



UNITED NATIONS DISPUTE TRIBUNAL

The Application and Procedural History

1. The Applicant is the Chief of the Staff Counselling and Welfare Section at the African Union-United Nations Mission in Darfur (UNAMID). She serves on a fixed-term appointment at the P-5 level in El Fasher.
2. On 23 June 2015, the Applicant filed an Application for Suspension of Action seeking an injunction against the decision to renew her appointment beyond 30 June 2015.
3. The Respondent filed his Reply to the Application on 25 June 2015.
4. The Applicant responded to the Respondent's Reply on the same day.

Facts and Submissions

Applicant

5. On 22 January 2015, the Applicant received an unofficial and draft Staffing Table for UNAMID for financial year 1 July 2015 to 30 June 2016¹. That Staffing Table showed that the Applicant's P-5 post (post number 68169) was to be "redeployed" as the Head of Office in Zubei, Darfur, and a vacant P-4 post would be "reassigned" to serve as the Chief of the Staff Counselling and Welfare Section – which Section would be moved under the Human Resources Section.
6. At no point prior to receiving the draft Staffing Table had anyone discussed the restructure or reclassification with the Applicant, which had by the time the Applicant became aware of it been submitted for consideration to the Advisory Committee on Administrative and Budgetary Questions (ACABQ). In her previous

¹ Applicant's Annex A.

those circumstances be entitled to exercise her procedural rights to appeal the classification decision at that point.

20. The Applicant is scheduled to be separated on 30 June 2015, well within the period for management evaluation. She is making this application now based on the apparent failure of informal resolution and the imminent date of her separation.

21. If this honourable Tribunal does not respond to the decision to separate the Applicant from service, the only remedy subsequently available to her will be monetary compensation.

22. Loss of employment is to be seen not merely in terms of financial loss, for which compensation may be awarded, but also in terms of loss of career opportunities. This is particularly the case in employment within the United Nations which is highly valued. Once out of the system for even a short period of time, the prospect of returning to a comparable position within the United Nations is significantly reduced. The damage to career opportunities and the consequential effect on one's life chances cannot adequately be compensated by money.

Respondent

23. The Respondent submits that contrary to the Applicant's submissions, her appointment is being renewed, at her current level, for one month beyond 30 June 2015 "pending GA approval of the budget and classification" of her post. That being the case, there is "no contestable administrative decision as stipulated by art. 2.1(a) of the UNDT Statute." The Application should therefore be dismissed.

Applicant

24. The Respondent's *interim* renewal of the Applicant's appointment is insufficient, and does not cure the procedural flaws and unlawfulness of the impugned decision.

25. The one month renewal also does not make the impugned decision any less urgent or irreparably harmful to the Applicant.

26. It is entirely likely that the General Assembly might approve the unlawful proposal of the Secretary-General within one month for which the Applicant is being renewed. Likewise, the Management Evaluation Unit is not likely to render its decision before the expiration of its 45-day limit. Should the General Assembly approve the proposal during the course of that month and before the Management Evaluation decision is issued, the likelihood that the Applicant will be immediately separated, thus leaving her with no recourse other than the filing of a substantive application and seeking monetary compensation.

Deliberations

27. Applications for suspension of action are governed by article 2.2 of the Statute of the United Nations Dispute Tribunal. ("he

35. This Tribunal recalls the position it espoused in previous cases, in that *prima facie* unlawful decision¹¹:

[S]hould not be allowed to continue simply because the wrongdoer is able and willing to compensate for the damage he may inflict. Monetary compensation should not be used as a cloak to shield what may appear to be a blatant and unfair procedure in a decision-making process.

36. The remaining limb to be satisfied is that of urgency of the application, which is tied to the question of whether the application can succeed in the face of the renewal of the Applicant's appointment. It is not lost on the Tribunal that the decision to renew her appointment was made after she filed the application to challenge her imminent separation.

37. The Applicant is correct in her assertion that the one month renewal does not cure the defects in the impugned decision. It continues to be the case that the conditions precedent to a re-evaluation exercise have not been met in respect of the Applicant.

38. The fact that an imminent decision of the General Assembly can radically alter the Applicant's circumstances at any time, and notwithstanding the one month renewal that she has been given, makes this matter urgent.

39. As it is the role of the Management Evaluation Unit, as prescribed in ST/SGB/2010/9 (Organization of the Department of Management), to conduct "an impartial and objective evaluation of administrative decisions contested by staff members of the Secretariat to assess whether the decision was made in accordance with rules and regulations," the Tribunal finds it appropriate under the circumstances of the present case that the Unit be afforded the opportunity to carry out that evaluation

¹¹ *Tadonki* UNDT-2009-016. See also *Corna* Order No. 80(GVA/2010); *Fradin de Bellabre* UNDT-2009-004; *Utkina* UNDT-2009-096.

and, if necessary, “propose means of ~~im~~ fully resolving disputes” between the Applicant and the Respondent.

40. The Application for Suspension of ~~Acti~~ pending management evaluation is hereby GRANTED.

(Signed)

Judge Vinod Boolell

Dated this ~~25~~th day of June 2015

Entered in the Register on this ~~25~~th day of June 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi