



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

ALVARADO LOPEZ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Michael Ford Shanahan

Counsel for Respondent:
Camila F. Nkwenti Awa, UNEP

Introduction

1. By application filed on 8 July 2014, the Applicant, the Coordinator, Strategic Approach to International Chemicals Management (“SAICM”), Chemicals Branch, Division of Technology, Industry and Economics, United Nations Environment Programme (“UNEP”) (P-5), requests the suspension of action, pending management evaluation, of the “implied decision” not to extend her fixed-term appointment (“FTA”), expiring on 10 July 2014.

Facts

2. The Applicant started her employment with UNEP in her current position on 11 February 2011, on a two-year FTA.

3. In her performance evaluations (e-PAS) for the performance cycles 2011-2012 and 2012-2013, she received twice the rating “partially meets expectations”; in both cases, that rating was subsequently confirmed in the final report of the rebuttal panel pursuant to a rebuttal process initiated by the Applicant. She completed then a performance improvement plan for the period from April 2013 until November 2013.

4. On 30 August 2013, the Applicant addressed to the Executive Director of UNEP a complaint of workplace harassment and abuse of authority against her first reporting officer.

5. On 6 March 2014, she filed a first request for suspension of action, pending management evaluation, of the implied decision not to extend her FTA, expiring 10 March 2014. Given that her FTA was then extended until 31 March 2014, the Tribunal declared her application moot by its Order No. 42 (GVA/2014) of 10 March 2014.

6. The Applicant’s FTA was subsequently regularly extended on a monthly basis pending discussions between the parties regarding an informal resolution of their dispute, and it is currently to expire on 10 July 2014. The Applicant filed with the Tribunal the present application for suspension of action on 8 July 2014,

on the grounds of an implied decision not to further renew her contract in view of the apparent failure of the mediation. She also requested management evaluation of “the implied decision not to renew [her] contract, expiring 10 July 2014, having been improperly influenced by the 2011-2012 and 2012-13 [e-PAS]” by letter dated 7 July 2014.

7. The application was served on the Respondent who filed his reply on 9 July 2014.

Parties’ contentions

8. The Applicant’s primary contentions may be summarized as follows:

Prima facie unlawfulness

- a. The Tribunal’s jurisprudence has confirmed that an express or implied decision not to renew a FTA is an appealable administrative decision; the decision not to renew such a contract shall be reasoned and the reasons have to be provided to the staff member; it may not be based on improper motives, such as bias and personal prejudice;
- b. She has well performed her functions and her position is not being abolished; funding for the post is available until 2020; therefore, she has a reasonable expectation for renewal; she has been working in a hostile working environment and her first reporting officer has shown extreme bias and prejudice against her;
- c. She was not supported in her efforts to clarify the financial situation of the SAICM trust fund, when she had alerted the Organization of the mismanagement of USD1,300,000 and contributed to them being finally found;
- d. In violation of the requirements determined by the Tribunal’s jurisprudence, she did not receive any actual notice nor was she given any reasonable basis for the non-renewal of her appointment;

Urgency

e. The urgency results from the fact that her improper separation from the Organization on 10 July 2014 is imminent;

Irreparable damage

f. The sudden non-renewal, without any notice, will cause irreparable harm to her and her family, particularly since she is a single mother living in a foreign country with her children, without social welfare, and currently on sick leave of an indeterminate duration due to her severe medical condition directly related to the stress and personal attacks she suffers in her work environment; the sudden loss of income will have drastic effects; most likely, she would have to relocate immediately, and she would not be in a position to continue with the proceedings on the merits of her case due to lack of means to pay the legal costs; once the irregularities are proven in the consideration of the merits of her case, it would be difficult for the Tribunal to order her being placed back in the Organization; her harm cannot be repaired through financial compensation;

g. She would also suffer from an irreparable damage to her reputation, as she would have a sudden “exit” from the programme she manages without explanation, which can be badly regarded externally;

h. The order by the Tribunal in the framework of the suspension of action to extend her appointment for a reasonable time, under different reporting lines, would prevent the irreparable harm, and is within the scope of proposals that have previously been made by the Ombudsman.

9. The Respondent’s primary contentions may be summarized as follows:

a. The Applicant’s FTA has been renewed for a period of three months, hence the application for suspension of action against the decision not to extend her appointment beyond 10 July 2014 is unwarranted and should be rejected on the ground that it is moot;

b. Indeed, following discussions, the Applicant had agreed to a lateral move to a new position as Senior Programme Officer within the Chemicals Branch, Division of Technology, Industry and Economics, UNEP, post No. 607063, hence the instant application comes as a surprise;

c. Contrary to the allegations made by the Applicant, the Respondent is not biased against her.

Consideration

10. Art. 2.2 of the Statute of the Tribunal and art. 13 of its Rules of Procedure provide that it may order the suspension, during the pendency of the management evaluation, of the implementation of a contested administrative decision that is the subject of an on-going management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

11. In the instant case, the Applicant referred to the implied decision not to extend her appointment beyond 10 July 2014. The Respondent submits that the Applicant's FTA has now been extended, due to her reassignment to a new position to which she has agreed.

12. As regards the Applicant's appointment, the Tribunal notes that the Respondent expressly stated in his reply that it "has been renewed for a period of three months". The Tribunal has no reason to doubt the trustworthiness of such a statement, emanating from a competent representative of the Secretary-General in this case. Therefore, it can only conclude that the request for suspension of action has become moot.

13. Further, the Tribunal considers that the Applicant's lateral move put forward by the Respondent in his reply is not relevant for the consideration of the instant request for suspension of action, which is limited to the matter of the non-renewal of the Applicant's FTA.

14. As a consequence, it is not necessary for the Tribunal to examine if the three statutory requirements specified in art. 2.2 of the Tribunal's Statute and art. 13 of

its Rules of Procedure, namely *prima facie* unlawfulness, urgency and irreparable damage are met in the case at hand.

Conclusion

15. In view of the foregoing, the Tribunal DECIDES:

The application for suspension of action is moot and there is no need to further decide on the Applicant's request.

(Signed)

Judge Thomas Laker

Dated this 9th day of July 2014

Entered in the Register on this 9th day of July 2014

(Signed)

René M. Vargas M., Registrar, Geneva