



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

AUDA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 3 December 2015, the Applicant, a D-1 level staff member in the Department for General Assembly and Conference Management (“DGACM”), submitted an application for suspension of action, pending management evaluation, of the decision of DGACM “not to renew [his] fixed-term appointment on 31 December 2015”.

2. With respect to the *prima facie* unlawfulness of the contested decision, the Applicant states that he has a “legitimate and confirmed expectation” of renewal of appointment based on the express assurances and promises given to him by the Under-Secretary-General (“USG”), DGACM, that the Applicant’s contract would not be discontinued. He further submits that, contrary to DGACM’s explanations that his functions are no longer required, he has performed a lot of work since the beginning of the year and his services are still needed by DGACM. With regard to the requirements of particular urgency of the matter, the Applicant submits that this is not a case of self-created urgency and that his separation would take place on 1 January 2016, unless the contested decision is suspended. With regard to irreparable harm, the Applicant submits that the contested decision would result in loss of employment, which satisfies the requirement of irreparable damage.

3. In his reply, the Respondent made no submissions regarding the requirement of irreparable harm. The Respondent states that he does not accept the Applicant’s assertions that the contested decision is *prima facie* unlawful, as fixed-term appointments do not carry any expectation of renewal, and that the functions performed by the Applicant are no longer required beyond 31 December 2015. The Respondent further submits that the requirement of particular urgency is also not satisfied in view of the assurances received by the Respondent from the Management Evaluation Unit (“MEU”) that its response to the Applicant’s request for

management evaluation would be finalized by 31 December 2015. The Respondent submits that, based on this assurance of the MEU, no management evaluation would be pending at the time of implementation of the decision, and thus no order for suspension could be made.

4. The Tribunal notes that, in his submission to the Tribunal, the Respondent states that the reply addresses only the requirement of urgency “in view of the deadline to file the Reply”. The Tribunal notes that, by their nature, interim relief

then, first for seven months at the end of 2013, and then for one year until the end of 2015.

7. The Applicant submits, since 2013, he has unsuccessfully applied to several positions in conference services, which fall under the authority of the USG/DGACM. He states that his non-selection for those positions suggests bias against him and indicates that the USG/DGACM wanted to remove the Applicant from DGACM generally.

8. The Applicant states that, although he continued to perform all tasks assigned to him, he remained throughout 2015 without any specific performance work plan. The Applicant submits that on three occasions—9 June, 11 June, and 29 June 2015—his first reporting officer (Assistant Secretary-General (“ASG”), DGACM) scheduled meetings at the request of the Applicant to discuss a work plan, only to cancel them on short notice.

9. The Applicant submits that he finally had a meeting with the ASG/DGACM on 2 October 2015 to discuss his mid-point performance review. In this meeting, the ASG/DGACM informed the Applicant that his appointment would not be renewed beyond 31 December 2015 because his initial assignment was *ad hoc* and there was no work for him in DGACM since the beginning of the year. The Applicant states that there was no performance discussion and the ASG/DGACM had no work plan to offer to the Applicant.

10. On 6 October 2015, the Applicant was also verbally informed by USG/DGACM that he contract would not be renewed.

11. The Applicant submits that both the USG/DGACM and the ASG/DGACM declined to provide the Applicant copies of the records of the meetings of 2 and

6 October 2015, indicating that the meetings were informal and he would be receiving a formal notification regarding the renewal of appointment.

12. On 12 November 2015, the Applicant received a memorandum, dated 6 November 2015, informing him that his contract would not be renewed beyond 31 December 2015. On the same day, the Applicant wrote to the Secretary-General, copying his supervisors and seeking the Secretary-General's intervention in the matter, but has received no response.

13. The Applicant requested management evaluation of the contested decision on 2 December 2015 and is still awaiting the outcome.

Consideration

14. An application for a suspension of action pending management evaluation is an extraordinary discretionary relief, generally not appealable, and which requires consideration by the Tribunal within five working days of the service of the application on the Respondent (art. 13.3 of the Rules of Procedure). Such applications disrupt the normal day-to-day business of the Tribunal and the parties' schedules. They also divert the Tribunal's attention from considering other cases filed under standard application procedures, some of which are long outstanding. Therefore, parties approaching the Tribunal must do so on genuine urgency basis, and with sufficient information for the Tribunal to preferably decide the matter on the papers before it. An application may well stand or fall on its founding papers. Likewise, a Respondent's reply should be complete to the extent possible in all relevant respects, but also bearing in mind that a matter is not at the merits stage by this time.

15. Article 2.2 of the Statute of the Tribunal provides that it may suspend the implementation of a contested administrative decision during the pendency of

contract is based on “an abuse of discretion including bias, prejudice, and other discrimination against [him]”. The papers before the Tribunal indicate that there is also an apparent dispute as to whether the Applicant’s functions are indeed no longer required, which was the reason on which the non-renewal decision allegedly was based. In addition, the Applicant raises the issue of the alleged failure to adhere to standard performance evaluation procedures leading to his non-renewal. 026ia05d8 these issues have been addressed or even averred to by the Respondent in his reply.

21. The claims raised by the Applicant will have to be fully canvassed as part05d8 substantive proceedings on the merits, if any, and it may well be that all05d8his claims8 will be fully addressed by the Respondent in the context05d8such further proceedings.8 However, at this point the Tribunal has to consider the submission presently before it.

22. In the circumstances and on the papers before it, the Tribunal finds8 the requirement 5d8prima facieunlawfulness to be satisfied.

Particular urgency

23. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. The Dispute Tribunal has stated in a number of rulings that the requirement of particular urgency will not be satisfied if the urgency was created or caused by the party8seeking interim relief (see, e.g., VillamoranUNDT/2011/126 and DoughertyUNDT/2011/133). 0

24. The Respondent submits that, in this case, the 30-day deadline to complete0 the management evaluation falls on 1 January 2016, which is an official holiday. The Respondent states that the MEU has informed Respondent’s Counsel by email, that, where the deadline to complete the evaluation falls on a holiday, MEU considers that the evaluation should be sent by the last working day prior to the

deadline. As such, the management evaluation is due to be completed by the MEU and notified to the Applicant by 31 December 2015, the last day of his fixed-term appointment. The Respondent thus submits that, as the management evaluation is due to be completed on or before the expiry of the Applicant's appointment, the Tribunal has no competence to suspend the contested decision since the management evaluation would end before the implementation of the contested decision.

25. The suggested practice of the MEU, as expressed in the MEU's email to Counsel for the Respondent, has no relevance to the determination of the issue of urgency.

26. Indeed, the suggested practice is contradicted by the actual letter from the MEU acknowledging receipt of the Applicant's request for management evaluation. The MEU's letter states:

Please also note that, pursuant to Staff Rule 11.2(d), the management evaluation in your case is to be completed within 30 days of receipt of your request, or no later than 1 January 2016. If there is any delay in completing the management evaluation, the MEU will contact you to so advise.

27. Thus, the letter from the MEU not only lacks confirmation that the management evaluation would be fina

[l]oss of employment is to be seen not merely in terms of financial loss, for which compensation may be awarded, but also in terms of loss of career opportunities. This is particularly the case in

amicable resolution between the parties and encourages the parties to attempt such resolution.

Order

38. The Tribunal orders suspension, during the pendency of the management evaluation, of the implementation of the decision not to renew the Applicant's contract.

(Signed)

Judge Ebrahim-Carstens

Dated this 8th day of December 2015