



Before: Duty Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

VASCONCELLOS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON MOTION FOR SUMMARY
JUDGMENT**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Rebecca Britnell, UNHCR
Elizabeth Brown, UNHCR

Introduction

1. By an incomplete application filed on 30 January 2023, completed on 13 February 2023, the Applicant, a staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), contests the decision to place her on Special Leave Without Pay (“SLWOP”) for any periods of non-employment until she is either regularly reassigned or at the end of her current standard assignment length (“SAL”) in Budapest, following recognition of a special constraint.

2. The application was served on the Respondent with a deadline for reply set to 22 March 2023.

3. On 17 February 2023, the Respondent filed a motion for summary judgment requesting the Tribunal to reject the application on the ground that is not receivable *ratione materiae*. He also requested an extension of the deadline to file his reply, should the motion be rejected.

Consideration

Motion for summary judgment

4. In support of his motion for summary judgment, the Respondent submits that the application is not receivable *ratione materiae* because “the contested decision under review is not an administrative decision with direct legal consequences affecting the staff member’s terms and conditions of appointment”.

5. Specifically, he argues that, currently, the Applicant holds a temporary assignment that only expires on 31 March 2023 and, thus, the contested decision “reflects merely an intent to place the Applicant on SLWOP, should the constellation of circumstances set out eventuate”.

6. At the outset, the Tribunal recalls that art. 19 of its Rules of Procedure provides that it can “issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”. In this connection, the Tribunal recalls that

[a]lthough no right to partially respond is granted by the Statute or the Rules of Procedure of the Dispute Tribunal, the Tribunal may decide in certain cases to permit the Respondent to file a reply addressing only the issue of receivability, provided that the Tribunal is satisfied that it would be appropriate for the fair and expeditious disposal of the case and to do justice to the parties (see *Di Giacomo* Order No. 335 (NY/2010); see also *Balakrishnan* Order No. 97 (GVA/2011) and *Mafessanti* Order No. 169 (GVA/2015)).

7. It is also relevant to recall one of the Appeals Tribunal’s findings in *Patkar* 2021-UNAT-1202:

22. Per our jurisprudence, an appealable administrative decision is a decision whereby its key characteristic is the capacity to produce direct legal consequences affecting a staff member’s terms and conditions of appointment. Further, the date of an administrative decision is based on objective elements that both the Administration and staff members can accurately determine.

8. Having examined the contested decision, namely the 3 August 2022 letter from the Director, Division of Human Resources, UNHCR, the Tribunal finds no merit in the Respondent’s submissions. Said letter informed the Applicant of her situation in the following terms:

If you are offered a [temporary assignment (“TA”)] opportunity and leave your current duty station to undertake such a TA, you will continue to be on paid status. However, should your TA not be extended you will be placed on SLWOP for any periods of non-employment until you are either regularly reassigned or at the end of your current [Standard Assignment Length] in Budapest which will remain the reference point.

9. In the Tribunal’s view, the fact that the Applicant being placed on SLWOP is only a possibility does not imply that the contested decision is not a final administrative decision with the capacity to produce direct legal effect on her.

10. Like it was the case in *Patkar*, the contested decision in the Applicant's case is a final one and clearly indicates the employment related consequences at the end of the Applicant's current TA, i.e., placement on SLWOP in the absence of a new TA. Thus, while the placement of the Applicant on SLWOP is contingent upon the eventuation of certain circumstances, it does not alter the finality of the contested decision (see, e.g., *Patkar* 2021-UNAT-1102, para. 27).

11. Accordingly, the Tribunal finds that the application is receivable *ratione materiae* and, consequently, the Respondent's motion for summary judgment fails.

Extension of time and filing of further submissions

12. The Respondent requested an extension of the deadline to file his reply should the motion for summary judgment be rejected, which is the case. Having regard to the circumstances of the case, and for the fair and expeditious disposal of the case, the Tribunal finds it appropriate to extend the deadline to file the reply by one week.

13. After a preliminary examination of the case file, the Tribunal finds it necessary to instruct the Respondent to clarify/address the following issues in his reply:

- a. The applicability of para. 145 of the UNHCR Recruitment and Assignments Administrative Instruction (UNHCR/AI/2017/7/Rev.2) to the present case; and
- b. The status of the Applicant's SAL.

14. Upon the filing of the Respondent's reply, the Applicant shall be given the opportunity to file a rejoinder.

Conclusion

15. In view of the foregoing, it is ORDERED THAT:

- a. The Respondent's motion for summary judgment is rejected;

- b. The Respondent's request for extension of the deadline to file his reply is granted;
- c. By **Wednesday, 29 March 2023**, the Respondent shall file his reply; and
- d. By **Thursday, 20 April 2023**, the Applicant shall file her rejoinder.

(Signed)

Duty Judge Teresa Bravo

Dated this 8th day of March 2023

Entered in the Register on this 8th day of March 2023

(Signed)

René M. Vargas M., Registrar, Geneva