

Before: Judge Agnieszka Klonowiecka Milart

Registry: Nairobi

Registrar: Rhena Kwakye Berko

GAVAZZO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION

Counsel for the Applicant:

Monika Ona Bileris

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR
Rosangela Adamo, AAS/ALD/OHR

Introduction

1. The Applicant serves on a continuing appointment at the P5, step 7 level, but is currently on a temporary position at the D-1 level with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), in Kinshasa,

Chief, Operations Resource Management, On Temporary Duty ("TDY") for three months effective October 2018. On 15 January 2019, the Applicant, through a competitive process, was appointed temporarily to the position of Chief, Operations Resource Management D-1. Her contract which was initially to run until 30 June 2020, was extended to until 31 August 2020. Through all this time she retained a lien to her position in Brindisi.

6. In 2020, a second PSRA was conducted and the report, it is indicated that no perpetrators of the threats were identified and the Applicant's risk remains high. The PSRA, therefore discusses two options: reassigning the Applicant from Brindisi which appears "more practicable" or allowing her return if success are implemented to attenuate the risk.

7. In May and July 2020, the Applicant contacted the Director, UNGSC and the Office of Internal Oversight Services ("OIOS") over the lack of information on her return to her post in Brindisi at the end of her temporary assignment with MONUSCO.⁹ In reply, the Director, UNGSC informed the Applicant that her return was contingent upon the completion of the second PSRA. The Deputy Director of OIOS informed the Applicant, among others, that "OIOS investigation should not

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discretionary authority and the transfer to the TMICC post is tainted by personal prejudice, malice, ill will, bias and discrimination by UNGSC officials.

14. On the point of substantive and procedural irregularities, the Applicant contends that while she would have accepted a return to her P-5 level post in Brindisi, to assign her to a new position at a lower grade after serving for two years at chief of service level is necessarily a demotion.

15. The Applicant further submits that the new post is completely unrelated to anything she has done in the past. The TMICC post requires technical work and experience she simply does not possess, therefore, impossible to assess whether the functions to be per

recommendations was to allow her to telecommute, especially during the COVID pandemic, so it is unclear why she should not be allowed to do so.

Urgency

19. The Applicant submits that the matter is urgent as she will be transferred to the TMICC post effective 1 September 2020.

Irreparable harm

20. If the contested decision is not suspended, the damage to the Applicant's reputation and career will be severe. She will be forced to work in a position for which she is not qualified and in which she is guaranteed to fail. This will affect her future performance evaluations and ability to find other employment in her field and will result in unavoidable termination of appointment due to unsatisfactory performance.

Respondent's submissions

21. The Respondent submits that the Applicant has not fulfilled the three prerequisites for suspension of implementation of the decision. With regard to *prima facie* lawfulness, the Respondent contends that the Secretary General has broad discretion to reassign staff under staff regulation 1(2). The Applicant was reassigned to a position at the same grade and level commensurate with her skills and competencies and for legitimate reasons.

23. Finally, the Applicant has not demonstrated irreparable harm. The Applicant has been reassigned to a position at the same grade and level commensurate with her skills and competencies.

24. In view of the foregoing, the Respondent requests the Tribunal to ~~dismiss~~ the application.

Considerations

25. Pursuant to art. 2.2 of the Tribunal's Statute the Dispute Tribunal may suspend the implementation of an administrative decision during the pendency of the 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. The Tribunal is not required at this stage to resolve any complex issues of ~~disputed~~ law. All that is required is for a *prima facie* case to be made out by an applicant to show that there is a judiciable issue before the court.

26. On the prong of unlawfulness, the Tribunal recalls that whereas there is no dispute that the Respondent manages the posts and reassigns staff with wide discretion¹⁹, this discretion is not unfettered and is subject to examination pursuant to

based on UNDSS assessment that the risk remains ~~High~~ **High** fact, however, was

