



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/104
Order No.: 100 (NBI/2019)
Date: 19 July 2019
Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

SHENGULA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for the Applicant:
Brandon Gardner, OSLA

Counsel for the Respondent:
Nicole Wynn,

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briefing on Safe and Defensive driving.⁴ Since April 2017, the Applicant has not held a driving permit and he has not performed driving functions.⁵

8. On 29 May 2019, the Applicant received a notice of extension of appointment with MONUSCO. The notice informed him that following a comparative review process (CRP), he was among those who had been identified to be retained and that his current appointment,

18. The doctrine of self-created urgency does not arise on the facts of this case. He acted with diligence by filing his pending management evaluation request on 12 July 2019, only a few weeks after he became aware of the contested decision.

19. The delay between his receipt of the contested decision and his filing this application was only because he was awaiting the outcome of his appeal of the decision to withdraw his driving permit, which he filed only because

Relief sought

24. The Applicant prays the Tribunal to order the suspension of the administrative decision to separate him from service on 19 July 2019 pending management evaluation, pursuant to art. 13 of the UNDT Rules of Procedure and art. 2.2 of the UNDT Statute.

Respondent's submissions

Unlawfulness

25. The contested decision was lawful. The SIU investigation determined that the Applicant had driven under the influence of alcohol inice on tak95.44 8483s0 -5501.91 Tm0 g0

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32. In view of the foregoing, the Respondent requests that the Dispute Tribunal dismiss the application.

Considerations

33. This application is made under art. 2.2 of the UNDT Statute and art. 13 of the UNDT Rules of Procedure, which allow the Tribunal to suspend implementation of the impugned decision where it appears *prima facie* to be unlawful, that it is a case of particular urgency and its implementation would cause irreparable damage. All three elements of the test must be satisfied before the impugned decision can be stayed. The Tribunal is not required at this stage to resolve any complex issues of disputed fact or law. All that is required is for a *prima facie* case to be made out by an applicant to show that there is a judicable issue before the court.¹²

34. In the present case, the impugned decision on non-extension is based on another decision, one permanently depriving the Applicant of the United Nations driving permit (predicate decision). As such the legality of the impugned decision depends on the legality of the predicate decision. Given that the predicate decision is not final the deadline for challenging the predicate decision through management evaluation and application before the Tribunal is still open - the Tribunal is neither bound by it nor prevented from assessing whether it is legal.

35. While the Tribunal agrees that the applicable rules leave the Secretary-General a wide discretion in deciding whether to resort to administrative or disciplinary measures¹³, this discretion is not unlimited and is subject to the test established by the Appeals Tribunal in *Sanwidi*:

matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse.¹⁴

36. The abuse of discretion in cases involving administrative measures occurs, among other, if the administrative measure, due to lack of transparency and/or onerousness,

Entered in the Register on this 19th day of July 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi