
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/044
Order No.: 146 (NY/2023)
Date: 15 December 2023
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

IJERANAH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON SUSPENSION OF ACTION
PENDING MANAGEMENT
EVALUATION**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

André Luiz Pereira de Oliveira, UNFPA
Elizabeth Ann Interlandi, UNFPA

Introduction

1. On 11 December 2023, the Applicant, a Protocol Clerk/Driver, in Tripoli, Libya with the United Nations Population Fund (UNFPA), filed an application under art. 2.2 of the Dispute Tri seeking to suspend, pending management evaluation, the decision not to renew his fixed-term appointment beyond its expiry on 31 December 2023.

2. By email of 12 December 2023, the Registry acknowledged receipt of the application and served it on the Respondent and, on behalf of the Tribunal, instructed him to file a reply by 15 December 2023.

3. On 14 December 2023, the Respondent filed a reply contending that the application is without merit.

Factual background

4. On 4

The Applicant's submissions on the merits of the case and the scope of the case

6. In the application, the Applicant sets out his submissions on why he believes that the contested decision regarding the non-renewal of his fixed-term appointment as a BT/ was unlawful as follows:

Suspension of Action During an Investigation at UNFPA

When misconduct allegations are made against a UNFPA staff member, the organization may take several steps to ensure a fair and impartial investigation, including the temporary suspension of the staff member from their duties. This suspension aims to:

Protect the integrity of the investigation: By removing the staff member from their regular duties, UNFPA can prevent them from influencing witnesses, tampering with evidence, or otherwise impeding the investigation.

Protect the interests of the complainant and the staff member: The suspension can help to ensure that both parties are treated fairly and that the investigation is free from bias or intimidation.

which he is otherwise referring in his submissions. Also, when closely perusing the casefile, the Tribunal cannot identify any other actual administrative decision(s), which the Applicant might reasonably wish to challenge.

9. The Tribunal therefore finds that the only administrative decision under review is the decision not to renew the Applicant's fixed-term appointment as per the letter of 4 December 2023.

Prima facie unlawfulness

10. In considering whether to suspend an administrative decision pending management evaluation, to make a definitive finding that the decision is in fact unlawful. The test is not particularly onerous since all the Tribunal is required to do at this stage is to examine the material in the application and to form an opinion as to whether it appears that, if not rebutted, the claim will stand proven. Any such opinion is not a finding by the Tribunal and is certainly not binding should the matter go to trial on the merits. It is merely an indication as to what appears to be the case at the suspension of action stage. Whether or not this initial impression is well-founded or not is a matter for determination after a full examination of the evidence in the event that a substantive claim is filed.

11. The Respondent submits that the Applicant's fixed-term appointment is not renewed due to loss of funding. He submits as evidence an Excel spreadsheet from which it follows that the Applicant's post, with position no. 13631(last digit is not readable), is 50 percent financed through a fund code labelled JPD56 . From another document of 13 December 2023, it follows that whereas an [a]greement regarding fund code JPD56 began on 13 December 2022, it ended on 31 December 2023. Under the heading Current Extension , the relevant field is thereafter left blank and not indicating any extension.

12. The Tribunal notes that the Appeals Tribunal has held that lack of funding is a valid reason for not renewing a staff member's appointment (see, for instance, *Nouinou* 2019-UNAT-902, *Abdeljalil* 2019-UNAT-960, *Abu Ouda et al.* 2020-UNAT-1018, and *El Najjar* 2020-UNAT-1028). Also, as follows from the evidence produced by the Respondent, the fund code, or budget line, from which the Applicant's post received 50 percent of its financing, namely JPD56, will end on 31 December 2023, which appears to indicate that this funding is no lon

IT IS ORDERED THAT:

16. The application for suspension of action is rejected.

(Signed)

Judge Joelle Adda

Dated this 15th day of December 2023

Entered in the Register on this 15th day of December 2023

(Signed)

Isaac Endeley, Registrar, New York