
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/093
Order No.: 218 (NY/2017)
Date: 4 October 2017
Original: English

Before: Judge Alessandra Greceanu
Registry: New York
Registrar: Morten Albert Michelsen, Officer-in-Charge

LEFEBVRE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alister Cumming, ALS/OHRM

Introduction

1. On 25 September 2017, the Applicant, a staff member with the United Nations Stabilization Mission in Haiti (MINUSTAH), management evaluation seeking evaluation of the decision not to laterally reassign

any, to the Respondent's submissions on receivability, together with a confirmation of her current employment status and a copy of her employment contract by 11:00 a.m. on Monday, 2 October 2017.

6. On 2 October 2017, the Tribunal issued Order No. 216 (NY/2017) pursuant to art. 19 of the Rules of Procedure, ordering the Respondent to file the following information and supporting documents by 5:00 p.m. on Monday, 2 October 2017:

- a. C"eqr {"qh"vjg"Cr rnkecpvøu"ewttgpv"lqd"fguetkrvkqp;
- b. A copy of the Job Opening for FS-4 Administrative Assistant in MINUJUSTH;
- c. To inform the Tribunal if the selection process for this position is ongoing, or completed;
- d. In case the selection process for FS-4 Administrative Assistant in MINUJUSTH is ongoing, the Respondent is to confirm: (1) if the position is supposed to be filled through the roster or through lateral reassignment; (2) if the position is to be filled through roster, confirm if it is to be filled by considering only the MINUSTAH rostered international staff members, or rostered international staff members from all field missions; (3) if the position is to be filled through lateral reassignment to inform the Tribunal if only MINUSTAH eligible international staff members are to be considered or eligible international staff members from all field missions, including MINUSTAH;
- e. In case the selection process was finalized, to provide a copy of the section decision and confirm if the selection decision has been implemented, or is yet to be implemented;

f. To inform the Tribunal if and when the Applicant applied for the

The submissions of the parties

8. The Applicant's submission may be summarized as follows:

Prima facie unlawfulness

- a. The UN Charter and staff regulation 1.2 provide that all forms of discrimination are prohibited;
- b. The Administration's position in regard to the staffing of MINUJUSTH has been that all international staff positions would be filled using the recruit from roster modality further adding that lateral reassignments are not technically possible;
- c. However, the Applicant has been made aware that several staff from MINUSTAH, including international civilian staff in the professional category, are being laterally transferred to MINUJUSTH. This constitutes discrimination without justification within certain categories of personnel and their rights;

Irreparable damage

- d. The Applicant claims that she would lose her job at the United Nations after 18 years of service;

9. The Applicant's submission is as follows:

Receivability

- a. The Application is not receivable *ratione materiae* as the Applicant has not requested management evaluation of the recruitment related to the FS-4 level position. Pursuant to art. 2.2 of its Statute, the Dispute Tribunal has jurisdiction to hear an application for the suspension of

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administrative decision has been made to not laterally reassign the Applicant. She does not identify any specific position to which she has requested a lateral reassignment and been denied;

f. Furthermore, art. 404" qh" vjg" Fkurwvg" Vtkdwpcnøu" Uvcvwwg" rtqxfgu" vjcv" the Tribunal shall be competent to hear and pass judgement on an application

There is no urgency

n. The Applicant does not aver that the situation is urgent nor does she provide any evidence of such. In the absence of such evidence, the Dispute Tribunal may not presume that urgency exists;

There is no harm

o. The Applicant has not provided any evidence that she will suffer irreparable harm if the recruitment process is not suspended. In fact, the Applicant may benefit from the recruitment process. The Applicant has applied to several positions in MINUJUSTH, including one grade level higher than her current level. These selection processes are ongoing. Should the Applicant be selected, she will be transferred to MINUJUSTH. She would suffer no harm. In any event, any harm can be compensated financially.

10. Rwtuwcpv"vq"vjg"Vtkdwpcnø"tgs wguv"hqt"hw tvjgt"kpht o cvkqp"fcvgf"29 September 2017, the

b. The job opening was open between 28 August and 4 September 2017. The Applicant applied within that window. No individual decision has been taken not to reassign the Applicant. There is no such request pending;

c. No staff have been laterally reassigned to MINUJUSTH. All positions will be filled through the recruit-from-roster process;

d. ~~_____~~

Whether application concerns an administrative decision that may properly be suspended by the Tribunal

16. The Tribunal notes that three posts for DFS4 Administrative Assistant (JO 17-ADM-MINUJUSTH-847676F-PORT-AU6PRINCE (M)) were posted for the period 28 August to 4 September 2017. As results from the recruitment section of the job opening, the three posts were open only to roster applicants who are already placed on preapproved rosters, following a review by a United Nations Central Review Body, and only rostered applicants who were placed on rosters with similar functions at the same level are eligible candidates.

17. The Respondent confirmed that the three posts will be filled through recruitment from the roster and all eligible staff members, or external rostered candidates, were eligible to apply and that the Applicant applied within the deadline.

18. Further, the Tribunal notes that the Respondent confirmed that the selection process is ongoing and that a selection decision is yet to be taken.

19. It results that no individual decision was taken in relation to the application for any of the three posts for DFS4 Administrative Assistant in MINUJUSTH, including the position within the Office of the Police Commissioner, and consequently, there is no administrative decision to be suspended by the Tribunal in relation to the recruitment process for these posts.

20. The Tribunal considers that the Applicant, by filing the present application, acted diligently but prematurely, since the recruitment for the FS-4 Administrative Assistants posts is ongoing and no intermediary and/or final decision regarding her candidacy with direct legal consequences on the terms and conditions of her employment has yet been taken. Consequently, the first mandatory condition is not fulfilled in the case of the contested decision as identified in the application for

suspension of action, respectively the recruitment for FS-4 Administrative Assistant posts.

21. Regarding the contested administrative decision indicated in the request for management gxcnwcvkqp." pcogn{" ðthe decision to refuse]vjg" Crnkecpvøu_ reassignment from MINUSTAH to MINUJUSTH while authorizing reassignment for certain staff in the same professional category in the same Police componentö." the Tribunal notes that that is a different decision than the one indicated in the suspension of action. Regarding this decision, which is the only decision currently subject to the ongoing management evaluation, the Tribunal notes that the Respondent informed the Tribunal that there was no individual decision taken tgi ctfkpi"vjg"Crnkecpvøu"tgcukipogpv"vq"OKPWLWUVJ "since no staff members from MINUSTAH, including international staff, were reassigned to MINUJUSTH and there is no such pending request from the Applicant. The Tribunal also notes that the Applicant does not identify a specific position to which she has requested a lateral reassignment and has been denied. In conclusion, there is no individual administrative decision issued denying the Applicantøu" tgcukipogpv" vq" c" uk o knct" position from MINUSTAH to MINUJUSTH and the first requirement is not fulfilled.

Whether the Applicant requested management evaluation of the contested decision and whether the evaluation is ongoing

22. It follows htqo "ctv0"404"qh"vjg"Vtkdwpcnøu"Uvcvwwg"cpf"ctv0"35.1 of its Rules of Procedure that the suspension of action of a challenged administrative decision may

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Conclusion

28. In the light of the foregoing, the Tribunal ORDERS:

The application for suspension of action is dismissed.

(Signed)

Judge Alessandra Greceanu

Dated this 4th day of October 2017