
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/054
Order No.: 251 (NY/2016)
Date: 26 October 2016
Original: English

Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

NOUINOU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER
ON AN APPLICATION FOR

5. On 3 October 2016, at 9:50 a.m., CTED informed the Applicant that she was selected for a temporary position at the G-4 level. On the same day, at 11:42 a.m., the Applicant informed CTED that she was “thrilled” to join CTED and be part of the team. Later the same date, at 5:22 p.m., the Applicant was informed by CTED that, according to the information available in UMOJA, she has a fixed-

with the instructions of the Judge, the New York Registry of the Dispute Tribunal transmitted the application to the Respondent, directing that a reply be filed by 2:00 p.m. on 21 October 2016.

12. On 21 October 2016, the Respondent filed a reply to the application for suspension of action. The Respondent submitted, *inter alia*, that the application is not receivable because she had once before requested management evaluation of the same decision not to renew her appointment beyond 28 October 2016 and for which she received a management evaluation response on 4 October 2016. Alternatively, the Respondent contended that the application is without merit, arguing that the Applicant has failed to demonstrate that the contested decision is *prima facie* unlawful.

13. On 24 October 2016, the Applicant filed an objection to the Respondent's reply.

14. By Order No. 249 (NY/2016) dated 24 October 2016, the Tribunal instructed the parties to file the following information, by 25 October 2016:

... The relevant 3 October 2016 offer from CTED to the Applicant of a temporary assignment is still valid or has been rescinded by CTED;

... If OHRM had been requested by any of the involved offices to shorten or waive the (alleged) prerequisite for a 31-day break-in-service for the Applicant to assume the position with CTED;

... If OIOS had discussed and/or agreed any options to allow her to immediately assume the position with CTED.

15. On 25 October 2016, both parties filed their submissions in response to Order No. 249 (NY/2016).

16. In his response to Order No. 249 (NY/2016), the Respondent indicated that:

a. The 3 October 2016 offer of a temporary assignment was no longer valid and that, on 24 October 2016, CTED had notified the Applicant that another candidate had been selected for the position;

b. No office had requested a waiver from OHRM in relation to the 31-day break-in-service requirement and that OIOS had suggested the Applicant be immediately reappointed by CTED following the expiration of her appointment on 28 October 2016;

c. The Applicant received a certification from Medical Services Division for sick leave from 17 October 2016 to 11 November 2016 and that her contract would accordingly be extended through to 11 November 2016 in accordance with section 4.9 of ST/AI/2013/1 (Administration of fixed-term appointments).

17. The Applicant stated in her his response to Order No. 249 (NY/2016) that:

a. The Applicant had contacted CTED regarding the offer for a temporary appointment on 21 and 24 October 2016. On 21 October, the

18. Later the same date, the Applicant filed an additional submission (labeled motion) in response to the Respondent's reply in accordance with Order No. 249 (NY/2016) in which she requested OIOS, as relief for her moral damages, to renew her two-year fixed-term appointment for another two years to allow her flexibility in order to restore her health and secure a position outside OIOS, where she can be reappointed or reassigned based on United Nations Regulations and Rules.

19. Later on 25 October 2016, the Applicant filed another submission (labeled "motion") requesting the Tribunal to confirm that her former supervisor "has not been banned from providing Reference to his Former United Nations Staff Members; if such Agreement had been made the Applicant would like to know why and whether this will affect her UN Career Development, being linked to [her former supervisor]...".

Consideration

The mandatory and cumulative conditions for suspending an administrative decision

20. Article 2.2 of the Dispute Tribunal's Statute states:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

21. Article 8.1(c) of the Tribunal's Statute states that an application shall be receivable if: "... [a]n applicant has previously submitted the contested administrative decision for management evaluation, where required;

22. Article 13.1 of the Tribunal's Rules of Procedure states:

The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facisi

Tribunal (see, for instance, *O'Neill* 2011-UNAT-182 read together with *Planas* 2010-UNAT-049).

25. The Respondent claims that the application for suspension of action is not receivable. He argues that the principle of *functus officio* applies and refers to the Applicant's 8 September 2016 request for management evaluation of the 7 September *functus ic*[()] TJETBT1 0 0p63 0 0p63 0 0p63 0 0p63 0 0p44-266Tanast2(e)49 Tm[(5(of

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33. The Tribunal observes that, in any event, even if the 13 October 2016 decision not to extend thec

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