
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/014

Order No.: 027 (NBI/2016)

Date: 17 February 2016

Original: English

Before:

Judge Vinod Boolell

The Application and Procedural History

1. The Applicant is a Finance Officer on a fixed-term appointment at the P-4 level with the United Nations Mission in Liberia (UNMIL).

2. On 11 February 2016, the Applicant filed an Application for suspension of action with the United Nations Dispute Tribunal (UNDT) in Nairobi seeking the suspension of the following decisions pending management evaluation:

a.

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section

Irreparable harm

15. The Applicant submits that the implementation of the contested decision is contrary to para. 5.18(c) of ST/SGB/2008/5 and is a subversion of the internal justice system of the United Nations. He further submits that the request by the SRSG that he should participate in training/sensitization on communication, performance management as well as prohibited conduct as defined in ST/SGB/2008/5 as a result of the fact finding is already having a negative impact on his professional reputation and causing him embarrassment.

16. The Applicant submits that the Respondent did not follow due process as the FFP never questioned him on any matter relating to leadership inadequacies or failures on his part. The SRSG request that he undergo training based on the findings of the FFP is contrary to due process and this is impacting negatively on his professional reputation.

Respondent

Prima facie unlawfulness

17. The Applicant has not met his burden of demonstrating a *prima facie* case of unlawfulness of the contested decisions. Paragraph 5.18(b) of ST/SGB/2008/5 specifically provides the responsible official with the discretion, where the allegations are factually established, but are not sufficient to justify the institution of disciplinary proceedings to take managerial actions.

18. The applicable provisions establish that the responsible official has the discretion to take managerial action if so warranted by the findings of the FFP. In this instance, the SRSG considered a number of factors which are consistent with the

The SRSB considered, in particular, the circumstances of the cases including the already tense work environment that preceded the conflict between Mr. Niidas and the Applicant, the tense relationship between the Applicant and various other personnel in the Finance Section, the ongoing downsizing process, and the frequent turnover of personnel in the Finance Section resulting in fewer personnel managing a workload that has not reduced commensurately.

19. In the case of Applicant UNDT/2015/051, the UNDT recognized the discretion afforded to the responsible official in determining the appropriate course of action in the light of the findings of an FFP established under ST/SGB/2008/5. The decision to impose a reprimand on another staff member does not adversely impact

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held in a number of cases that to be reviewable, an administrative decision must TJEnumbe

any form of prohibited conduct as foreseen, *inter alia*, by sections 3.2 and 4.1 of ST/SGB/2008/5.

Urgency

22. With regard to the decision to issue a reprimand to Mr. Niidas, the Respondent submits that the Applicant has not established the element of particular urgency required to suspend the implementation of that action.

23. With respect to the decision to request the Applicant to participate in training/sensitization on communication, performance management as well as prohibited conduct as defined in ST/SGB/2008/5, no specific deadline for compliance with the instruction from the SRSG/UNMIL has been set.

Irreparable harm

24. The Applicant has failed to demonstrate either how his rights are being denied or the negative impact on his reputation and career prospects by the imposition of a reprimand against Mr. Niidas. The complaint filed by the Applicant and the resulting action against Mr. Niidas pursuant to ST/SGB/2008/5 should have no impact on the

action are confidential.

25.

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26.

30. ST/SGB/2008/5 defines prohibited conduct as follows in section 1.5:

For the purposes of the present bulletin, discrimination, harassment, including sexual harassment, and abuse of authority shall collectively be referred to

31. The Applicant was only a complainant and a witness before the FFP. The available record does not indicate that any allegations of prohibited conduct as defined in ST/SGB/2008/5 were put to him. It should be recalled that

discrimination, harassment, including sexual harassment, and abuse of authority, as defined in it¹. The SRSG treated the findings of the FFP on the Applicant as if they amounted to prohibited conduct. This was beyond his powers².

32. The Respondent refers to the performance appraisal of the Applicant to buttress his defence that what the SRSG decided was correct. This is simply surprising. If a staff member is lacking in any of the core values or in performance, measures to address these flaws exist in ST/AI/2010/5 (Performance Management and Development System). Section 10 of ST/AI/2010/5 deals extensively with aspects

Identifying and addressing performance shortcomings and unsatisfactory performance

10.1 During the performance cycle, the first reporting officer should continually evaluate performance. When a performance shortcoming is

10.2 If the performance shortcoming was not rectified following the remedial actions indicated in section 10.1 above, and, where at the end

plan shall be prepared by the first reporting officer. This shall be done in consultation with the staff member and the second reporting officer. The performance improvement plan may cover up to a six-month period.

10.3 If the performance shortcoming was not rectified following the remedial actions indicated in section 10.1, a number of administrative actions may ensue,

34. Under the Core Values of Integrity ; Professionalism and Respect for Diversity . In the overall comments on Core
In general I consider [the Applicant] to

35. Allegations that a staff member is not a good leader or manager do impact on the employment terms of that staff member. Due process would have required that he be given at least an opportunity to rebut the allegations before any measure, be it a sanction or a corrective measure is taken against the staff member.

Conclusions on the element of unlawfulness

36. The Tribunal concludes that by taking the observations or conclusions of the FFP at face value without giving the Applicant an opportunity to comment or rebut them and subsequently imposing on him an obligation to take corrective measures, the Administration acted unlawfully. In addition the particulars of prohibited conduct referred to by the SRSG in his letter to the Applicant were never set out. This was essential as the definition of prohibited conduct is a sweeping one in the relevant ST/SGB.

Is the matter urgent?

37. There can be no doubt that the matter is urgent as the Administration would in normal circumstances take action for the Applicant to be subjected to corrective

Ruling

41. A suspension of action of the decision by the SRSG/UNMIL to request the Applicant to participate in training/sensitization on communication, performance management as well as prohibited conduct as defined in ST/SGB/2008/5 is granted until management evaluation is determined.

(Signed)

Judge Vinod Boolell

Dated this 17th day of February 2016

Entered in the Register on this 17th day of February 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi