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Introduction

1. The Applicant serves as a Mail Assistant at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), in Goma.¹ On 14 June 2020, he filed an application on the merits challenging the decision to place him on administrative leave without pay “(ALWOP)”.²

2. On 17 June 2020, the Applicant filed a motion for interim measures pending proceedings seeking: (a) change of the administrative leave from ALWOP to administrative leave with pay (“ALWP”), effective 13 January 2020, with payment of his full pay and

investigation and that he was required to submit to an interview on 13 December 2019.³ The Applicant was interviewed on the appointed date.⁴

6. On 13 January 2020, the Under-Secretary General for Management, Strategy, Policy and Compliance (“USG-MSPC”), placed the Applicant on ALWOP for a

10. The Respondent also submits that the Applicant is requesting the grant of final relief in a form of interim relief. The final remedies requested in the Application include rescission of the 13 January 2020 decision and the replacement of ALWOP with the Administrative Leave with Pay (“ALWP”). Accordingly, granting the Applicant’s request for suspension of action, would in effect, be granting final relief in the form of rescinding the placement of the Applicant on ALWOP and placing him on ALWP as from 13 January 2020.

11. With regard to the 13 May 2020 decision, the Respondent contends that the decision is partially moot. The ASG/OHR has rescinded this decision on a retr[(de)3(c(h)19()-(t)-221)17(

May 2020 decision came a month after the expiry of the 13 January 2020 decision would emphatically separate the two decisions, and galvanize the assertion that the 13 January decision had been fully implemented.

15. The second scenario is presented by the Respondent's email under which he communicated the 13th May 2020 decision.⁷ The communication was that the ASG/HR was extending the Applicant's ALWOP, i.e. extending the 13 January decision to a future date. The dictionary meaning of the word "extend" is to "cause to cover a wider area, to continue, to expand". The Respondent in fact uses the words "continuation of the administrative leave without pay" in that letter. Going by that email, the Respondent's clear intention was to seamlessly connect the two decisions, and indeed as argued by the Applicant, the 13 May 2020 extension of the ALWOP was not a standalone decision and it does not exist on its own without the original 13 January 2020 decision.

16. Much later, the Respondent seems to have realized the confusion created by the two letters, and in Annex R/5 he states that "... After carefully revisiting the case and the retroactivity legal implications ... it has been decided that [the Applicant] should be paid his salary for the period for which the ALWOP was extended retroactively, i.e. 13 April 2020 to 13 May 2020".

17. Crucially, it is only from this point that the Respondent started viewing the

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18. In view of that, the Respondent's proposition that the Tribunal has no competence to order the suspension of the decision, and the 13 May 2020 decision is not properly before the Tribunal for not having been subjected to management evaluation as a separate decision are rejected.

19. The Respondent further argues that the request for suspension of action of the 13 May 2020 decision is partially moot. The Tribunal is cognizant of the jurisprudence (*Crotty* 2017-UNAT-763, paras. 15 and 16) that where a contested decision ceases to have legal effect, the application becomes moot as there is no longer a live issue upon which it is competent to pass judgment.

20. The evidence that the ASG/OHR informed MONUSCO that the decision to place the Applicant on ALWOP on a retroactive basis, from 13 April to 12 May 2020 has been rescinded with instructions to pay his salary (including corresponding allowances and entitlements) for this period is not evidence that there are no live issues upon which the Tribunal can pass judgment. That evidence only points to the fact that the 13 May 2020 decision created two separate results, one of which is the subject of these proceedings. The decision is therefore not moot.

21. The argument that the Tribunal has no competence to grant the orders because the Applicant has sought a final remedy through this motion for interim measures is without basis. The interim relief sought by the Applicant is that the current ALWOP be transformed into an ALWP (administrative leave with pay). This is different from the remedies sought under the main application, namely that the Tribunal finds the decision to put the Applicant on administrative leave is unlawful and grant him compensation with not only the full pay for the totality of the period since 13 January 2020, but for the harm suffered that can be remedied.

22. After careful consideration of facts and submissions of the parties, the Tribunal finds the application receivable.

Merits

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27. For irreparable harm, the Applicant has not demonstrated how the decisions would cause him a loss that cannot be adequately compensated through a monetary award.

Considerations

28. The only issue for determination is whether there are any exceptional circumstances that justify the Administration's decision to place the Applicant on ALWOP.

29. Under art. 10.2 of the Statute and art. 14 of the Rules of Procedure of the Tribunal an applicant for suspension of action must establish that the impugned decision is prima facie unlawful, calls for urgent adjudication and that implementation of the decision would cause him/her irreparable harm. 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 (*Hepworth* UNDT/2009/003 at para. 10).

30. In conducting judicial review of decisions to place an applicant on ALWOP, the Dispute Tribunal reviews whether the decision was rational, considering the criteria stipulated in staff rule 10.4(c) and section 11.4 of ST/AI/2017/1 and the information before the Administration at the time of the decision.

31. Staff rule 10.4(c) and section 11.4 of ST/AI/2017/1 provide for the placement of staff members on ALWOP in two categories of cases, pending the investigation of the staff member for alleged unsatisfactory conduct and any subsequent disciplinary process.

32. Section 11.4 provides as follows:

A staff member may be placed on administrative leave without pay by an authorized official when at least one of the following conditions is met:

- a. There are reasonable grounds to believe (probable cause) that the staff member engaged in sexual exploitation and sexual abuse, in

which case the placement of the staff member on administrative leave shall be without pay;

b. There are exceptional circumstances that warrant the placement of the staff member on administrative leave without pay because the unsatisfactory conduct is of such gravity that it would, if established, warrant separation or dismissal under staff rule 10.2 (a)

40. On the remaining two elements of urgency and irreparable damage, having carefully reviewed the entire case record, the Tribunal is convinced that those elements have also been met, since each new day in the circumstances in which the Applicant is placed, escalates the urgency and desperation of his situation. With regards to hardship for example, the Tribunal notes that the Applicant is the sole provider for his wife, seven children 8 -150fpngto