



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/035
Order No.: 032 (NBI/2018)
Date: 16 March 2018
Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ROSS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Lance Bartholomeusz, UNHCR

Louis Lapicerella, UNHCR

Receivability

a. The application is receivable *ratione personae*. There is a strong nexus between the Applicant's former employment with UNHCR and the administrative decision under consideration. The core issues flow from his previous employment with UNHCR.

b. The application is receivable *ratione materiae*. The contested decision produces continuing legal effects and as such, cannot be considered as having been implemented.

Prima facie unlawfulness

c. Adverse material was inserted into the Applicant's online personnel file without showing it to him before doing so, this action violates ST/AI/292 and constitutes abuse of authority and harassment as defined in ST/SGB/2008/5. The adverse material was inserted into the Applicant's personnel file in retaliation and to bar the Applicant from getting re-employed by UNHCR in the future.

Urgency

d. The adverse material in his online personnel file *de facto*

Receivability

a.

Merits

23. Pursuant to art. 2.2 of the Tribunal's Statute and art. 13.1 of its Rules of Procedure, the Dispute Tribunal may suspend the implementation of an administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage to the concerned staff member. These are cumulative conditions. Therefore, the impugned decision can be suspended only if all three requirements are met (e.g., *Hepworth* UNDT/2009/003).

Prima facie unlawfulness

24. The Tribunal has repeatedly held that the prerequisite of *prima facie* unlawfulness does not require more than serious and reasonable doubts about the lawfulness of the contested decision (see *Hepworth* UNDT/2009/003; *Corcoran* UNDT/2009/071; *Corna* Order No. 90 (GVA/2010); *Berger* UNDT/2011/134; *Chattopadhyay* UNDT/2011/198; *Wang* UNDT/2012/080; *Wu* Order No. 188 (GVA/2013)).

25. The content of the annotation which states "Consult PER/EX or the Chief of PAPS before any possible rehire" ~~breaches~~ ST/AI/292 (Filing of adverse material in personnel records). While the Respondent argues that ST/AI/292 is not applicable to UNHCR, it is not in doubt that the content of the annotation constitutes adverse material. Indeed, the Respondent does not contest that the annotation was added to the Applicant's profile in the MSRP system without being shown to the Applicant.

26. Furthermore, while the Respondent argues that no rules prohibit the Organization from including in a staff member's personnel records a mention or note requiring a coordinated response, the Tribunal finds that the content l 706more ~~can~~

files. Although he submitted that such annotations are made by UNHCR as a matter of practice, counsel could not provide any information on when the alleged practice to include annotations in the staff member's MSRP files was adopted or any statistics to show that such a practice existed.

28. Based on the evidence before the Tribunal, the decision is *prima facie* unlawful.

Urgency

33. The Respondent shall **immediately** remove the adverse material complained of by the Applicant which was inserted into the said Applicant's online personnel file, pending the result of management evaluation.

(Signed)

Judge Nkemdilim Izuako

Dated this 16th day of March 2018

Entered in the Register on this 16th day of March 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi