

Introduction

1. The Applicant serves as a Security Officer at the United Nations Multidimensional Integrated Stabilisation Mission in the Central African Republic. He is based in Bangui.

2. On 14 June 2017, the Applicant filed the subject application of the present decision for an injunction against the Respondent's decision to separate him from service for misconduct. The Secretary-General decided that the Applicant's conduct warranted separation from service with compensation *in lieu* of notice, but without the payment of termination indemnity.

3. The Respondent filed his Reply to the application for suspension of action on 15 June 2017.

4. The Applicant was found to have misconducted himself when he engaged in disorderly conduct at the Nouvel Hotel in Bangui, Central African Republic on 16 July 2016; and, the next day, when he drove a United Nations vehicle while intoxicated, operated the vehicle in a manner that was dangerous to the public and failed to stop the vehicle when instructed by MINUSCA Security personnel.

Submissions

Applicant

5. The Applicant's case is that the decision to separate him from service was taken without a review of all the circumstances surrounding the assaults on 16 and 17 July 2016, and that past incidences formed part of the decision making process.

Respondent

6. The Respondent submits that the Application is not receivable because the decision to separate the Applicant from service was implemented on 8 June 2017. The Tribunal cannot suspend a decision which has already been implemented.

7. The Respondent also submits that in the event the Tribunal finds this application re

court finds that the payment of damages would be an adequate remedy for the harm suffered.¹

10. 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

15. The Applicant was subsequently presented with a charge letter on 13 February 2017. He responded to the allegation in the charge letter on four occasions between 14 and 23 February 2017. He did not provide the Tribunal with a copy of his responses to the Respondent's allegations.

16. The Tribunal surmises from the letter containing the disciplinary sanction, dated 31 May 2017, that the Applicant conceded to having engaged in the alleged conduct.

17. While the 31 May 2017 letter also makes mention of the Applicant's allegations that he was mistreated by the Chief Security Advisor, and the Cameroonian Formed Police Unit, the Applicant has not provided the Tribunal with any evidence in support of his allegations.

18. Given what is available on the record, the Tribunal is not persuaded that the decision to separate the Applicant was improperly made or tainted by the extraneous factors alleged.

19. Having found that the impugned decision has not been shown to be *prima facie* unlawful, and given that the test for suspension of action applications is a cumulative one, it is unnecessary for the Tribunal to proceed to assess this Application on the ground of urgency and irreparable harm.

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

Case No. UNDT/NBI/2017/053

Order No.: