



Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

CHATTOPADHYAY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Myriam Foucher, UNOG

Introduction

1. By an application filed on 26 August 2011, the Applicant requests the Tribunal to suspend, during the pendency of the management evaluation, the implementation of the decision to require him to take a 31-day break in service after the expiration of his fixed-term appointment and prior to his reappointment on a temporary contract.

Facts

2. In August 2005, the Applicant joined the Office of the High Commissioner for Human Rights (“OHCHR”) in Geneva, under a three-month short-term appointment subject to the 300 series of the former Staff Rules. His appointment was subsequently extended and, with effect from 21 July 2006, he was given a series of fixed-term appointments, the duration of which varied from one month to a year.

3. On 5 July 2011, the Applicant accepted a fixed-term appointment for a duration of two months and three days, until 3 September 2011, in the OHCHR Special Procedures Branch (“SPB”).

4. By a memorandum dated 24 August 2011, the Officer-in-Charge of SPB requested the Chief of the OHCHR Programme Support and Management Services to reappoint the Applicant on a temporary contract, until 31 October 2011.

5. Also on 24 August 2011, the Applicant wrote to the Chief of the OHCHR Human Resources Management Section. He sought confirmation that he would remain employed from 4 September 2011, explaining that he had been made aware of a judgment in which the Tribunal had found that staff moving from a fixed-term to a temporary appointment were not required to take a break in service.

6. The Chief of the Human Resources Management Section responded on the same day :

... if SPB wishes to extend your appointment we shall ask [the] U[nited Nations Office at Geneva (“UNOG”)] to do so. But please be aware that UNOG will most likely reject such a request...

7. On 26 August 2011, the Applicant requested management evaluation of the decision “not yet made by the UN Human Resources Management Office in Geneva” to require him to take a break in service between the expiration of his fixed-term appointment and his reappointment on a temporary contract.

8. On the same day, he filed a request for suspension of action against that decision before the Tribunal.

9. By an email of 29 August 2011, the Applicant was advised that “UNOG ha[d] decided to extend [his] fixed-term appointment until 30 September 2011”.

10. The Respondent filed his reply on 30 August 2011.

Parties’ contentions

11. The Applicant’s contentions are:

Prima facie unlawfulness

a. In Judgment *Villamorán* UNDT/2011/126, the Tribunal found that the decision to require the applicant to take a break in service after the expiration of her fixed-term contract and prior to her temporary appointment was *prima facie* unlawful;

Urgency

b. His fixed-term appointment will expire within one week and there are only four working days in that week;

Irreparable damage

c. The implementation of the contested decision would negatively affect his health and welfare as well as that of his dependent son. It would also impact on his medical insurance, pension and other benefits, and residence permit;

d. Further, it would affect his chances of remaining employed and having further opportunities to be selected for a regular post.

12. The Respondent's contentions are:

The application is irreceivable in view of the fact that the decision to require the Applicant to take a 31-day break in service after the expiration of his fixed-term appointment has never been taken, and that he was informed on 29 August 2011 that his fixed-term appointment would in fact be extended until 30 September 2011.

Consideration

13. In accordance with article 2.2 of its Statute, the Tribunal may suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision where the decision appears to be *prima facie* unlawful, the matter is of particular urgency and the Applicant would suffer irreparable damage if the decision in question is not suspended.

14. It is not disputed by the Applicant that what he contests is not a decision which was actually made. Rather, he challenges a possible decision which would most likely be made by UNOG.

15. In the instant case, no decision had been made at the time when the Applicant filed his application and the latter must therefore be deemed irreceivable.

Conclusion

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

(Signed)

Judge Jean-François Cousin

Dated this 30th day of August 2011

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

(Signed)

Víctor Rodríguez, Registrar, Geneva