
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/004
Order No.: 010 (NBI/2023)
Date: 12 January 2023
Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

EL-SHEIKH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:
Jason Biafore, OSLA

Counsel for the Respondent:
Saidou N'Dow, UN-Habitat

Saudi Arabia.²

8.

Case No. UNDT/NBI/2023/004

Order No. 010 (NBI/2023

f. Had UN-Habitat harboured any concerns they might be unable to reabsorb the Applicant according to the rules, they should not have proposed him as a candidate for such a role.

g. His post has not been abolished. Thus, the justification for not

administrative decision regarding the Applicant's non-reabsorption and corresponding separation by non-renewal. The first unequivocal communication of the Applicant's non-reabsorption and corresponding separation by non-renewal was communicated during the meeting of 16 December 2022. Taking either of these dates as the date of communication of the decision, the Applicant submits no self-created urgency can be alleged for a delay of two weeks or four days from communication of the decision to filing of a management evaluation request.

n. In respect of irreparable harm, the Applicant submits that monetary compensation is insufficient to compensate the frustration, unhappiness, and loss of chance of career development associated with the non-renewal of a fixed-term contract. Loss of United Nations employment is not merely viewed in terms of financial loss but also in terms of the loss of career opportunities.

The Respondent

16. The Respondent's case is summarized below.

a. At no time did the Respondent decide or make the decision to separate the Applicant from the Organization. Therefore, the Applicant's application must fail because his application concerns an administrative decision that has not been made and, as such, may not be suspended by the Tribunal.

b. The Applicant's assertions that the Respondent has not accorded him the right to return is unfounded and unsupported by the evidence. Moreover, funding received for the D-1 position he previously occupied in Kuwait, is not disputed. However, the contribution for the year 2021 was not received and this necessitated a restructuring of the personnel in the UN-Habitat office in Kuwait and the reduction of its scope of work.

c. A decision was made to nationalise the team in Kuwait to cover two national officers at the “NOB” and “NOA” levels in addition to one general service staff. This was strongly encouraged by the Government of Kuwait and agreed upon between the Government and the Respondent.

considered all the relevant factors including the financial constraints faced by the Organization and what the Respondent considered is in the best interest of the Organization. The lawfulness of the offer of the P-5 post in Yemen to the Applicant is strengthened by the fact that several consultations between the Applicant and the Respondent were held with respect to his reabsorption to UN-Habitat. Furthermore, the P-5 post in Yemen was offered to the Applicant by the Respondent in good faith efforts as it was the only available post with funding to reabsorb the Applicant by the date of his return to UN-Habitat. The Applicant's (his) 612 in no way was it intended to demotivate him

g. With regards to the Applicant's expressed interest to be assigned to either the P-5 positions in Bilbao, Spain or Iraq, the Applicant was informed that both posts would not be available by the date of his return to UN-Habitat.

h. The Applicant has been already offered the P-5 position following the expiration of his current contract. Additionally, efforts have continuously been made by the Respondent

decision appears to be *prima facie* unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are cumulative; in other words, they must all be met for a suspension of action to be granted.¹¹

18. The burden of proof rests on the Applicant to show that the three requirements are met to the satisfaction of the Dispute Tribunal.¹² The three elements are summarised below as argued by the Applicant and contested by the Respondent.

Particular urgency

22. The Applicant has shown, and the Respondent has not disputed that the Applicant's temporary contract as Resident Coordinator expires on 20 January 2023 which is only eight days from the date of this Order. Therefore, the matter is urgent for purposes of this application. The Applicant took all necessary steps to give notice to the Respondent and engaged him in discussions pertaining to his impending return to his position, but the Respondent took no action to honour his obligation prompting the Applicant to file this application. The Tribunal finds that the urgency is not self-created.

Irreparable damage

23. The Applicant has argued that implementation of the decision to refuse to absorb him into his contractual position and instead offer him a junior position would cause irreparable damage. The Respondent is of the contrary opinion. The Tribunal finds that Applicant is entitled to his contractual right to return to his position at the D-1 level and that failure by the Respondent to receive the Applicant at that level would indeed cause the Applicant irreparable harm.

Conclusion

24. The Applicant has satisfied the three conditions to be granted the application to suspend the Respondent's decision not to absorb him into a D-1 level position at the expiry of his temporary contract with UNDP on 20 January 2023. The application is granted as prayed.

25. The Respondent seems

(Signed)

Judge Rachel Sophie Sikwese

Dated this 12th day of January 2023

Entered in the Register on this 12th day of January 2023

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi