



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/005
Order No.: 4 (GVA/2010)
Date: 26 January 2010
Original: English

Before: Judge Thomas Laker
Registry: Geneva
Registrar: Víctor Rodríguez

ABDALLA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON SUSPENSION OF ACTION

Counsel for Applicant:
None

Counsel for Respondent:
Adele Grant, ALU/OHRM, UN Secretariat

Introduction

1. On 12 January 2010, the Applicant filed with the United Nations Dispute Tribunal (UNDT) an application requesting the Tribunal to suspend, during the pendency of the management evaluation, the implementation of the decision not to renew his contract beyond 31 December 2009.

Facts

2. According to the Respondent, on 19 August 2008, the Applicant was appointed to the United Nations International Independent Investigation Commission (UNIIC), as a Language Assistant at FS-5/A level, until 31 December 2008. Effective 1 January 2009, the Applicant's appointment was extended until 28 February 2009. Effective 1 March 2009, his contract was further extended until 30 April 2009.

3. Following UNIIC downsizing, on 29 April 2009, the Applicant was offered a three-month temporary duty assignment to the United Nations Assistance Mission for Iraq (UNAMI) as Administrative Assistant at the same level (FS-5), effective 1 May 2009.

4. According to the Respondent, effective 1 July 2009, the Applicant's appointment was converted into a temporary appointment until 31 October 2009, due to the new contractual arrangements approved by the General Assembly.

5. Effective 1 November 2009, the Applicant's temporary appointment was extended until 31 December 2009. However, he was informed that this would be the last extension of his appointment because "there [were] no Language Assistant or Translator/Interpreter posts at FS-5 in the Mission".

6. By letter dated 31 December 2009 from the Chief, Human Resources Section (HRS), UNAMI, the Applicant was informed that UNAMI would not extend his "90 day conditional offer beyond 31 December 2009 due to unavailability of the function of Interpreter/Language assistant at the FS-5 level".

7. On 12 January 2010, the Applicant submitted to the Tribunal a request for suspension of action of the decision not to renew his appointment beyond 31 December 2009.

8. On 14 January 2010, the Applicant filed a request for management evaluation.

9. On 18 January 2010, the Applicant completed his request for suspension of action before the Tribunal.

10. By memorandum dated 18 January 2010 from the Chief, HRS, the Applicant was informed inter alia that “[HRS had] revised [his] date of close of business with UNAMI to 03 February 2010”.

11. On 21 January 2010, the Respondent submitted his reply. In his reply, he did not refer to the above-mentioned memorandum. He asserted that the Applicant’s appointment expired on 31 December 2009 and that he was separated from service effective 3 January 2010.

12. By letter dated 22 January 2010, the Tribunal requested from the Respondent clarifications as to the above-mentioned memorandum dated 18 January 2010.

13. On 25 January 2010, the Respondent provided the requested clarifications. He stated that the Applicant had been given “a final extension of his temporary appointment, effective 1 January 2010, until 3 February 2010”. The Respondent further asserted that “the date of implementation of the decision would be 4 February 2010”.

Considerations

14. The Applicant requests the Tribunal to suspend the implementation of the decision not to extend his temporary appointment beyond 31 December 2009.

15. The application was filed before he requested a management evaluation of the contested decision. On 14 January 2010, the Applicant requested management evaluation. At the date of issuance of this order, the time limit for the Secretary-General’s response to the request for management evaluation was still running and no such response had been made to the Applicant. Thus the application for

suspension of action must be examined in the light of article 2, paragraph 2, of the Tribunal's statute, which provides that:

“The Dispute Tribunal shall be competent to hear and pass judgement 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...”

16. It follows from this provision that the Tribunal may only order suspension of action if the implementation of the contested decision is still possible and at stake. In the present case, this condition is no longer fulfilled.

17. According to the Respondent's clarifications received on 25 January 2010, it is now clear that the Applicant was given a further extension of his temporary appointment, effective 1 January 2010, until 3 February 2010. In the light of this development, the original decision not to extend the Applicant's appointment beyond 31 December 2009 has become moot. This decision can no longer be implemented since the Respondent's former intention to separate the Applicant as from 31 December 2009 has been overruled by the extension of his appointment effective 1 January 2010. The original – and contested – decision therefore no longer has any effects on the Applicant's status.

18. The Tribunal does not overlook the fact that the Respondent considers the current extension of the Applicant's appointment as final. Therefore, it is possible that the Applicant's appointment will end on 3 February 2010. Of course, the Applicant is not precluded from filing a new application for suspension of the implementation of the decision not to extend his appointment beyond 3 February 2010.

Conclusion

19. For the reasons stated above, it is DECIDED that
The application for suspension of action is rejected.

(Signed)

Judge Thomas Laker

Dated this 26th day of January 2010

Entered in the Register on this 26th day of January 2010

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva