



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2011/036

Judgment No.: UNDT/2011/120

Date: 30 June 2011

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

SULIQI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Christine Graham, ALS/OHRM, UN Secretariat

Introduction

1. By an application filed on 30 June 2011, the Applicant requests the United Nations Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of the decision not to extend his appointment beyond 30 June 2011.

Facts

2. The Applicant joined the United Nations Interim Administration Mission in Kosovo (“UNMIK”) in 1999, at grade GL-4, under a fixed-term appointment.

3. On 20 September 2010, a request was made to the UNMIK Administration with a view to changing the Applicant’s functional title. It was explained in the request that, while his functional title had been that of Data Entry Assistant since May 2007, he had in fact been performing the functions of Inventory Control Assistant since then.

4. On 19 January 2011, the Applicant was informed orally that, due to the downsizing of UNMIK, his post might be abolished in 2011.

5. By a memorandum dated 21 February 2011 and received by the Applicant on 9 March 2011, he was notified that, following a comparative review exercise to determine which posts had to be downsized, his appointment with UNMIK would not be extended beyond its expiry, on 30 June 2011.

6. At some point during the first half of 2011, the Applicant’s functional title was changed to Inventory Control Assistant.

7. In March 2011, a Central Review Panel (“CRP”) examined the situation of the UNMIK staff in the General Service category, for the purpose of making recommendations as to which posts ought to be abolished.

8. On 24 June 2011, the Applicant requested management evaluation of the decision to abolish the post of Inventory Control Assistant.

9. On 30 June 2011, he filed a request for suspension of action with the Tribunal against the decision to separate him from service.

Parties' contentions

10. The Applicant's primary contentions may be summarized as follows:

Prima facie unlawfulness

- a. The downsizing process was unfair;
- b. If, when reviewing his situation, the CRP considered the Applicant as a Data Entry Assistant, there was no other candidate than him for the position. If, on the other hand, the CRP considered that he was an Inventory Control Assistant, he was not given fair consideration;
- c. Another post of Inventory Control Assistant was added to the budget for 2010/2011. This shows that the Applicant's post was not abolished. Nor has he performed less satisfactorily or been imposed a disciplinary measure.

Urgency

- d. The Applicant's appointment is due to expire on 30 June 2011;

Irreparable damage

- e. If the Applicant's appointment is not renewed, he will lose his job.

Consideration

11. In the instant case, though the Applicant was informed on 19 January 2011 about the intention to abolish his post and was notified in writing on 9 March 2011 of the decision to separate him effective 30 June 2011, he filed his request for management evaluation on 24 June 2011 only. Subsequently, it took him almost another week to file his application for suspension of action with the Tribunal, on the very day when the contested decision was to be implemented.

12. In *Woinowsky-Krieger* Order No. 59 (GVA/2010), the Tribunal held that “an applicant ... has the obligation to enable [it] to give the other party the possibility to reply within a reasonable period of time. If the applicant does not comply with this obligation, he has to bear the consequences from the fact that a full and fair assessment of the application is not possible because of the applicant’s own delay. Normally, such an application cannot be successful”. On this ground alone, the application has to be rejected.

13. In addition, the Tribunal considers that the application is irreceivable because the Applicant failed to submit his request for management evaluation in due time.

14. Staff rule 11.2 provides:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

15. It follows from article 2.2 of the Statute of the Dispute Tribunal and article 13.1 of its Rules of Procedure read in conjunction with the above staff rule that a request for suspension of action during the pendency of the management evaluation may only be receivable if a request for management evaluation has been submitted in due time.

16. The Applicant identifies the contested decision as the decision dated 21 February 2011, of which he received notification on 9 March 2011. In accordance with staff rule 11.2(c), the Applicant had until 9 May 2011 to file his request for

management evaluation, which he failed to do. It was not until 24 June 2011 that he sent it.

Conclusion

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

(Signed)

Judge Thomas Laker

Dated this 30th day of June 2011

Entered in the Register on this 30th day of June 2011

(Signed)

Víctor Rodríguez, Registrar, Geneva