



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

MUSUMECI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Mohamed Abdou, OSLA

Counsel for Respondent:

Marina Vasilescu, UNITAR

Introduction

1. By application filed on 21 December 2017, the Applicant, an Administration and Procurement Clerk (GS-4), Administration and Procurement Section, United Nations Institute for Training and Research (“UNITAR”), requests the suspension of action, pending management evaluation, of the decision “not to renew her fixed-term appointment [(“FTA”)] beyond 31 December 2017 except for the limited purpose of exhausting sick leave entitlements”.

2. The application was served on the Respondent, who filed his reply on 22 December 2017.

Facts

3. The Applicant currently holds an FTA with UNITAR, which has been renewed every year for one-year periods since 2014 and is due to expire on 31 December 2017.

4. On 7 February 2017, the Applicant was placed on certified sick leave (“CSL”).

5. By email of 14 September 2017 to a Human Resources Specialist (“HR Specialist”), Human Resources Section (“HRS”), UNITAR, the Applicant requested information about her balance of a) CSL days on full pay, b) CSL days on half pay, and c) annual leave days.

6. On 19 September 2017, the HR Specialist replied to the Applicant referring her to staff rule 6.2(b)(ii), which provides for an entitlement of three months of sick leave on full salary and three months on half salary in any period of 12 consecutive months.

7. On the same day, the HR Specialist also referred the Applicant to staff rule 6.2(b)(iii), which provides for an entitlement of nine months of sick leave on full salary and nine months on half salary in any period of four consecutive years.

8. By email of 4 October 2017, the HR Specialist advised the Applicant that her sick leave with full pay was to expire on 13 October 2017, and proposed to her to record her leave as of 14 October 2017 either as annual leave until exhaustion of her accrued annual leave, or as sick leave with half pay.

9. On 9 October 2017, the Applicant replied to the HR Specialist indicating that, she would like to get her full salary. Thus, she wished that her leave be recorded as sick leave with half pay combined with half day of annual leave.

10. By email of 10 October 2017, the HR Specialist advised the Applicant that due to special conditions applying to staff contracts at UNITAR, the combination of annual leave with sick leave with half pay was not possible. The HR Specialist, therefore, requested the Applicant to confirm her preferred option from those offered to her in her 4 October 2017 email.

11. On 18 October 2017, the Applicant informed the HR Specialist that she did not “accept to be placed on 100% annual leave” because she would lose her sick leave entitlement. The Applicant therefore advised the HR Specialist that she wished to exhaust her sick leave entitlement before using any annual leave.

12. On the same day, the Applicant requested the Head, Operations Unit/Chief, HRS, Administration and Procurement, UNITAR, information about the renewal of her contract, due to expire on 31 December 2017.

13. The Head, Operations Unit/Chief, HRS, replied to the Applicant that in their communication exchanges she represents UNITAR, and that said exchanges should be considered in that context.

14. By email of 23 October 2017, the HR Specialist informed the Applicant *inter alia* that she had exhausted her entitlement to nine months of sick leave with full pay on 28 September 2017, and that she would be placed on sick leave with half pay effective 29 September 2017.

15. In an email of 30 November 2017 to the Head, Operations Unit/Chief, HRS, the Applicant reiterated her request for information about the renewal of her contract and the date at which she could expect to receive her appointment renewal letter.

16. On the same day, the Head, Operations Unit/Chief, HRS, replied to the Applicant *inter alia* that she had a contract with UNITAR until 31 December 2017 and that UNITAR would keep her inform about it “in due time”.

17. On 5 December 2017, the HR Specialist informed the Applicant *inter alia* that her current contract was due to expire on 31 December 2017 and that it would be “extended for administrative purposes to enable [her] to utilize [her] sick leave entitlement”.

18. On 7 December 2017, the Applicant replied to the HR Specialist requesting her to give her the reason for the non-renewal of her contract. On the same day, the Head, Operations Unit/Chief, HRS, replied to the Applicant that her FTA, expiring on 31 December 2017, did not “carry any expectancy, legal or otherwise, of renewal”.

19. By email of 8 December 2017 to the Head, Operations Unit/Chief, HRS, the Applicant requested confirmation that the sole reason for the non-renewal of her FTA was that it carried no expectation for renewal. The Applicant, therefore, asked that any other reason in support of the non-renewal of her contract be communicated to her by 11 December 2017.

20. On 21 December 2017, the Applicant submitted a request for management evaluation of the decision referred to in para. 1 above to the Under-Secretary-General for Management.

Consideration

21. In his reply to the application, the Respondent informed the Tribunal that the Applicant's FTA had been extended. To his submission, the Respondent attached a letter of appointment ("LoA") for a six-month period effective 1 January 2018, addressed to the Applicant and signed on 22 December 2017 by the Executive Director, UNITAR.

22. The Tribunal notes that the LoA contains no reference to it being issued for administrative purposes and/or to allow the Applicant to exhaust her sick leave entitlement. The Tribunal observes, however, that its expiration date, namely 30 June 2018, coincides with the date at which the Applicant is expected to exhaust her nine-month entitlement to sick leave with half pay (see para. 14 above).

23. Recalling that the Applicant's challenge concerns the decision to extend her appointment beyond 31 December 2017 exclusively to allow her to exhaust her sick leave entitlement, the Tribunal cannot but conclude that in light of the above-mentioned LoA, the request for suspension of action has become moot.

Conclusion

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

(Signed)

Judge Rowan Downing

Dated this 27th day of December 2017

Entered in the Register on this Dated this 27th day of December 2017

(Signed)

René M. Vargas M., Registrar, Geneva