



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/106

Judgment No.: UNDT/2011/114

Date: 24 June 2011

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

PHILIPPART

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Esther Shamash, OSLA

Counsel for Respondent:
Kong Leong Toh, UNOPS

Introduction

1. On 23 December 2010 the Applicant filed an application for suspension of action of the decision not to extend his contract beyond its expiration on 31 December 2010. The Applicant filed a request for management evaluation on the same day.

2. On 28 December 2010 the Respondent filed a response to the application. On 30 December 2010 a hearing was held, at which Counsel for the Applicant was present personally. Counsel for the Respondent and Counsel for the Applicant attended via telephone link from Denmark and Laos respectively.

3. On 31 December 2010 the Tribunal granted suspension of action pending management evaluation, pursuant to Order No. 338 (NY/2010). This Order was 22 pages long and provided full reasons in an attempt to give guidance to the parties in considering their positions in light of the Tribunal's preliminary findings.

Consideration

4. In accordance with the requirements of art. 2.2 of its Statute, in Order No. 338 (NY/2010) the Tribunal noted that it was obliged to determine whether the Applicant satisfied all of the requirements of *prima facie* unlawfulness, particular urgency and irreparable harm, in which case it would suspend the contested decision. The Tribunal found in this case that it was evident that the decision not to renew the Applicant was influenced by at least some improper considerations and that, as a result, it was satisfied of the *prima facie* unlawfulness of the decision. The Respondent had already conceded, and the Tribunal agreed, that the situation held particular urgency. Further, the Tribunal found that, in the context of the criticisms made of the Applicant's performance, it was reasonable to conclude that if the contested decision was not suspended, irreparable harm to the Applicant's reputation and employability would result. The Order concluded that "a suspension of action on the decision not to renew the Applicant's

contract after its expiry on 31 December 2010 is hereby granted, pending management evaluation”.

5. As noted above, the Applicant’s request for management evaluation was filed on 23 December 2010. Pursuant to staff rule 11.2(d), the Secretary-General’s response was to be communicated to the Applicant within 45 calendar days of receipt of the request for management evaluation, given the staff member was stationed outside of New York. Thus, the response to the request for management evaluation should have been communicated to the Applicant by 7 February 2011. Following this, in accordance with staff rule 11.4(a), the Applicant had a period of 90 calendar days from the earlier of the date on which he received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2(d). The date of expiration of the deadline specified under staff rule 11.2(d) was 9 May 2011.

6. The Tribunal has not received an application, a request for an extension of time to file one, nor any other correspondence, motion or pleadings from either party in this case. Further, the relief granted under Order No. 338 (NY/2010) is no longer operative; it was only granted during the pendency of management evaluation, which period is now well over.

7. As noted by this Tribunal in *Saab-Mekkour* UNDT/2010/047 and *Monagas* UNDT/2010/074, an applicant must continue to have a legitimate interest in the maintenance of his or her proceedings. Moreover, as noted in *de la Fayette* UNDT/2010/037, it is in the Tribunal’s interest to ensure that only current proceedings are maintained before it. As this is no longer the case in this matter, the proceedings shall be closed.

Conclusion

8. In light of the subsequent lack of prosecution of the proceedings, there is no matter for adjudication before the Tribunal. The case file is closed.

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(Signed)

Judge Ebrahim-Carstens

Dated this 24th day of June 2011

Entered in the Register on this 24th day of June 2011

(Signed)

Santiago Villalpando, Registrar, New York