



Before: Judge Alexander W. Hunter, Jr.

Registry: Geneva

Registrar: René M. Vargas M.

DANZA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Lucienne Pierre, AAS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 18 March 2022, the Applicant, a staff member of the United Nations Interim Mission in Kosovo (“UNMIK”), requests suspension of action, pending management evaluation, of the decision not to renew her contract beyond its expiration date on 27 March 2022.

Summary of relevant facts

2. The Applicant is a Human Rights Officer holding a temporary appointment with UNMIK that expires on 27 March 2022.

3. On 14 February 2022, the Chief of the Human Rights Office advised the Applicant that her temporary appointment would not be renewed.

4. By email of 15 February 2022, a Human Resources Assistant (“HRA”), UNMIK, sent the Applicant instructions regarding administrative arrangements and check-out formalities. On the same day, the Applicant replied asking the HRA to verify with her supervisor about extending her contract until her post -which she argued it was soon going to be announced for a fixed-term appointment, is filled; or, alternatively, until the end of the current semester due to medical and personal reasons.

5. On 25 February 2022, the Applicant had a virtual meeting with UNMIK’s Officer in Charge, Chief of Mission Support/Chief Operations and Resource Management (“OiC CMS/CORM”), to discuss her contractual status. According to the minutes of said meeting, the OiC CMS/CORM informed the Applicant about UNMIK’s vacancy management and current exercise to maintain the budgetary vacancy rate to avoid over-expenditure on the international staff budget line. In addition, the OiC CMS/CORM informed the Applicant *inter alia* the P-4 level post would remain vacant for the foreseeable future.

6. The OiC CMS/CORM also explained to the Applicant that the Mission's leadership had decided to address the ongoing projects of the Human Rights Section, Mitrovica Regional Office, with the remaining resources and that the alleged assurances the Applicant claimed to have received from multiple sources regarding the extension of her appointment for up to two years were misguided.

7. Regarding the Applicant's medical condition and need for medical insurance, the OiC CMS/CORM acknowledged the Applicant's request to have the contract extended until the end of April so that she could be insured during the proceedings already scheduled and affirmed she would discuss the matter internally within the context of the vacancy management exercise but that a contract extension could not be guaranteed. Finally, the Applicant expressed her dissatisfaction regarding the behaviour of the Chief Human Rights Officer since October 2021, which she considered to amount to harassment.

8. On 18 March 2022, the Applicant filed a management evaluation request of the 14 February 2022 non-renewal decision.

9. On the same day, the Applicant filed the application for suspension of action referred to in para. 1 above.

10. On 21 March 2022, the instant case was assigned to the undersigned Judge.

11. On 23 March 2022, the Respondent filed his reply.

Parties' contentions

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

Prima facie unlawfulness

- a. The decision is unlawful because it is not based on the best interests of the Organization. There is an objective organizational need for the Applicant to continue working at her section, which is currently at the peak of the implementation of projects, since the Applicant is the best suited staff member to continue the ongoing tasks;

b. The Applicant's First Reporting Officer ("FRO"), the Chief of the Human Rights Sector, alongside several other sources, promised that her contract would be extended for up to two years as long as the actual P-4 post incumbent continued to serve in a P-5 temporary assignment as Senior Political Officer in Mitrovica; and

c. The Applicant has been suffering workplace harassment by her FRO since October 2021. As a result, his decision not to extend the Applicant's contract is based on his unprofessional behaviour and personal animus towards her;

Urgency

d. The temporary appointment expires on 27 March 2022. Thus, the separation from service is imminent;

Irreparable damage

e. The human rights section in Mitrovica and the implementation of all ongoing projects will suffer with one less staff member on the team; and

f. The Applicant is undergoing anti-cancer therapy and has medical proceedings scheduled throughout the first semester of 2022. If she loses her income and medical insurance, there will be irreparable damage to her physical and mental well-being, which is why she is requesting a contract extension until July 2022 or, at the very least, April 2022.

13. The Respondent's primary contentions may be summarized as follows:

Prima facie unlawfulness

a. The application has no merit as the Applicant has not met the three statutory conditions under article 2.2. of the Dispute Tribunal's Statute;

b. The Dispute Tribunal has repeatedly held that the prerequisite of *prima facie* unlawfulness requires an applicant to establish that there are serious and reasonable doubts about the lawfulness of the contested decision. There is no *prima facie* unlawfulness in this case. Pursuant to staff rule 4.12(a), a

temporary appointment may be granted for a period of less than one year, or it may be exceptionally extended beyond 364 days on the limited grounds set out in staff rule 4.12(b);

c. Section 14.1 of ST/AI/2010/4/Rev.1 (Administration of temporary appointments) provides the conditions for an exceptional extension. Herein, not one of them is met. There is no temporary emergency, special project or unexpected operational need warranting renewal of the Applicant's temporary appointment;

d. Pursuant to Staff Regulation 4.5(b) and staff rule 4.12(c), a temporary appointment does not carry any expectancy of renewal. Under staff rule 9.4, a temporary or fixed-term appointment shall expire automatically and without prior notice on the expiration date specified in the letter of appointment;

e. In determining whether a non-renewal is lawful, the Dispute Tribunal reviews: (a) whether the Applicant was promised a renewal; (b) whether the reason provided for the non-renewal decision was lawful and supported by the facts; (c) whether the non-renewal decision was flawed by procedural irregularities; and (d) whether the non-renewal decision was tainted by ulterior motives. Where an Applicant alleges that a non-renewal decision was motivated by improper motives, the Applicant has the burden of proving that such factors played a role in the decision. In the instant case, the Applicant has not provided any evidence to support her claims;

f. As such, the contested decision is lawful and supported by the evidence;

Urgency

g. The Applicant has not demonstrated particular urgency. The Applicant was notified about the non-renewal on 14 February 2022, but only sought suspension of action on 21 March 2022. Thus, any urgency is self-created and does not satisfy the requirements for suspension of implementation of the contested decision;

Irreparable damage

h. The Applicant has not established irreparable harm. Her allegations regarding loss of employment and loss of career prospects in the Organization are insufficient to establish irreparable harm given that a temporary appointment is a short-term, limited appointment, not a career appointment;

i. In addition, the Organization is under no obligation to renew the Applicant's appointment solely for the purpose of allowing her the right to access an entitlement such as health insurance, or for her to have income to pay for her son's completion of middle school "in an expensive private international institute"; and

j. The Applicant has no "right" to renewal of her temporary appointment. If there is no right, there can be no violation of a right. UNMIK has been forthcoming with the Applicant regarding the reasons for the contested decision. The fact that the Applicant disagrees with the decision taken by UNMIK does not mean that there has been a violation of her rights.

Consideration

14. Art. 2.2 of the Tribunal's Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in the case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are conjunctive and cumulative, meaning that all of these elements must all be established in order for a suspension of action to be granted. Furthermore, the burden of proof rests on the Applicant.

Prima facie unlawfulness

15. The Tribunal recalls that the threshold required in assessing this condition is that of "serious and reasonable doubts" about the lawfulness of the impugned decision (*Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Miyazaki* UNDT/2009/076, *Corna* Order No. 90 (GVA/2010), *Berger* UNDT/2011/134,

Chattopadhyay UNDT/2011/198, *Wang* UNDT/2012/080, *Bchir* Order No. 77 (NBI/2013), *Kompass* Order No. 99 (GVA/2015)).

16. In the instant case, the Applicant attempts to establish doubt over the lawfulness of the decision with four main arguments: she was promised employment by the Chief of the Human Rights Sector and other personnel for up to two years; the decision not to renew her contract is based on her FRO's personal animus towards her; the decision does not serve the best interest of the Organization since the section is already understaff; and she is the best suited staff member to continue the implementation of ongoing projects.

17. Regarding the promise of employment, the Applicant failed to substantiate such claim with evidence. UNAT jurisprudence provides that for a staff member's claim of legitimate expectation of renewal of appointment to be sustained, there must be proof that the Administration made an express promise in writing that confirms the staff member's expectancy, and "it must not be based on mere verbal assertion, but on a firm commitment to renewal revealed by the circumstances of the case" (*Abdalla* 2011-UNAT-138, *Igbinedion* 2014-UNAT-411, *Munir* 2015-UNAT-522, *He* 2018-UNAT 481).

18. However, nothing on the record shows that an express promise or a firm commitment of renewal was ever made to the Applicant. In addition, since a temporary appointment does not carry any expectancy of renewal pursuant to Staff Regulation 4.5(b) and staff rule 4.12(v), the Tribunal does not identify any expectancy of renewal in this case. The Applicant was aware of her contract's expiration date since the day she accepted the offer of appointment and nothing on the record shows that she was led to believe otherwise.

19. Notwithstanding the foregoing, to warrant an exceptional extension of a temporary appointment beyond the period of 364 days, it is necessary to meet the conditions under staff rule 4.12(b) and section 14.1 of ST/AI/2010/4/Rev.1. However, none of the exceptional circumstances provided in said provisions are present in the instant case. The fact that the Applicant believes that her leaving the section will have an impact on the ongoing projects does not mean that there is a

temporary emergency, special project or unexpected operational need under the provisions above.

20. Secondly, where an Applicant alleges that a non-renewal decision is motivated by improper motives which would amount to abuse of authority, the Applicant has the burden of proving that such factors played a role in the decision (*He* 2016-UNAT-686, *Geegbae* UNAT/2020/061). However, the Applicant has not provided any documentary evidence to support this claim.

21. The Tribunal underlines that formal complaints of workplace harassment must be submitted to the proper investigation body pursuant to section 4 of ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) and ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority), so that an investigation and assessment of the possible misconduct takes place. Only then, after the issuance of an investigation report and a decision on the respective complaint, a harassment complaint can be subjected to judicial review.

22. Finally, the Applicant's arguments that there is an objective organizational need for her temporary appointment to be renewed cannot be legally sustained. The discretion for determining the organizational needs lies with the Special Representative of the Secretary-General ("SRSG"), UNMIK. It is not incumbent on the judicial review mechanism to examine the Mission Management's assessment of the staffing needs or its budgetary exercises. If there is/will be an understaffing issue, it is to be addressed by management and leadership and not by this Tribunal and certainly not by the Applicant.

23. Likewise, the assertions that the Applicant's contract should be renewed because she is the best suited candidate to continue the implementation of ongoing projects is irrelevant to the determination of the matter in dispute. Efficient or outstanding performance of a staff member on a temporary appointment cannot legitimately create an expectancy of renewal of appointment (*Abdalla* 2011-UNAT-138, *Igbinedion* 2014-UNAT-411). In addition, "it is not the role of the Tribunal to review *de novo* the Agency's decision, and to place itself in

the position of the decision maker and determine whether it would have renewed the contract based on the performance evaluation” (*Said* 2015-UNAT-500, *Akthab* UNAT/2016/068).

24. The Tribunal finds that the Respondent has successfully demonstrated that the decision not to renew the Applicant’s contract was based on a lawful and proper exercise of discretion by the SRSG, UNMIK, when budgetary constraints required a decision on staffing matters. The Applicant was thoroughly briefed on such exercise and on the reasons behind her non-renewal during the virtual meeting with the OiC CMS/CORM on 25 February 2022, thus no rights were likewise in existence and violated in this respect.

25. Considering the circumstances of the present case, the Tribunal finds that the reasons provided by the Respondent are both credible and lawful.

26. Accordingly, the Applicant has failed in demonstrating *prima facie* unlawfulness of the decision not to renew her contract beyond its expiration date.

27. As the Applicant failed to satisfy the requirement of *prima facie* unlawfulness, and given the cumulative nature of the conditions to be met for the granting of a suspension of action, the Tribunal does not find it necessary to consider whether the contested decision is urgent or whether it would cause irreparable damage (*Evangelista* UNDT/2011/212, *Dougherty* UNDT/2011/113).

Conclusion

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

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 25th day of March 2022

Case No. UNDT/GVA/2022/012

Order No. 45 (GVA/2022)

Entered in the Register on this 25th day of March 2022

(Signed)

René M. Vargas M., Registrar, Geneva