



Introduction

1. The Applicant holds a fixed-term appointment with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO/the Mission). He serves as a Logistics Assistant at the G-4 level and is based in Lubumbashi.

Facts

2. The Applicant entered into service of the United Nations in MONUSCO as a Transport Assistant in 2000. In 2005, he became a Logistics Assistant on the G-4 level.

3. Following a complaint by a MONUSCO vendor on 13 October 2015, that the Applicant had placed purchase orders and obtained supplies for hundreds of vehicle tyres and batteries in the name of MONUSCO between 1 and 12 October 2015, the Applicant's home was searched on 13 October 2015. Upon recovery of most of the tyres and batteries, the Applicant admitted placing orders for and obtaining the goods.

4. He was interviewed by the MONUSCO Special Investigations Unit (SIU) on suspicion of fraudulent purchases in the name of the Mission on 14 October 2015.

5. MONUSCO SIU produced its report on 18 December 2015 and it was then forwarded to OIOS for further investigation.

6. In or about the third week of January 2016, another vendor complained to the Field Administration Officer at MONUSCO that the Applicant, posing as a procurement officer in the Mission, had between 31 March and 22 September 2015 placed purchase orders in the name of MONUSCO from him for stationery. Although the stationery was all delivered, payments had not been made for most of it.

7. On 2 May 2016, the Applicant was placed on Administrative Leave without Pay (ALWOP) for three months by the Under-Secretary-General for the Department of Field Support (USG/DFS) in respect of the complaint and investigations concerning the vehicle tires and batteries.

8. On 31 August 2016, OIOS interviewed the Applicant in relation to the report regarding his alleged fraudulent purchase orders and the obtaining of stationery in the name of the Mission between March and September 2015. Again the Applicant admitted to investigators that he placed the orders and obtained the stationery supplies.

9. On 3 August 2016, the USG/DFS extended the ALWOP by a further three months.

10. On 4 November 2016, the Office of Human Resources Management (OHRM) received a memorandum from the Assistant Secretary-General for Field Support referring the two matters of the Applicant's conduct for consideration of disciplinary action. The correspondence included two investigation reports from the Investigations Division of OIOS, and a preliminary investigation report from the MONUSCO SIU.

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not do. The Applicant submits that evidence of an attempted fraud does not resulting in a risk to the Organization and reputational threat does not meet the required level that the staff member poses a danger to the Organization.

14. The USG/DFS provides no indication as to the probable duration of the ALWOP.

Respondent

19. The Respondent submits that the Applicant has not disputed that he engaged in the conduct he has been accused of. Indeed, he has expressed his “desire to generate a revenue stream to his personal benefit, utilizing the reputation and goodwill of the Organization in the process”.

20. The Applicant has engaged in the alleged fraudulent conduct at issue on multiple occasions including at least on one more occasion after he had been interviewed by the MONUSCO SIU in October 2015 and, on at least two occasions, after he had received a formal written reprimand for similar conduct. The Applicant has repeatedly engaged in deceptive conduct under the guise that he was acting under the authority of the United Nations.

21. It is the case for the Respondent that the Applicant has failed to establish that the impugned decision(s) are *prima facie* unlawful, that the matter is urgent and that the element of irreparable harm has been satisfied.

Deliberations

22. Applications for suspension of action are governed by art. 2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal. Art. 13 provides as follows:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears **prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.**

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3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

23. *All three*

28. Additionally, a suspension of action application will only succeed where the Applicant is able to establish a *prima facie* case on a claim of right, or where he can show that *prima facie*, the case he has made out is one which the opposing party would be called upon to answer and that it is just, convenient and urgent for the Tribunal to intervene and, without which intervention, the Respondent's action or decision would irreparably alter the *status quo*.

29. This Application must be adjudicated against the stipulated cumulative test, in that the Applicant must establish that the impugned decision is *prima facie* unlawful, calls for urgent adjudication and that implementation of the impugned decision would

33. The Respondent complied with the requirements of staff rule 10.4(b) and provided the Applicant with written explanations for being placed on ALWOP on 2 May 2016, 3 August 2016 and 9 November 2016.

34. With respect to “exceptional circumstances” *per* staff rule 10.4(c), this Tribunal has previously held that:

It is rather the Tribunal’s view that “exceptional circumstances” refer to the *particular* set of circumstances which are “exceptional” or as in this case “egregious” and which surround the facts in issue in the particular case.³

35. On the facts of the present case, the Tribunal is satisfied that there are in this case “exceptional circumstances” warranting the placement of the Applicant on ALWOP. The record before the Tribunal suggests that the Applicant has, on several occasions, procured goods for personal use using the Organization’s good offices with vendors.

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cumulative one, it is unnecessary for the Tribunal to proceed to assess this Application on the ground of urgency and irreparable harm.

39. The Application for Suspension of Action is **accordingly REFUSED.**

(Signed)

Judge Nkemdilim Izuako

Dated this 22nd day of November 2016

Entered in the Register on this 22nd day of November 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi