



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

ELKEIY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

UNOG

Introduction

1. On 23 February 2015, the Applicant, a former staff member of the United Nations Conference on Trade and Development (“UNCTAD”), filed an application for suspension of action pending management evaluation of the decision not to renew his fixed-term appointment beyond 31 January 2015.

Facts

2. The Applicant served as Economic Affairs Officer (P-3) with UNCTAD, in Geneva, on a fixed-term appointment, due to expire on 31 January 2015.

3. By letter dated 30 January 2015, the Senior Human Resources Officer, Human Resources Management Service (“HRMS”), notified the Applicant that his fixed-term appointment would not be renewed beyond its expiration date, that is, 31 January 2015. The letter stated that, given the Applicant’s failure to reply to two HRMS communications of 29 December 2014 and 19 January 2015, respectively, his absence from the office since 26 November 2014 would be recorded as unauthorised absence as per staff rule 5.1(e)(ii).

4. On 16 February 2015, the Applicant asked the Senior Human Resources Officer, HRMS, for the reason(s) for the non-renewal of his contract. On the following day, she replied as follows:

UNCTAD management stated that [the Applicant] remained unresponsive to their communications, that [he] was absent without providing timely justification and that [he] did not deliver since his reassignment to Geneva. Also, UNCTAD noted that [the Applicant’s] behavior vis-à-vis [his] colleagues and [his] supervisors was considered as disruptive for the office, and the situation had become not sustainable for all concerned.

5. On 17 February 2015, the Applicant submitted a certified sick leave attestation dated from 1 December 2014 to 31 January 2015, totalling 43 days.

6. On 22 February 2015, he submitted via email a request for management evaluation of the non-renewal of his contract.

Applicant's contentions

7. The Applicant's primary contentions may be summarized as follows:

Prima facie unlawfulness

- a. The reasons given by management as the basis for the contested decision do not correspond to objective facts. The decision is therefore flawed;
- b. Timely justification for absence was submitted and successfully processed;
- c. There exists no completed performance appraisal that could serve as justification for the non-renewal decision;
- d. With respect to any behavioural issues, no administrative or disciplinary action was undertaken that indicate any disruptive behaviour harmful to the interest of the Office;
- e. If he was unresponsive to any communications, those were not formal and were sent during his sick leave;

Urgency

- f. Each additional day of exposure to the impugned decision increases the risk to be subjected to more harm on career prospects, reputation and health;

Irreparable damage

g. Very often the possibility of an irreparable harm to the interest of a staff member may be considered a sufficient indicator of irreparable harm. Such harm should not be confined to material harm but must also encompass moral harm. Besides economic loss deriving from the loss of employment, there is a loss of career prospects, loss of self-esteem and unquantifiable potential harm to his professional reputation.

Consideration

8. Pursuant to art. 2.2 of its Statute and art. 13.1 of its Rules of Procedure, the Tribunal is competent to hear and pass judgment on an application filed by an individual requesting the Tribunal:

[T]o 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.

9. This wording—particularly the use of the term “suspend” and of the conditional tense—implies that once a decision has been implemented the Tribunal can no longer grant its suspension as an interim measure. Indeed, the Tribunal has consistently ruled that it is a condition for granting a request for suspension of action that the decision has not yet been implemented (e.g., *Kawas* Order No. 297 (NY/2014); *Smoljan* Order No. 43 (GVA/2013), *Applicant* Order No. 167 (NBI/2014)).

10. In the case at hand, the letter informing the Applicant of the impugned decision makes clear that it would be implemented on 1 February 2015. Additionally, the application confirms that the Applicant was separated on that date.

11. The Applicant states in para. 3 of his application that “the suspension of the decision (and *its ongoing implementation*) is an urgent matter” (emphasis added). The foregoing statement implies that the contested decision has not yet been fully implemented. This is incorrect in fact and in law. Indeed, a decision resulting in the cessation of service of a staff member with the Organization, is fully implemented as from the date of his separation (see, e.g., *Nair* Order No. 27 (GVA/2015)). Moreover, as the Tribunal held in *Applicant* Order No. 87 (NBI/2014):

[A] suspension of action order is, in substance and effect akin to an interim order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the status quo between the parties to an application pending trial. It follows, therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

12. For all the foregoing, the Tribunal is satisfied that the non-renewal of the Applicant’s appointment was fully implemented before the present application was filed. It follows that the decision in question does not meet one of the cumulative and mandatory conditions for granting a suspension of action and that, under the circumstances of the instant case, it is not necessary to seek a reply from the Respondent. Furthermore, having reached this finding, the Tribunal does not need to examine the remaining cumulative requirements for granting a suspension of action.

13. Finally, the Tribunal underlines that its decision on the application for suspension of action does not entail any assessment with respect to the lawfulness of the contested decision.

Conclusion

14. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Thomas Laker

Dated this 24th day of February 2015

Entered in the Register on this 24th day of February 2015

(Signed)

René M. Vargas M., Registrar, Geneva