



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/023

Judgment No.: UNDT/2024/110

Date: 11 December 2024

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

SCEPANOVIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Manuel Calzada

Counsel for Respondent:

Nisha Patel, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a former staff member with the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”), filed an application dated 6 June 2024 challenging the decisions: (a) to terminate his fixed-term appointment effective 31 May 2024, and (b) not to place him on “special leave with half pay” (“SLWHP”), following the exhaustion of his entitlements to annual leave and certified sick leave (“the contested decisions”).

2. On 10 June 2024, the Respondent filed a motion, *inter alia*, requesting that the Applicant’s application on the merits be summarily dismissed pursuant to art. 9 of the Dispute Tribunal’s Rules of Procedure.

3. On 11 July 2024, the Respondent filed a reply submitting that the contested decisions were lawful.

4. On 28 October 2024, the Applicant filed a rejoinder to the Respondent’s motion and reply.

5. For the reasons set out below, the application is denied.

Factual background

6. On 5 August 2021, the Applicant joined MINUSMA as an Air Operations Assistant in its Kidal duty station. He held a fixed-term appointment.

7. On 30 June 2023, the Security Council, in its resolution 2690 (2023), decided to terminate the mandate of MINUSMA as of that date and instructed MINUSMA to conduct an orderly drawdown of the Mission and withdrawal of its personnel by 31 December 2023.

8. From 16 October 2023 to 27 March 2024, the Applicant was either on certified sick leave or on half sick leave combined with half annual leave. During this period, the Applicant's appointment was extended, and not terminated, pursuant to sec. 3.9 of administrative instruction ST/AI/2005/3 (Sick leave).

9. On 30 November 2023, the Kidal office, where the Applicant was stationed, was permanently closed.

10. On 14 December 2023, the Applicant's entitlement to certified sick leave with full pay was exhausted. On 18 March 2024, his entitlement to certified sick leave on half pay was equally exhausted.

11. On 28 March 2024, the Applicant was granted special leave without pay ("SLWOP"), which was amended to SLWHP until 9 April 2024. From 10 April to 24 May 2024, he was on SLWOP.

12. On 12 February 2024, the Applicant's case was submitted to the Division of Healthcare Management and Occupational Safety and Health ("DHMOSH") for their review to determine whether the Applicant should be considered for a disability benefit under art. 33(a) of the United Nations Joint Staff Pension Fund ("UNJSPF") Regulations.

13. On 9 April 2024, the Office of the Medical Director, DHMOSH, advised MINUSMA Human Resources ("HR") that the Applicant's case would not be recommended to the UNJSPF Committee (or "the Committee") for its consideration for a disability benefit. The following day, the Applicant was informed of the same.

14. On 23 April 2024, the Applicant received a notice of termination of his fixed-term appointment, which stated it was "effective 24 April 2024 with one (1) month payment in lieu of notice". The letter referred to United Nations Security Council resolution 2690 (2023) and the determination on 9 April 2024 from DHMOSH that the

Applicant would not be recommended to the UNJSPF Committee for a disability benefit.

15. On 24 April 2024, the Applicant filed a request for management evaluation to the Management Advice and Evaluation Section and an application for suspension of action to this Tribunal in Case No. UNDT/NY/2024/019 in relation to the decision to terminate his fixed-term appointment.

16. On 27 April 2024, the Respondent suspended the implementation of the contested termination decision until 24 May 2024, pending the outcome of the Applicant's request for management evaluation.

17. On 24 May 2024, the Applicant's SLWOP was extended to 31 May 2024, when he received a response to his request for management evaluation by which the Under-Secretary-General for Management Strategy, Policy and Compliance upheld the decision to terminate his fixed-term appointment.

18. On 4 June 2024, the Respondent emailed the Applicant that his separation from service was effective 31 May 2024. The following day, the Respondent emailed the Applicant a checkout memorandum regarding his separation from the MINUSMA Liquidation Entity.

Consideration

19. In present case, the Applicant challenges the decisions: (a) to terminate his fixed-term appointment following the termination of MINUSMA's mandate, and (b) not to place him on SLWHP, following the exhaustion of his entitlements to annual leave and certified sick leave.

20. The Tribunal notes that the reason provided for the termination of the Applicant's fixed-term appointment is the abolition of the post he encumbered due to the termination of MINUSMA's mandate. In this regard, the Tribunal recalls that the

Organization enjoys a broad discretion to reorganise its operations and departments to meet changing conditions, including by abolishing posts (see, for example, *Russo-Got* 2021-UNAT-1090; *Timothy* 2018-UNAT-847; and *Smith* 2017-UNAT-768). In *Collins* 2020-UNAT-1021, para. 25, the Appeals Tribunal stated “[i]n the context of the ongoing budgetary shortfall when the contested administrative decision was taken, it was reasonable to expect some kind of retrenchment by the Administration. Nevertheless, an administrative decision to terminate a fixed-term appointment can be challenged on the grounds that the Organization had not acted fairly, justly, or transparently with the staff member, or was motivated by bias, prejudice or improper motive”.

21. The Applicant contends that the contested decisions are unlawful pursuant to administrative instructions ST/AI/1999/16 (Termination of appointment for reasons of health), and ST/AI/2019/1 (Resolution of disputes relating to medical determinations). He argues that he “is entitled to remain a staff member on Special Leave With Half Pay pending the outcome of the medical review process and the eventual decision of the Pension Fund whether to award the Applicant a disability benefit under the rules and regulations of the UNJSPF”.

22. The Respondent submits that the contested decisions were lawful and that the cessation of MINUSMA’s mandate necessitated a reduction in United Nations personnel. On 23 April 2024, the Applicant was duly informed of the termination of his appointment and the reasons for the termination. The Respondent further states that the administrative instructions that the Applicant cites are not applicable because his appointment was not terminated for health reasons but, rather, for the Organization’s needs.

23. The Tribunal notes that the Applicant does not dispute that the Organization terminated his appointment under staff regulation 9.3(a)(i) because the necessities of service required the reduction of staff following the termination of MINUSMA’s mandate pursuant to Security Council resolution 2690 (2023). The essence of the Applicant’s argument seems to be that his appointment was unlawfully terminated

early because of the status of his health. He submits that pursuant to ST/AI/2019/1 and ST/AI/1999/16 and “given the exhaustion of [his] [certified sick leave] entitlements (at both full and half pay) and the delay of the determination by the Committee, [he] should have been placed on SLWHP”.

24. The Tribunal finds that the Applicant’s reliance on ST/AI/2019 and ST/AI/1999/16 is misguided since his appointment was not terminated for reasons of health. In particular, the provisions of ST/AI/2019/1 do not entitle the Applicant to a suspension of the termination decision because he seeks a review of the medical determination that was communicated to him on 23 April 2024. Section 1.2 of ST/AI/2019/1 explicitly provides that “[a] request for review of a medical determination does not have the effect of suspending the implementation of any administrative decision taken on the basis of the contested medical determination”. The provisions of ST/AI/1999/16 do not entitle the Applicant to be placed on SLWHP or otherwise prevent the termination of his appointment as the provision only applies to termination on health grounds. In this regard, the Tribunal notes that the Applicant’s appointment was not terminated on health grounds pursuant to staff regulation 9.3(a)(iii). Rather, it was terminated under staff regulation 9.3(a)(i) which provides that the Secretary-General may terminate a staff member’s appointment “[i]f the necessities of service require abolition of the post or reduction of the staff”.

25. Furthermore, the Tribunal finds that the Organization did not err in deciding against the Applicant being placed on SLWHP from 10 April 2024 until the outcome of his challenge to DHMOSH’s determination not to recommend him to the UNJSPF Committee for a disability benefit. There is no provision that mandates the placement on SLWHP where termination is based on the necessities of service under staff regulation 9.3(a)(i) or where a (former) staff member is contesting a medical determination under ST/AI/1999/16.

26. It follows that there is no basis for the Applicant’s claim that the Administration unlawfully terminated his appointment early because of his health. Accordingly, the

Tribunal finds that the Applicant's appointment was lawfully terminated under staff regulation 9.3(a)(i) following the termination of MINUSMA's mandate.

Summary judgment

27. The Respondent requests that the application be disposed of by way of summary judgement in accordance with art. 9 of the Dispute Tribunal's Rules of Procedure. The Respondent argues that "[t]here is no dispute as to the material facts regarding the cessation of MINUSMA's mandate or the legality of the Respondent's decision to reduce staff. [The Applicant's] appointment was lawfully terminated based on the necessities of service, not on reasons for health".

28. The Tribunal notes that under art. 9 of the Dispute Tribunal's Rules of Procedure "[a] party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law".

29. As demonstrated above, there is indeed a need to review and clarify the various material facts of the case. Accordingly, the case may not be adjudicated by way of a summary judgment.

Conclusion

30. In view of the foregoing, the Tribunal finds that the contested decision was lawful and rejects the application.

(Signed)

Judge Joelle Adda

Dated this 11th day of December 2024

Entered in the Register on this 11th day of December 2024

(Signed)

Isaac Endeley, Registrar, New York