



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pele Fomété

KONNEH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGEMENT
ON AN APPLICATION FOR
SUSPENSION OF ACTION

Counsel for Applicant:
Self-Represented

Counsel for Respondent:
Steven Dietrich, Nairobi Appeals Unit, ALS/OHRM, UN Secretariat
Elizabeth Gall, Nairobi Appeals Unit, ALS/OHRM, UN Secretariat

This judgement has been corrected in accordance with Article 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. On 24 August 2011, the Applicant, an Administrative Clerk, at the G-3 level, in the United Nations Mission in Liberia (“UNMIL”), filed an application for suspension of action with the United Nations Dispute Tribunal (“the Tribunal”), contesting the decision not to renew her fixed-term appointment beyond 31 August 2011.

Relevant Facts

2. On 1 July 2010, the Applicant was appointed as Administrative Assistant in the UNMIL on a one year fixed-term contract. On 30 June 2011, her appointment was extended until 31 August 2011.

3. By memorandum dated 29 July 2011, the Applicant was advised by the Officer-in-Charge in the Human Resources Management Section (“HRMS”) of UNMIL that the post of General Service Administrative Assistant, post # 57662 she encumbered would be reclassified to become a National Professional Officer Human Rights position. In view of this, the Applicant was informed of the non-extension of her fixed-term appointment beyond 31 August 2011.

4. On 17 August 2011, the Applicant requested management evaluation of the impugned decision.

Applicant’s Submissions

5. The Applicant frames her case as follows:

- a. The Applicant claims that her application meets the three criteria required by the Statute and Rules of Procedure for the granting of a suspension of action.
- b. First, the Applicant submits that the decision not to extend her fixed-term appointment was improperly motivated. In her view, the decision was the result of problems she has been facing with her supervisor. The change of category from General Service Administrative Assistant to National Officer Post is an excuse to lay her off. She argues that the HRMS did not make any effort to reassign her to another suitable post.
- c. In view of the above, the Applicant argues that the decision is *prima facie* unlawful because the classification of a post should not negatively affect the existing contractual status, salary and entitlements of a staff member. Secondly, the Applicant refers to “Chapter IX of the staff rule 109, paragraph c” which concerns the abolition of posts, and avers that the Organization should have found her another suitable post.
- d. Finally, the Applicant submits that this is a matter of urgency and that if implemented the decision would cause her loss of income and would create hardship in providing support to her family and children.

Respondent’s Submissions

6. In accordance with article 13.2 of the Rules of procedure the application was served on the Respondent on 26 August 2011. No reply was neither requested by the Tribunal nor submitted by the Respondent.

Consideration

7. After careful consideration of the submissions of the Applicant, the Tribunal did not deem it necessary to hold an oral hearing in this matter in accordance with article 16.1 of its Rules of Procedure.

8. When dealing with applications for suspension of action, the Tribunal is guided by the provisions of article 2 of the Tribunal's Statute and article 13 of the Tribunal's Rules of Procedure. Article 13 (1) provides as follows:

“The Dispute Tribunal shall make an order on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage”.

9. The current application must be therefore reviewed against the three essential prerequisites to a suspension of action application as outlined in articles 2 (2) of the Tribunal's Statute and 13 (1) of its Rules of Procedure.

Prima facie unlawfulness

10. In the present case, the Applicant submits that the decision to reclassify her position was a biased one and that UNMIL did not assist her in identifying a suitable post for her reassignment. In support of her allegations of improper motives, the Applicant alleges personal prejudice on the part of her supervisor who is responsible for the decision to reclassify her post, and in particular she argues that her supervisor wanted to let her go because she had been involved in misconduct. In this respect, indeed, the Tribunal notes that the Applicant received a letter of reprimand, dated 21 June 2011, for having been involved in posting non-work related (pornographic)

material on the UNMIL 96-hour z-drive, captioned 'Hot Clips' consisting of several pornographic movies.

11. When considering applications for suspension of faction, the Tribunal held in *Abosedra* Order No. 10 (NBI/2011) that the first requirement is that the administrative decision must be unlawful and "what is unlawful depends obviously on the specific circumstances of each case". It further stated that "such decision would also be unlawful if it was motivated by countervailing circumstances."

12. In cases of reclassification of post, the International Labour Organization Administrative Tribunal ("ILOAT") stated in Judgment No. 3016:

"The Tribunal cannot substitute its own assessment or direct a new assessment unless certain grounds are established. Consistent precedent has it that the "Tribunal will not interfere with the decision [...] unless it was taken without authority or shows some procedural or formal flaw or a mistake of fact or of law, or overlooks some material fact, or is an abuse of authority, or draws a clearly mistaken conclusion from the facts" (see Judgment 1281, under 2)."

13. This Tribunal agrees with the above reasoning. In this regard, the Tribunal will not assess whether the reclassification exercise was relevant or not. It will mainly examine whether there are countervailing circumstances or if the decision not to renew the Applicant's contract was based on improper motives. When such allegations are brought before the Tribunal, it must be reminded that the burden of proof lies on the Applicant.

14. In the present case, however, the Tribunal does not find sufficient evidence on the file to conclude that the decision was based on improper motives. It appears at the outset, based on the available evidence that the decision to reclassify the post she encumbered was a reasonable exercise of the Organization's discretionary authority. In an email dated 12 July 2011, the Chief of Human Rights and Protection Section and Representative, High Commissioner for Human Rights submitted clarifications

regarding the Post Classification exercise and notified the recipients of his email that he had approved decisions for reclassification about not less than 20 posts. As stated in *Mills-Aryee* UNDT/2011/051, the Applicant bears the burden to identify troubling anomalies in the reclassification process or in her non selection for the new position. In this case, the Tribunal is of the considered view that the Applicant has not satisfactorily brought sufficient evidence in support of her allegations.

15. In the light of the above, the Tribunal finds that the decision does not appear *prima facie* unlawful. Having reached this conclusion, there is no need to address the other issues.

FOR THE FOREGOING REASONS

16. The application is dismissed.

(Signed)

Judge Vinod Boolell

Dated this 26th day of August 2011

Entered in the Register on this 26th day of August 2011

(Signed)

Jean-Pelé Fomété, Registrar, Nairobi