



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2014/024

Order No.: 60 (NY/2014)

Date: 9 April 2014

Original: English

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Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahoual

GALLIENY

v

## Introduction

1. On 3 April 2014, the Applicant, a staff member in the United Nations Stabilization Mission in Haiti (MINUSTAH), submitted an application for suspension of action, pending management evaluation, of the decision to renew [his] placement on administrative leave without pay pending outcome of an investigation into disciplinary conduct. He was placed on administrative leave by letter dated 18 December 2013, which also informed him that his administrative leave will continue for three months at which point the matter will be revisited. The Applicant submits that by not informing him of the discontinuation of the administrative leave by the end of the three-month period, i.e., by 18 March 2014, the Administration implicitly decided to continue it.

2. With respect to the *prima facie* unlawfulness of the contested decision, the Applicant states in his application that the Under-Secretary General for Field Support does not have the delegated authority to place the Applicant on administrative leave without pay. Further, the conditions for placing the Applicant on administrative leave without pay have not been met. The failure to review the decision of 18 December 2013 as promised renders the Applicant's continued placement on administrative leave without pay unlawful. With regard to the requirements of *particular urgency* of the matter and *irreparable harm*, the Applicant submits that both are expressed in terms of the serious financial consequences of the imposed administrative leave. He is financially responsible for providing for his own family including seven children, as well as for his recently deceased brother's two children. The Applicant submits that he is behind on education-related payments for five of his children, two of whom have already been removed from school as a result of placing their education in jeopardy.

3. The Registry transmitted the present application to the Respondent on Thursday 3 April 2014. Accordingly the Tribunal has until 5 p.m. on Thursday 10 April 2014, to consider his application.

4. The Respondent filed his reply by 10 a.m. on Monday 7 April 2014. The Respondent submits that the Department of Field Support has indicated on 4 April 2014 that it is preparing the documents to provide for the placement of the Applicant on administrative leave *with pay*. Thus, here is no decision to end the Applicant's placement on administrative leave *without pay*. Accordingly the application is moot and should be dismissed.

5. Later the same day the Applicant filed a submission seeking leave to respond to the Respondent's reply and attaching his comments. In his submission, he states that no actual change to his status has taken place as of 7 April 2014, and, therefore, the application cannot be considered moot. He submits that the application for suspension of the implementation of the decision applies both to the decision to place him on administrative leave and the decision that such leave should be *without pay*. The proposed change of status addresses only one of these elements. The Applicant states, *inter alia*, that the *in law* decision to place him on administrative leave—either *with* or *without pay*—causes reputational and financial harm and could adversely affect him during any downsizing exercise.

## Background

6.

consistently positive performance appraisals throughout this period and has never been subject to any disciplinary investigation before.

8. The Applicant submits that in July 2013, he was interviewed by a MINUSTAH staff member from Conduct and Discipline in relation to allegations of theft of 200 litres of fuel from one of MINUSTAH's trucks.

9. The Applicant submits that around five months later he was approached by another staff member from Conduct and Discipline and requested to sign a document acknowledging receipt of a letter.

10. The letter was from the Under-Secretary General for Field Support and addressed to the Applicant. The letter informed the Applicant that he would be placed on administrative leave without pay pending the outcome of a disciplinary investigation against him. The letter stated (emphasis added):

It has been brought to my attention by the United Nations Stabilization Mission in Haiti (MINUSTAH) that you have been the subject of an investigation in connection with an allegation that you conspired to steal United Nations property, namely fuel.

According to the information provided to me, the allegation relates to an incident on or about 26 July 2013, wherein you conspired with .in the theft of approximately two hundred (200) litres of fuel from a UN vehicle.

The purpose of this letter is to advise you that the Under-Secretary-General for Management has decided, on behalf of the Secretary-General, to place you on administrative leave without pay (ALWOP), pursuant to Staff Rule 10.4. This decision is based on the information provided to the Department of Management by the Department of Field Support. Accordingly you are placed on

The reason for your placement on administrative leave is that there is sufficient *prima facie* evidence that you conspired to commit the offence of theft and as such pose a threat to the property of the Organization. The nature of the conduct you are alleged to have engaged in is sufficiently serious, in itself, if proven, lead to your dismissal.

Please note that your placement on administrative leave is an administrative measure. It is not prejudice to your rights, it does not constitute a disciplinary measure and it does not prejudice the outcome of any further investigation or subsequent disciplinary process. *It will be subject to review depending on the developments of your case and may, if the circumstances so warrant, be extended. You will be informed promptly of any decisions made regarding your status.*

During the period of administrative leave, you are required to surrender your MINUSTAH Grounds Pass and Driver's Permit to the MINUSTAH Chief Security Advisor. You may only enter United Nations premises under escort and in prior permission from the MINUSTAH Chief of Mission Support. You are further required to obtain approval from the MINUSTAH Chief of Mission Support before leaving the duty station. Finally, you must provide current contact information during the entire duration of the administrative leave.

While on administrative leave, you may not pay if you wish to maintain your health insurance coverage you may do so at your own expense by contacting the MINUSTAH Human Resources Management Section and making the requisite arrangements.

In addition, during your placement on ALWOP please note that you remain a staff member of the United Nations and you are, accordingly, subject to the Staff Regulations, the Staff Rules and other administrative issuances. You are also reminded that as a staff member you are obliged, under Staff Regulation 1.2(r) and Staff Rule 1.2(c), to respond fully to requests for information from staff members and other officials of the Organization authorized to conduct an investigation, including making yourself available to investigators.

11. The letter of 18 December 2014 was in English. The Applicant states that he is a Haitian national and speaks Creole as his first language and French as a second language. He neither speaks nor reads English.

12. The Applicant states that despite the expiration of three months, his placement on administrative leave without pay has not been revisited. He submits that he has received no communication to indicate that a review of the administrative measure took place or, if it did take place, what the outcome was.

13. The Applicant submits that he was never provided with the opportunity to comment on the investigation report nor has he seen the investigation report or the evidence against him. He denies he alleged heft and any suggestion that he was part of a conspiracy.

14. The Applicant submits that to his knowledge, he matter has apparently been referred to OHRM for a decision as to whether his allegations will be filed against him.

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leave without pay during a certain period of time has continuous legal effect during that period of time and is only deemed to have been implemented in its entirety at the end of the administrative leave (rather than when the decision was first notified). In any case it is evident from the papers before the Tribunal that the decision to place the Applicant on administrative leave without pay has continued beyond the stipulated three months and it is only on 4 April 2014, after the Applicant filed his application, that the Respondent has seen it fit to address the Applicant's predicament.

21. For the reasons stated above, the Tribunal finds that the decision contested by the Applicant in his case is the decision to continue his placement on administrative leave beyond the three-month period, which decision may be suspended by the Tribunal if the requirements of art 2.2 of its Statute are satisfied.

22. The Tribunal will now turn to the consideration of the three requirements of 03 TNY 605 1s1 Tf1.14 C



24. Staff rule 10.4 states:

Rule 10.4

Administrative leave pending investigation and the disciplinary process

- (a) A staff member may be placed on administrative leave, subject to conditions specified by the Secretary General, at any time pending an investigation until the completion of the disciplinary process.
- (b) A staff member placed on administrative leave pursuant to paragraph (a) above shall be given a written statement of the reason(s) for such leave and its probable duration, which, so far as practicable, should not exceed three months.
- (c) Administrative leave shall be without pay unless, in exceptional circumstances, the Secretary General decides that administrative leave with pay is warranted.
- (d) Placement on administrative leave shall be without prejudice to the rights of the staff member and shall not constitute a disciplinary measure. If administrative leave is without pay and either the allegations of misconduct are subsequently not sustained or it is subsequently found that the conduct at issue does not warrant dismissal, any pay withheld shall be restored without delay.
- (e) A staff member who has been placed on administrative leave may challenge the decision to place him or her on such leave in accordance with chapter XI of the Staff Rules.

25. The Respondent indicates in his reply dated 7 April 2014 that there is an indication that documents are being prepared to provide for the Applicant's placement on administrative leave with pay. This means that the Applicant may or may not currently be on special leave without pay as there is no indication whether these documents have been completed or indeed have been put into effect. Certainly the Applicant has not been notified promptly or even by a definite date of any change in his status, if any. Furthermore, the Applicant clearly states that the decision contested by him is the implied decision to continue his placement on administrative leave beyond the three-month period, be it with or without pay. The Tribunal finds therefore the Respondent's submission that the application would



29. The Tribunal finds that there is no self-created urgency in his case, and his is clearly a pressing matter requiring urgent intervention, the Applicant having filed the present application approximately two weeks after the promised deadline for revisiting the issue of his administrative leave. On the other hand, the Respondent has notified the Applicant promptly of his status and of the alleged changes to his administrative leave status. Furthermore, the continuing financial consequences visited upon the Applicant have exacerbated the urgency.

30. In the circumstances and on the papers before it the Tribunal finds the requirement of particular urgency to be satisfied.

*Irreparable damage*

31. It is generally accepted that mere economic

spent or three months away from the post he has held since 2007. He submits that posts not occupied for significant periods are more likely to be considered redundant. The Respondent has not sought rebuttal of these submissions.

33. In the circumstances and on the papers before it the Tribunal finds the requirement of irreparable harm to be satisfied.

34. Finally on the brief facts that are currently before it and in the particular circumstances of his case, including the *prima facie* unlawfulness, the Tribunal finds that his matter is well-suited to amicable resolution between the parties and encourages the parties to attempt such resolution.

#### Conclusion

35. The Tribunal orders suspension, pending management evaluation, of the decision to continue the Applicant's placement on administrative leave with or without pay.

(Signed)

Judge Ebrahim-Carstens

Dated this 9<sup>th</sup> day of April 2014