

INTRODUCTION

1. The current Order is in relation to applications for suspension of action filed by 14 staff members of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) on 21 June 2019 to challenge the non-renewal of their fixed-term appointments (FTAs) upon expiry on 30 June 2019.

2. The Applicants are all serving on fixed

Case Nos.: UNDT/NBI/2019/068,
069, 070, 071, 072, 073, 074, 076
077, 079, 080, 082, 083 and 084
Order No. 083 (NBI/201

11. On 16 May 2019, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) recommended in its report that the General Assembly approve the abolition of posts as proposed by the Secretary-General in the 2019-2020 budget.

12. On 28 May 2019, the Office of the Director of Mission Support, sent a broadcast to staff advising them that: the CRP process had been completed; and from 29 May onwards, notification letters would be sent to staff members affected by the CRP or dry cuts. The broadcast further indicated that staff on continuing appointments or permanent appointments would be notified upon approval of MONUSCO's budget proposal by the General Assembly.

13. The Applicant's posts were subjected to dry cuts instead of the CRP since all the 15 Heavy Vehicle Operator posts in the Centralized Warehouse Section had been proposed for abolition.

14. On 29 May 2019, the CHRO informed the 14 Applicants once again that their posts had been proposed by the Secretary-General for abolition and thus, their FTAs would not be renewed beyond 30 June 2019. Once again, they were informed that HRS would commence their check-out processes in line with the notices.

15. The Applicants wrote to the Management Evaluation Unit (MEU) requesting suspension of action and management evaluation of the non-renewal decisions on 14 June 2019. On 19 June, MEU informed the Applicants that their request for suspension of action pending management evaluation was under consideration and that a decision would be made in "due course". MEU further

MERITS

22. When faced with an application for suspension of action, the Tribunal must decide whether the Applicant satisfies the three cumulative requirements in art. 2.2 of the Statute and art. 13 of the Tribunal's Rules of Procedure, namely that the decision appears to be *prima facie* unlawful, that the matter appears to be of particular urgency, and that the implementation of the decision would appear to cause irreparable damage.

23. The Tribunal is not required to make a conclusive finding when it is considering an application for suspension of action. It simply applies the statutory test by making a swift assessment based on the submissions and supporting documents. Whether this initial assessment is upheld when the substantive issues of fact and law are subsequently considered will depend on the evidence, arguments and submissions of the parties.

24. The issues that are currently before the Tribunal are: (i) whether the Respondent's decision not to renew the Applicants FTAs beyond 30 June 2019 is *prima facie* unlawful; (ii) whether the matter is urgent; and (iii) whether implementation of the separation decision will cause the Applicants irreparable damage.

Prima facie unlawfulness

Submissions

25. Each of the Applicants submits that the contested(t)-22(e)4whether

utilizing outsourcing services that neither save money nor reduce costs. It is more economical/cost effective to reinstate the Applicants.

b. The Staff Union was not involved in the decision-making process prior to the service being outsourced.

26. The Respondent submits that the contested decision is *prima facie* lawful because:

a. The Applicants have failed to present a “fairly arguable case” that the contested decision is unlawful.²

b. The Applicants’ posts are anticipated to be abolished by the General Assembly following the adoption of the budget with effect from 1 July 2019. Since all the 15 Heavy Vehicle Operator posts in the Centralized Warehouse Section were proposed for abolition, there was no need for a CRP. The posts were subject to dry cuts.

c. The mission acted transparently throughout the downsizing exercise by keeping staff members apprised of developments in the budgetary and downsizing processes. Information was communicated to staff through email broadcasts, meetings with staff association representatives, town hall meetings and posting of relevant documents on the mission’s intranet.

d.

Assembly resolutions 55/232 and 59/289 and the mission's failure to consult with the Staff Union are baseless.

Considerations

27. The Tribunal finds it surprising that MONUSCO is proceeding with its decision not to renew the Applicants FTAs although the General Assembly has not approved the Secretary-General's final budget proposal for 2019/2020. While the ACABQ has recommended that the General Assembly approve the budget, this approval is still pending.

28. In the Tribunal's considered view, unless the General Assembly's anticipated resolution on the mission's proposed budget is approved on or before

32. The Respondent argues that alternatively, should the Tribunal consider 29
May 2019 as the date of notification of the contested decision BT /F90(t)-22(h)19(e)3()-90(c)

after MEU rejected their request for suspension of action, they were diligent in filing their applications for suspension of action with UNDT. Thus, the urgency in this case was not self-created.

36. The Tribunal holds that the Applicants have satisfied the prerequisite for urgency.

Irreparable damage

Submissions

37. The Applicants submit that implementation of the contested decision will cause irreparable damage to them because their jobs with MONUSCO are the only source of income for their families. They also submit that implementation will also cause irreparable damage to the Organization financially and reputation-wise.

38. The Respondent did not provide any submissions on irreparable damage.

Considerations

39. It is established law that a loss of a career opportunity with the United Nations is considered irreparable harm for the affected individual.⁴ The Tribunal finds that implementation of the separation decision now would damage the Applicant's career prospects in a way that could not be compensated by a monetary award. The requirement of irreparable damage is satisfied.

Conclusion

40. The Tribunal finds that the three statutory conditions for a suspension of action have been met by the Applicant.

⁴ *Saffir* Order No. 49 (NY/2013); *Farrimond* Order No. 200 (GVA/2013)

ORDER

41. This application for suspension of action is accordingly GRANTED pending management evaluation.

(Signed)

Judge Nkemdilim Izuako

Dated this 27th day of June 2019

Entered in the Register on this 27th day of June 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi