



Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

BRIERLEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Brandon Gardner, OSLA

Counsel for Respondent:
Nusrat Chagtai, ALD/OHR, UN Secretariat

Introduction

1. On 13 December 2019, the Applicant filed an application contesting the Administration's decision to terminate his permanent appointment following the abolishment of his post.

2. In the Respondent's reply dated 19 December 2019, the Respondent submits that the application is not "ready for adjudication" because the Administration has suspended the termination decision pending management evaluation.

3. For the reasons stated below, the application is rejected as non-receivable.

Consideration

Relevant facts

4. Following the Security Council's decision to close the United Nations Mission for Justice Support in Haiti ("MINUJUSTH"), the Applicant was notified on 12 September 2019 that his continuing appointment was to be terminated effective 15 October 2019. The Applicant was then placed on Special Leave with Full Pay ("SLWFP") as of 11 October 2019.

5. On 2 October 2019, the Applicant requested management evaluation of the termination decision. On 4 October 2019, the Administration notified the Applicant that the decision was suspended pending management evaluation.

6. On 24 November 2020, the Respondent confirmed that the Applicant had not been separated from the Organization and on 2 December 2020, the Applicant confirmed that he continued on SLWFP.

Parties' contentions

7. In essence, the Applicant argues that, since the abolition of his post with MINUJUSTH, the Administration has failed to fulfill its duty to make reasonable and good efforts to find an alternative post for him.

8. The Respondent argues that the present matter is not ready for adjudication because the Administration has suspended the decision to terminate the Applicant's appointment and continues, to this day, to make good faith efforts to find the Applicant a suitable position.

Discussion

9. Article 2.1(a) of the Tribunal's Statute states that the Dispute Tribunal has jurisdiction to pass judgment on:

... an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance ...

10. The Appeals Tribunal's well-established jurisprudence provides that an administrative decision is only capable of judicial review when it produces direct legal consequences for the applicant's terms of appointment (see, for instance, *Hassanin* 2017-UNAT-759, para. 37).

11. The Tribunal notes with concern that the Administration has failed to find a suitable post for the Applicant in over 14 months since it placed him on SLWFP pending management evaluation. This denotes, in the Tribunal's view, a serious managerial failure.

12. This notwithstanding, as the decision to terminate the Applicant's appointment remains suspended, it has no impact on the Applicant's terms of appointment.

13. The Tribunal therefore finds the application to be non-receivable *ratione materiae*.

14. However, the Tribunal notes that this finding is without prejudice. An eventual decision by the Administration to lift the suspension of the termination decision and proceed to separate the Applicant would constitute a reviewable administrative decision if all the requisites of art. 2.1(a) of the Statute were otherwise met.

15. In the 2 December 2020 submission, the Applicant further states that since the abolition of his post, he has continued to apply for suitable posts but has received no information from the Administration regarding efforts being made to place him in a suitable administrative position after being placed on SLWFP 14 months ago. The Applicant avers that this inaction shows that the Administration has failed in its obligation to find him a suitable alternative position.

16. The Tribunal notes that the alleged inaction of the Administration to find an alternative post for the Applicant so long after he was first placed on SLWP is not covered by the Applicant's request for management evaluation of 3 October 2019 or in his application and is therefore not receivable *ratione materiae*.

17. Should the Applicant wish to contest any such implied decision, he may do so within the procedures established by the Tribunal's Statute and Rules of Procedure.

18. In light of the above,

Conclusion

19. The application is rejected.

(Signed)

Judge Joelle Adda

Dated this 4th day of December 2020

Entered in the Register on this 4th day of December 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York