

UNITED NATIONS DISPUTE T

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UNN5

Introduction

1. The Applicant is a Movement Control Assistant at the FS-5 level working with the United Nations Support Office in Somalia (“UNSOS”).¹

2. On 23 April 2021, the Applicant filed before the United Nations Dispute Tribunal in Nairobi an application for suspension of action (“SOA”), pending management evaluation, of a decision, directed against UNSOS’s refusal to rescind its decision of 10 November 2020 to deduct a sum of USD5,032.33 on a monthly basis from his salary in child support, including retroactive child support and arrears. The case was registered as Case No. UNDT/NBI/2021/029.

3. In accordance with art. 13 of the UNDT Rules of Procedure, the Tribunal transmitted a copy of the application to the Respondent and is required to issue a decision within five days thereof. The Tribunal finds, nevertheless that Respondent’s reply is not needed as the application may be adjudicated on its content alone.

Facts

4. The Applicant has a case pending before this Tribunal since 6 January 2021, registered as Case No. UNDT/NBI/2021/002 where he contests UNSOS’ decision to make deductions from his salary under sec. 2.2(b) of ST/SGB/1999/4 (Family and child support obligations of staff members), pursuant to which the Organization deducts a sum of USD5,032.33 from his salary based on a judgment in Case No. 2017-021520-FC-04 issued by the Miami-Dade County Court in Florida.²

5. On 10 February 2021, the Third District Court of Appeal of the State of Florida overturned the Judgment in Case No. 2017-021520-FC-04 and remanded the case, having found that the subject matter jurisdiction was not properly ascertained.³

¹ Application, section I.

² Ibid. and section VII.

³ Application, annex 2.

to deduct USD5,032.33 from his salary on a monthly basis. The irreparable harm test is met because the loss of over half of his salary affects his ability to provide for basic food and housing for his family; which harms their physical and mental health and well-being. The deductions are sent to a third party, as to whom there is no certainty that the UNSOS Administration or the Applicant will be able to recover from them any undue payments.

Considerations

11. Under art. 2.2 of the Dispute Tribunal's Statute, a suspension of action pending management evaluation is possible where the Applicant makes the showing that: (i) the contested decision was *prima facie* unlawful; (ii) there is particular urgency; and (iii) implementation of the decision would cause irreparable harm. The Tribunal concedes that the response obtained from UNSOS presents an administrative decision not to act on the Applicant's request; notes that the assertion that "UNSOS is not a party to the proceedings" is misplaced as, obviously, the decision on child support deductions had been made on behalf of the Secretary-General who is also a party to the proceedings; and finds that the Applicant requested management evaluation within the prescribed time-limits. The question, however, whether the decision could be subject to an SOA application under art. 2.2 of Dispute Tribunal's Statute must be answered in the negative.

12. Analysis of the UNDT Statute demonstrates that an SOA application is a recourse available in the phase preceding litigation before the UNDT. Whereas the avenue for requesting interim relief while the matter is pending before the Tribunal, is art. 10.2 of the UNDT Statute. Among others, there is a possibility of suspension of the implementation of the impugned decision. An applicant cannot, however, through provoking an administrative refusal to satisfy the claim already put before the Tribunal, launch a parallel formal dispute in the same matter.

13. Child support deductions from the Applicant's salary is the matter pending in Case UNDT/NBI/2021/002. The present application is, therefore, precluded by *lis*

Case No. UNDT/NBI/2021/029

Order No.: 088 (NBI/2021)