on the SSI Post 54326 shows that the intention is to bring his contract to an end because Post No. 54326 is currently under recruitment in Inspira. He had testified that on 28 August 2013, he wrote to Mr. Dias to inquire about his contractual status beyond 31 October 2013 and is yet to receive a written response. The Applicant further submitted that as a result of the change of his post number, his contract was in essence being extended for only 18 days and that he would only be able to access 80% of his salary.

48. The Respondent's pleadings on this score are that the source of funding for the Applicant's position was changed for operational reasons, specifically, that in order to proceed with the recruitment of a Contracts Management Officer post, it was necessary to change the source of financing for the Applicant's position. The Respondent submitted that the change of post number has no impact on the Applicant's contractual status.

49. The Tribunal, having considered the entire circumstances surrounding the impugned decisions, is convinced that the decisions to place the Applicant on a PIP and to change his post number were motivated by the disagreement between him and UNAMI managers when he advised them against.

a case of retaliation and abuse of authority against the Applicant by Ms. Yasin and the KJSO Steering Committee.

50. The rule of law is the cornerstone of the system of internal justice of the Organization and a core concern and objective of the United Nations activities and programmes everywhere. Managers within the Organization cannot misuse the staff rules in a manner such as in the present case to circumvent the rules of natural justice. In this case, the KJSO Senior Managers and particularly Ms. Yasin constitute themselves to be Judges in their own cause. Having failed in their efforts to bully the Applicant into renewing contractual appointments by one year without complying with FPD's instructions, they have chosen to retaliate against him by purporting to utilise the Staff Rules. This displays a regrettable lack of tolerance on their part.

51. There is a conflict of interest in the present case on the part of UNAMI Managers who, clearly, smarting from a disagreement with the Applicant on the issue of inappropriate renewal of appointments, turn around and start making administrative decisions detrimental to the Applicant's terms of appointment without regard to due process. Not only were these actions and decisions on their part unethical, they exhibit bias and a lack of integrity on the part of the KJSO Steering Committee and particularly Ms. Yasin. These Senior Managers abused their authority to achieve their own personal ends, which is, to retaliate against the Applicant who was only upholding the Staff Rules and Regulations of the United Nations.

52. The Tribunal will not countenance a situation where the very fundamental tenets provided in the Preamble to the Charter of the United Nations are trampled on by anyone even if they are Senior Managers. The requirement of *prima facie unlawfulness* is satisfied by the Applicant.

Irreparable damage

53. With respect to irreparable harm, a staff member's career consists of more than the financial remuneration that comes with a job. It includes reputation, respect and self-esteem. These cannot be compensated by a monetary award. If

the impugned decisions are allowed to stand, the Applicant's career will be irreparably harmed. The Respondent additionally failed to rebut the Applicant's contentions that he will also suffer harm because he would only be able to access 80% of his current salary.

Urgency

54. With respect to urgency, the Applicant submitted that this matter is urgent because the impugned decisions were initiated to remove him from his post and to end his career with the United Nations. He also submitted that the net result is that his contract is only being renewed for 18 days and that on 28 August 2013, he wrote to Mr. Dias to inquire about his contractual status beyond 31 October 2013 and is yet to receive a written response.

55. The Respondent, on the other hand, submitted that the Applicant's fixed-term appointment will not expire before 31 October 2013 and that pursuant to Staff Rule 11.2 (d), the response to the Applicant's request for management evaluation is due within 45 days of the date it was filed, that is, on or before 19 October 2013. Any order issued by the tribunal will only be in effect during the pendency of the management evaluation.

56. The Tribunal has considered the parties' arguments and finds that this matter is urgent.

Conclusion

57. The Tribunal wishes to direct FPD's attention to assist in addressing the HR challenges facing UNAMI as detailed in the outgoing CCPO of UNAMI's End of Mission Assignment Report of 31 August 2013.

58. The Tribunal, having considered the parties pleadings, testimonies and oral and written submissions, finds that the Applicant has satisfied the requirements for the grant of a suspension of action as required by art. 2.2 of the Tribunal's Statute and orders:

- a. Suspension of the decision to remove the Applicant from Post Number 64588 pending management evaluation.
- b. Suspension of the decision to place the Applicant on a Performance Improvement Plan pending management evaluation.

Signed

Judge Nkemdilim Izuako

Dated this 25th day of September 2013

Entered in the Register on this 25th day of September 2013

Signed

Abena Kwakye-Berko, Acting Registrar, Nairobi