
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/106
Order No.: 239 (NY/2017)
Date: 25 October 2017
Original: English

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

VULETA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION

Counsel for Applicant:
Katya Melliush, OSLA

Counsel for Respondent:
Alister Cumming, ALS/OHRM, UN Secretariat

Introduction

1. On 20 October 2017, at 5:00 p.m., the Applicant, a Human Resources Assistant with United Nations Stabilization Mission in Haiti (“MINUSTAH”) at the FS-5 level on a continuing appointment, filed an application for suspension of action during management evaluation pursuant to art. 13 of the Dispute Tribunal’s Rules of Procedure, requesting that the decision to terminate his continuing contract with MINUSTAH, which was notified to him on 19 October 2017 and scheduled to be implemented on 20 October 2017, be suspended pending management evaluation. With the application, the Applicant filed a motion pursuant arts. 19 and 36 of Rules of Procedure requesting the Tribunal to suspend the implementation of the contested decision pending the consideration of the application for suspension of action under article 2.2 of the Dispute Tribunal’s Statute.

2. On 20 October 2017, the case was assigned to the undersigned Judge.

3. On 20 October 2017, at 5:49 p.m., the Registry acknowledged receipt of the application and transmitted it to the Respondent. The Tribunal instructed the Respondent to submit his reply by 5:00 p.m. on 24 October 2017.

4. The Tribunal further informed the parties that, due to the urgency of the matter and pursuant to arts. 19 and 36 of the Dispute Tribunal’s Rules of Procedure, the Applicant’s motion on suspension pending the consideration of the application for suspension of action under article 2.2 of the Dispute Tribunal’s Statute was granted and that a reasoned written order would follow.

5. By Order No. 234 (NY/2017) dated 20 October 2017, the Tribunal granted, without prejudice to the Tribunal’s determination of the application for suspension of action under art. 2.2 of the Dispute Tribunal’s Statute, the suspension of the implementation of the decision to terminate the Applicant’s continuing appointment until the Tribunal rendered its decision on the application for suspension of action, or until further order.

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- ii. The Applicant was unlawfully not given precedence over a fixed-term appointee, namely a Human Resources Assistant in the Liquidation Team of MINUSTAH;
 - iii. A suitable post (a post of Human Resources Assistant) with Job Opening No. 85169, was available, but the Applicant was not subjected to any comparative review process for this position;
- d. Even if the Applicant had been fully and fairly and properly considered for suitable posts within the Organization, which is disputed, the Applicant was not given sufficient (or any) notice of termination;

Urgency

- e. Termination is said to take effect on 20 October 2017. In *Applicant* UNDT/2012/091, it was held that the purported provision of 30 minutes' notice for non-renewal for a contract of employment that had lasted two years was "nonsensical". The Tribunal commented that it "amounts to a petty and disgraceful game and portrays irresponsible managerial practice";
- f. In *Applicant* UNDT/2012/091, it was found that where notice of non-renewal was provided after close of business, it could not be considered to be implemented until the end of the following day;
- g. In the instant case, the notice requirements for termination are codified in the Rules and a period of three months months is required under staff rule 9.7(a);
- h. The fact that no notice has been provided means that the matter is of the utmost urgency as implementation is imminent;

Irreparable damage

i. Referring to *Kasmani* 2009-UNDT-017, *Diop* 2012-UNDT-029 and *Villamoran* 2011-UNDT-126, it is well-established that monetary compensation is insufficient to compensate the frustration, unhappiness and loss of chance of career development associated with non-renewal of a fixed-term contract. How much more so the unexpected and unlawful termination of a continuing appointment?

10. In the Applicant's additional submissions dated 23 October 2017, the Applicant requested that the Tribunal accept additional submissions in support of his Application, stating that the additional submissions serve only to "flesh out" some of the detail supplied previously and should not unduly prejudice the Respondent in preparing his reply which

11. On 24 October 2017, the Respondent filed his reply submitting that the contested decision will not be implemented pending management evaluation. Based thereon, the Respondent contended that the application is moot because the Applicant has been provided with the relief he is seeking and that there is no matter for the Dispute Tribunal to adjudicate.

Consideration

The mandatory and cumulative conditions for suspending an administrative decision if it is found to be unlawful.

notes that the Respondent, on behalf of the Secretary-General, has informed the Tribunal that the Administration has decided—and, consequently, obliged itself—not to implement the contested administrative decision during the pendency of the management evaluation.

19. It results that the relief the Applicant has requested, namely that the decision to terminate his continuous appointment be suspended during the pendency of management evaluation, has already been granted by the Administration.

20. Consequently, the Tribunal considers that, since the implementation of the contested decision was suspended by the Administration pending management evaluation, there is no further determination to be made by the Tribunal in the present case.