



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

CHERNEVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Self-represented

Counsel for Respondent:

UNICEF

Introduction

1. By application filed on 9 December 2017, the Applicant requests suspension of action, pending management evaluation, of the lack of response from the Chief, Human Resources (“HR”), Private Fundraising and Partnerships Division (“PFPD”), United Nations International Children’s Emergency Fund (“UNICEF”) in Geneva, to her request to have all the information disclosed concerning investigations against her.

Facts

2. The Applicant is a Corporate Research Officer with PFPD, UNICEF (Geneva).

3. The Applicant claims to have filed a complaint in April 2017 against her first and second reporting officers outlining several irregularities and rights violations.

4. By letter dated 9 September 2017, the Applicant requested whistleblower protection. By letter dated 6 December 2017, the UNICEF Ethics Office informed the Applicant of its view that no *prima facie* case of retaliation had been established.

5. On 5 December 2017, the Applicant filed a request for suspension of action, pending management evaluation, of the decision to place her on Special Leave Without Pay (“SLWOP”) as from 9 November 2017.

6. By Order No. 250 (GVA/2017) issued on 12 December 2017, the Tribunal granted the suspension of action and suspended UNICEF’s decision to place the Applicant on SLWOP.

7. On 8 December 2017, the Applicant wrote to the Chief, HR, PFPD, UNICEF, requesting immediate disclosure of all information about any investigation against her. On the same date, the Applicant received a response from an Administrative Law Specialist, Policy and Administrative Law Section (“PALS”), Division of Human Resources, UNICEF (New York), informing her that PALS was not aware of any investigations and that if there were any, they would be conducted by the

Office of Internal Audit and Investigation. The Applicant was also provided with a link to UNICEF Policy governing disclosure in investigations into misconduct.

8. On 9 December 2017, the Applicant filed a request for management evaluation.

Consideration

9. Applications for suspension of action pending management evaluation are to be decided in accordance with art. 2.2 of the UNDT Statute of the Dispute Tribunal and art. 13 of the UNDT Rules of Procedure.

10. In *Agha* Order No. 158 (NY/2015), the Tribunal observed that:

6 While it is clear that the Tribunal is under a duty to transmit a copy of the request for suspension of action to the Respondent and to issue a decision within five days thereof, there is no requirement, either under art. 2.2 of the Statute or art. 13 of the Rules of Procedure, for the Tribunal to defer consideration of the request until receipt of the Respondent's response. In fact, service to the Respondent is all that is required under the Rules. The request for suspension of action stands or falls on its merits as presented at the time.

7 A request under art. 2.2 of the Statute is also predicated upon an ongoing and pending management evaluation of an administrative decision that may properly be suspended by the Tribunal and any order to suspend a contested administrative decision ends on the date on which the management evaluation is completed. Further, the Tribunal must proceed on the basis of an impression regarding whether the Applicant satisfies the three cumulative requirements in art. 2.2 of the Statute and art. 13 of the Tribunal's Rules of Procedure, namely that the decision appears to be *prima facie* unlawful, that the matter appears of particular urgency, and that the implementation of the decision would appear to cause irreparable damage. The Tribunal is not expressing a conclusive finding but merely applying the statutory test and expressing an opinion based on the material presented in support of this urgent request. Whether this preliminary indication is upheld when the substantive issues of fact and law are subsequently considered will depend on the evidence, arguments and submissions of the parties. However, the benefit afforded by the suspension of action procedure is to indicate a preliminary view which may assist either party to consider its position.

11. This Tribunal endorses the views expressed by Meeran J. and decides that there is no need to hold off consideration of the application until receipt of the Respondent's response.

12. Any request for suspension of action has to be to an administrative decision or action that is capable of being suspended. The Applicant in her application is requesting a suspension of the "refusal" by Chief of Human Resources to respond to her request and to direct her request to another department.

13. The "refusal" to provide a response is not an act that is capable of being suspended by this Tribunal. Additionally, the Applicant did receive a response to her request from an Administrative Law Specialist, who had received it through the Chief of Human Resources. The Tribunal finds that it cannot compel a particular individual to respond to the Applicant's request.

14. The Tribunal is also of view that the fact that the Chief of Human Resources did not directly respond to the Applicant but forwarded her request to another department is likewise not an administrative decision capable of being suspended. However, this can constitute prefatory acts, which ultimately could lead to an administrative decision.

15. Therefore, the application is not receivable *ratione materiae*.

Conclusion

16. In view of the foregoing, the request for suspension of action is dismissed.

(Signed)

Judge Teresa Bravo

Dated this 13th day of December 2017

Entered in the Register on this 13th day of December 2017

(Signed)

René M. Vargas M., Registrar, Geneva