



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

RAFII

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

**ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. By application filed with the New York Registry of the Dispute Tribunal on Wednesday, 15 August 2012, the Applicant, a staff member of the United Nations Assistance Mission in Afghanistan (“UNAMA”), sought a suspension of action, pending management evaluation, of the alleged decision by UNAMA not to allow her to be employed in another office on a non-reimbursable loan. The Applicant alleged that UNAMA reneged on an undertaking made in her previous application for suspension of action in May 2012, thus frustrating her temporary engagement.

2. The Respondent was duly served and directed to file a reply by 4 p.m. on Friday, 17 August 2012. However, as this matter was filed on urgency basis, I deemed it imperative, being the only Judge available at the duty station and due to proceed on official leave the following week, to call a case management hearing on the morning of Friday, 17 August 2012, in order to decide the future conduct of the matter.

3. Counsel for the Respondent agreed at the case management hearing to urgently communicate to the Tribunal and the Applicant the latest developments regarding an invitation that had been made to the Applicant with regard to a temporary position in the United Nations Integrated Mission in Timor-Leste (“UNMIT”), as his instructions were that there was no objection to the Applicant being employed in another office. The Respondent also duly filed the reply to the application as directed by the Tribunal.

Background

Employment status

4. The Applicant first joined the Organization in the early 1990s. She was employed by the Organization on different contracts, including consultancies, on a number of occasions, although her engagement was not continuous.

5. In July 2011, she joined UNAMA on a fixed-term assignment. She was placed on extended sick leave with full pay in January 2012, based upon the opinion of medical professionals that it was not advisable for her to work in Afghanistan, though she could work in a more suitable environment. The Applicant has exhausted her annual leave and paid sick leave entitlements and is presently on special leave without pay. Her current contract with UNAMA expires on 31 December 2012.

First suspension of action application

6. The Applicant wants to work in an office suitable to her medical condition. She attempted to secure a transfer on a non-reimbursable loan to the Department of Economic and Social Affairs (“DESA”) in New York, maintaining a lien on her post in UNAMA, but the transfer was refused by UNAMA. On 29 May 2012, she filed an application for suspension of action of that decision, but while her application was before the Tribunal, she was informed that the decision not to permit her non-reimbursable loan had been set aside by the Respondent. On 1 June 2012, the Tribunal rendered *Rafii* UNDT/2012/082, finding that, in view of the reversal of the contested decision, the application for suspension of action was moot and stood to be dismissed.

Temporary assignment

7. According to the Applicant, there were subsequent delays in completing the necessary formalities for her temporary assignment with DESA in New York.

She alleges that she was verbally informed on 23 July 2012 that UNAMA had decided not to agree to her non-reimbursable loan arrangement. However, the Applicant acknowledges that, on 14 August 2012, it was confirmed to her that the information provided to her on 23 July 2012 regarding objections to her loan arrangement was a result of miscommunication.

8. On 15 August 2012, she was contacted by UNMIT, asking if she would be interested in a temporary assignment ending on 31 October 2012. On 15 August 2012, the Applicant confirmed her availability to work for UNMIT “on a temporary basis once all the necessary formalities for [her] reassignment have been completed”.

9. According to the Respondent, the temporary assignment to DESA is no longer feasible as it was needed to assist with a conference that already took place in June 2012. However, efforts were made to find the Applicant a temporary assignment with UNMIT, and those efforts were successful. The Respondent submits that the Administration has no objections to the Applicant joining UNMIT on a temporary loan arrangement. The Respondent also stated that, contrary to the Applicant’s assertions, if she were to join UNMIT, it would not be interpreted as a waiver of any rights of the Applicant.

10. On 17 August 2012, the Respondent informed the Tribunal that “following consultations between UNMIT and the Field Personnel Division of the Department of Field Services, UNMIT agreed to offer a temporary assignment to [the Applicant] through 31 October 2012 to provide assistance to the mission through its liquidation phase. UNMIT has agreed to pay for [the Applicant’s] services through 31 October 2012”. The Respondent submitted that, following the Applicant’s confirmation of her availability, an offer of appointment is being prepared by UNMIT and will be issued to the Applicant shortly.

11. On 21 August 2012, the Applicant filed a submission informing the Tribunal that she would take the temporary appointment with UNMIT in order “to fulfil [her] legal obligation to mitigate damages”. She confirmed that she would not be pursuing the present application for suspension of action but would preserve her right to pursue other remedies.

Consideration

12. This Tribunal has reaffirmed time and again that a suspension of action is an extraordinary relief and both parties should come to the Tribunal in good faith.

13. It was evident from the Applicant’s submissions during the case management hearing that she appeared not to trust the Respondent due to her experience both prior to and following her first application for suspension of action. However, it is also apparent from the Respondent’s reply that DESA had made no offer to the Applicant with regard to any assignment concerning the first suspension of action.

14. The Applicant was medically cleared to work in UNMIT on 24 July 2012. On 15 August 2012, she confirmed, by email, her availability to work for UNMIT “on a temporary basis once all the necessary formalities for [her] reassignment had been completed”. This to the Tribunal indicates more than a simple consideration of her interest in the position. This email was provided to the Tribunal by the Applicant and also made available as an annex to the Respondent’s reply. Therefore, by the time the application for suspension of action was received and before the hearing of 17 August 2012, the Applicant had already confirmed her availability to take up an alternative temporary assignment with UNMIT. Therefore, the need for this application for suspension of action was questionable, particularly as there was no objection by the Respondent to the Applicant taking up that temporary position.

Conclusion

15. In view of the Applicant's submission of 21 August 2012, and the issues in this case now being moot, the application for suspension of action is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 21st day of August 2012

Entered in the Register on this 21st day of August 2012

(Signed)

Hafida Lahiouel, Registrar, New York