
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2019/100
OrderNo.: 181 (NY/2019)
Date: 19 December 2019
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

ESPINOZA MADRID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION
PENDING MANAGEMENT
EVALUATION

Counsel for Applicant:
Dorota Banaszewska@SLA

Counsel for Respondent:
Yun Hwa Kq UNFPA

Introduction

1. On 16 December 2019, the Applicant, a staff member at the P-5 level with the United Nations Population Fund (UNFPA) in New York, filed an application requesting urgent relief under art. 2.2 of the Rules of Procedure and art. 13 of its Rules of Procedure seeking to suspend, pending re-merit evaluation, the decision to reassign her from New York to Panama to take up the position of Regional Programme Adviser at the P5 level.

2. On the same day, the Respondent issued a decision suspending the Applicant pending its final determination under the principles in *Villamorán* (2011-UNAT-160) and ordered the Respondent not to undertake any further steps regarding the contested decision until the determination of the present application for suspension of action.

3. On 18 December 2019, the Respondent filed a reply contending that the application is not receivable and has no merit.

Factual background

4. On 1 July 2018, the Applicant, a staff member at the P-5 level with UNFPA, joined the United Nations Secretariat as Special Advisor for the 73rd Session of the United Nations General Assembly on a non-reimbursable loan basis. According to the loan agreement signed by the Applicant on 26 July 2018, UNFPA agreed to grant her a right of return against her post of External Relations Adviser at the P5 level, Division for Governance and Multilateral Affairs, UNFPA in New York for one year only, from 1 July 2018 through 30 June 2019.

5. In May 2019, the Applicant contacted UNFPA to confirm that she was ready to resume her duties within UNFPA as of 1 July 2019 or earlier, if needed.

12. In the present case, the Respondent contends that the application is not receivable on the grounds that the selection notification letter of 13 December 2019 is simply a notice of selection that contained an express request to the Applicant to confirm her availability and interest and therefore it is not an administrative decision subject to judicial review in accordance with article 2.1(a) of the Statute of the Dispute Tribunal.

13. From the outset, the Tribunal notes that the Applicant defines the contested decision as the decision to reassign her to the -5 post of Regional Programme Adviser in Panama. While the Applicant raises various claims relating to her return to UNFPA from a non-reimbursable loan at the United Nations Secretariat, they are not before the Tribunal as part of the present application for suspension of action. Therefore, the receivability question before the Tribunal is whether the letter of 13 December 2019 which notified her of the selection for the -B post in Panama is an administrative decision subject to the Dispute Tribunal's judicial review.

14. The Appeals Tribunal has

16. Therefore, the contested decision is not an administrative decision subject to judicial review.

Conclusion

17. In light of the foregoing, the present application for suspension of action is rejected