



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

NKOYOCK FILS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Sètondji Roland Adjovi

Counsel for Respondent:

Stéphanie Cochard, LPAS, UNOG

Adrien Meubus, LPAS, UNOG

Introduction

1. By application filed on 10 February 2020, the Applicant, a staff member of the United Nations Office on Drugs and Crime (“UNODC”) in Vienna requests suspension, pending management evaluation, of the implied decision not to end his placement on administrative leave with pay despite his recent selection to a position at the P-5 level in another office.
2. The same day, the application was transmitted to the Respondent who filed his reply on 12 February 2020.

Facts

3. The Applicant serves at the P-4 level as Chief, Software Products for Member States (“SPMS”), Information Technology Service, Division for Management, United Nations Office at Vienna (“UNOV”)/UNODC in Vienna. He holds a continuous appointment.
4. By memorandum dated 20 November 2019, the Chief, Human Resources Management Service (“HRMS”) informed the Applicant of the decision to place him on administrative leave with pay, pending the outcome of a matter involving allegations that the Applicant engaged in conduct prohibited under ST/SGB/2008/5 (Prohibition of discrimination, harassment, and abuse of authority). This memorandum provides, in relevant part, that the reasons for placing the Applicant on administrative leave with pay are the following:
 - a. You are currently unable to continue effectively performing your functions, given the nature of those functions [...];
 - b. Your continued presence at the office could have a negative impact on the preservations of a harmonious work environment [...]; and
 - c. There is a risk of repetition or continuation of the unsatisfactory conduct [...].
5. The Applicant’s placement on administrative leave with pay was effective as of 25 November 2019 when the Applicant was informed of the above-mentioned memorandum.

6. On 31 January 2020 the Applicant was informed of the decision to select him for the position of Chief, Senior Information Systems Officer at the P-5 level in the United Nations Office of Counter-Terrorism (“UNOCT”) in Vienna.

7. On the same day, the Applicant confirmed his acceptance and availability for the position.

8. By letter dated 3 February 2020, the Applicant, through his Counsel, requested the Chief, HRMS to rescind the decision to place him on administrative leave with pay. He explained that given the Applicant’s appointment to the P-5 position, the reasons provided for in his placement on administrative leave were no longer valid. He requested a response by 7 February 2020.

9. By email dated 6 February 2020, a Human Resources Officer replied to the Applicant’s request on behalf of the Chief, HRMS. He informed the Applicant that a request had been received for his release and that he would be informed of any decision in that regard.

10. On 7 February 2020, the Applicant filed a request for management evaluation of the decision “to keep [him] on administrative leave with full pay despite his recent promotion” to the P-5 level in UNOCT.

11. By memorandum dated 10 February 2020, the Chief, HRMS informed the Applicant that, in view of his selection for the position in UNOCT, his placement on administrative leave with pay would end as of the implementation date of his transfer. She further informed him that his First Reporting Officer had agreed to his release with immediate effect and that UNOV/UNODC was waiting confirmation of the specific effective date of his transfer.

12. On 10 February 2020, the Applicant filed the present application for suspension of action. The same day, the application was transmitted to the Respondent who filed his reply on 12 February 2020.

13. On 13 February 2020, the Applicant filed a motion for leave to respond to the Respondent's reply, along with a submission in which he categorically refutes all the allegations made against him in the memo of 20 November 2019.

Consideration

14. The Tribunal recalls that what is being contested in the current case is not the decision to place the staff member on administrative leave with pay, which was notified to him on 25 November 2019, but rather, the decision not to end his placement on administrative leave with pay in view of his selection for the position of Chief, Senior Information Systems Officer at the P-5 level in UNOCT. Therefore, the legality and the rationale of the decision to place the Applicant on administrative leave with pay will not be addressed.

15. On 3 February 2020, the Applicant requested the Administration to put an end to his placement on administrative leave alleging that this would prevent him from reporting to his new position which will be detrimental to his career. Since the Administration had not made a decision on the Applicant's request by the time he filed his request for management evaluation, the Applicant qualified the inaction of the Administration as an implied decision.

16. However, the so-called implied decision was, in fact, superseded by a decision taken by the Chief, HRMS, UNODC on 10 February 2020 when the Applicant was informed that his placement on administrative leave with pay will end as of the implementation date of his transfer to the new position.

17. Therefore, since the relief the Applicant seeks before the Tribunal has been granted and will be effective as of his transfer to UNOCT, the Applicant's request is moot.

18. In the present case, the Administration has committed itself to put an end to the Applicant's placement on administrative leave with pay upon his transfer to UNOCT. Indeed, once the Applicant is transferred to another position in a different office, the reasons for his placement on administrative leave with pay, as communicated to him on 20 November 2019, will no longer be valid (see para. 4 above).

19. Furthermore, the Tribunal notes that the Administration has not opposed the Applicant's transfer to UNOCT but it is only waiting confirmation of the effective date of his transfer. In the current circumstances, nothing prevents the processing of the Applicant's transfer to UNOCT.

20. Having said the above, the Tribunal notes with concern that the Administration only made a decision on the Applicant's transfer to UNOCT after he had sought management evaluation of the impugned decision. The Tribunal trusts that the Administration will deal with the Applicant's case in good faith and will process his transfer to UNOCT as soon as possible.

Conclusion

21. In view of the foregoing, the application for suspension of action is not granted as it is moot.

(Signed)

Judge Teresa Bravo

Dated this 14th day of February 2020

Entered in the Register on this 14th day of February 2020

(Signed)

René M. Vargas M., Registrar, Geneva