

Case No. UNDT/NBI/2019/085

Order No. 086 (NBI/2019)

CONSIDERATIONS

14. When faced with an application for suspension of action, the Tribunal must decide whether the Applicant satisfies the three cumulative requirements in

Considerations

19. The facts that have been presented by the Applicant regarding the early notification to other Telecommunication Assistants at the G-5 level in Entebbe and the very late notification sent to him, have given the Tribunal cause to doubt the reasonableness of the contested decision. The Tribunal is also concerned with the failure of Respondent's counsel to address this issue squarely and providing, instead, the following rather flippant explanation: "The fact that the Mission, in error, omitted to send the Applicant the initial CHRO letter of 15 April 2019 is immaterial." What exactly was this "error", which now calls into question the propriety of the CRP in respect of the Applicant?

20. There is evidence on the record to show that the CRP began on 17 April 2019 and ended on 28 May 2019. This, in the Tribunal's considered view, places a rather large question mark against the correctness/fairness of the process that the Applicant was subjected to when his assessment did not commence on 17 April 2019 and ended on 28 May 2019.

23. The Tribunal holds that the Applicant has satisfied the prerequisite for *prima facie* unlawfulness.

Urgency

Submissions

24. The Applicant submits that the matter is urgent because he will be separated on 30 June 2019.

25. The Respondent submits that the urgency is self-created and thus, the Applicant has failed to meet the requirement of urgency. He was notified of the contested decision on 29 May 2019 and on 17 June 2019, he submitted a request for management evaluation, which is drafted in very similar terms to his current application for suspension of action. He has not provided any reasonable explanation for the delay of over three

that his request for suspension of action could be pending beyond the expiry of his FTA and this prompted him to turn to the Tribunal as a last resort.

28. The Tribunal finds that the Applicant acted reasonably by first using the mechanism for suspension of action in cases involving separation from service, which is set out in staff rule 11.3(b)(ii), before approaching the Tribunal. The Tribunal notes that the Applicant initiated this process on 17 June, when he still had 13 days before the end of his FTA. The Tribunal also finds that since the Applicant came to the Tribunal at the first available opportunity, i.e. three days after MEU rejected his request for suspension of action, he was diligent in filing his application for suspension of action with UNDT. Thus, the urgency in this case was not self-created.

29. The Tribunal holds that the Applicant has satisfied the prerequisite for urgency.

Irreparable damage

Submissions

30. The Applicant submits that implementation of the contested decision will cause irreparable damage to him because his job with MONUSCO is the only source of income for his family. He also submits that implementation will cause irreparable damage to the Organization financially and reputation

ORDER

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

(Signed)

Judge Nkemdilim Izuako

Dated this 28th day of June 2019

Entered in the Register on this 28th day of June 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi