
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/006

Order No.: 006 (NBI/2018)

Date: 12 January 2018

Original: English

Introduction

1. The Applicant is a staff member at the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA). He is currently employed at the P-4 level, on a fixed-term appointment, as Civil Engineer in the Engineering Section of the Mission. based in Bamako.

The Application and Procedural History

2. On 11 January 2018, the Applicant filed an application for suspension of

appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

2. The Registrar shall transmit the application to the Respondent.

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

7. It is clear that the Tribunal is under a duty to transmit a copy of the suspension of action application to the Respondent and to issue a decision within five days thereof. There is no requirement, either under art. 2.2 of the Statute or art. 13 of the Rules of Procedure, for the Tribunal before the applicant's request

8. The Applicant is required to satisfy the Tribunal that the impugned decision appears prima facie to be unlawful, is urgent and will cause him/her irreparable harm if implemented. All three elements of the test must be satisfied before the impugned decision can be stayed.

9. It is clear that the Statute does not require the Tribunal to make a definitive finding that the decision is in fact unlawful. The test is not particularly onerous since all the Tribunal is required to do at this stage is to examine the material in the application and to form an opinion as to whether it appears that, if not rebutted, the claim will stand proven. This means that the onus is on the Applicant to provide a sufficiency of material in order to satisfy the statutory test. Any such opinion is not a finding by the Tribunal and is certainly not binding should the matter go to trial on the merits. It is

11. Having examined the material provided by the Applicant, the decision to deploy him to carry out duties in Kidal does not, without more, give the appearance of an unlawful or otherwise impermissible exercise of managerial discretion. Whether the Applicant's fear that his Cao Airpora Project will be harmed if he is transferred are well-founded or not, is not for the Tribunal to decide. Further, at this stage there is not a sufficiency of material to support an inference that the decision maker was motivated by improper or impermissible motives like, for example, retaliation rather than by the interest of the Organization.

12. The Applicant's contentions and submissions do not satisfy the test of whether the impugned decision appears *prima facie* to be unlawful.

13. Since the threefold test is cumulative it is not necessary for the Tribunal to examine whether the other two limbs of the test for a successful application for suspension of action have been met.

ORDER

14. The application for suspension of action is refused.

(Signed)

Judge Goolam Meeran

Dated this 12th day of January 2018

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