



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

RUSDIA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Omar Shehabi, OSLA
Dorota Banaszewska, OSLA

Counsel for Respondent:

Matthias Schuster, UNICEF
Alister Cumming, UNICEF

Introduction

1. By application filed on 31 August 2021, the Applicant, a staff member of the United Nations Children’s Fund (“UNICEF”), requests suspension of action, pending management evaluation, of the decision of 6 August 2021, ending her remote working arrangement as of 9 August 2021, and recalling her to her duty station at Hyderabad, Telangana, India, to work in person.

2. The application for suspension of action was served on the Respondent, who filed his reply on 2 September 2021, by which he *inter alia* challenged the receivability of the application.

Facts

3. On 17 April 2017, the Applicant was assigned to the position of Chief, UNICEF Field Office in Hyderabad, India.

4. In June 2020, the Applicant returned to her home country, the United States of America (“USA”), on home leave. Following the conclusion of this home leave, she was permitted to work remotely from the USA given the evolving situation related to the Covid-19 pandemic.

5. On 20 November 2020, the UNICEF Representative in the India Country Office (“the Representative”) wrote to all UNICEF staff in India, informing them that staff should return to their duty stations on 5 January 2021. The Applicant requested permission to work remotely beyond this date.

6. On 25 March 2021, following an exchange of emails, the Representative notified the Applicant of her decision to not authorize an extension of teleworking from the USA beyond 31 March 2021.

7. At the Applicant’s request, and to enable further discussions around a possible informal resolution of the matter, her teleworking outside the duty station was extended several times until 6 August 2021.

8. On 6 August 2021, the Applicant wrote to the Representative, confirming her intention to return to the duty station by 1 September 2021. She indicated that she would make arrangements for her visa and flights and requested a further extension of her teleworking until the end of August 2021.

9. The same day, the Representative responded informing the Applicant that, as an exceptional measure, her teleworking outside the duty station was extended until 9 August 2021, and that if she required any further time outside the duty station, she would have to take leave.

10. Since 9 August 2021, the Applicant has been on annual leave.

11. On 31 August 2021, the Applicant submitted a request for management evaluation of the contested decision mentioned in para. 1 above.

Consideration

Receivability

12. Given the Respondent's objection to the receivability of the application, the Tribunal will address this issue as a preliminary matter.

13. The Respondent argues that the application is not receivable because the Applicant did not timely request management evaluation of the contested decision. He alleges that the decision requiring the Applicant to return to the duty station was taken on 25 March 2021 and not on 6 August 2021. In his view, the subsequent extensions of time granted to the Applicant to facilitate her return do not amount to new decisions.

14. Contrary to the Respondent's assertion, the Tribunal is of the view that the subsequent decisions that considered the Applicant's personal circumstances and granted her requests for extension of teleworking constitute new administrative decisions.

15. Moreover, the Tribunal has “the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”, and “may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed” (see *Fasanella* 2017-UNAT-765, para. 20).

16. Having considered the application in its entirety, the Tribunal considers that the contested decision is that of 6 August 2021 ending the Applicant’s remote working arrangement as of 9 August 2021 and recalling her to her duty station to work in person.

17. The Applicant requested management evaluation of this decision on 31 August 2021, which is within the 60-day time-limit set forth in staff rule 11.2(c).

18. Accordingly, the Tribunal finds that the application is receivable.

Merits

19. Art. 2.2 of the Tribunal’s Statute provides in its relevant part that:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to 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.

20. Therefore, for an application for suspension of action to be successful, the contested decision must have not yet been implemented. Indeed, if the contested decision has already been “implemented”, there is no longer a decision that the Tribunal can suspend.

21. The Tribunal notes that in the present case, the contested decision extended the Applicant's teleworking until 9 August 2021 and made clear that she should take leave if she needed more time outside the duty station after 9 August 2021. In fact, the Applicant's teleworking status was ended on 9 August 2021 and she has been on leave since that day.

22. Consequently, the Tribunal finds that the contested decision was implemented by discontinuing the Applicant's teleworking status since 9 August 2021.

23. The Tribunal therefore finds that, since the contested decision was already implemented before a ruling on suspension of action could be rendered, the condition for it to "hear and pass judgment" under art. 2.2 of its Statute is not fulfilled. It is therefore not necessary for the Tribunal to examine the remaining cumulative requirements for granting a suspension of action, namely, *prima facie* unlawfulness, urgency, and irreparable harm.

Conclusion

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

(Signed)

Judge Teresa Bravo

Dated this 6th day of September 2021

Entered in the Register on this 6th day of September 2021

(Signed)

René M. Vargas M., Registrar, Geneva