



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/102

Order No.: 001 (NBI/2015)

Date: 6 January 2015

Original: English

Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

DALGAMOUNI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE PARTIES' MOTION
FOR SUSPENSION OF PROCEEDINGS**

Counsel for the Applicant:

Alexandre Tavadian, OSLA

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM
Alister Cumming, ALS/OHRM

The Application and Procedural History

1. The Applicant is a Budget Officer at the Regional Service Centre in Entebbe, Uganda (RSCE). She serves at the P4 level on a fixed term appointment.
2. On 12 November 2014, the Applicant filed the subject Application of this Order before the Tribunal.
3. Taking into account the substantive application before the Tribunal, this is the Applicant's fifth challenge at the UNDT. All five of these applications stem from and essentially revolve around the same set of facts.
4. Given the multiple applications and motions by this Applicant before the Tribunal, the procedural history in this case is set out in full.
5. On 16 May 2014, the Applicant filed an application for suspension of action challenging the decision not to extend her fixed-term appointment. The Tribunal issued Order No. 137 (NBI/2014) on 23 May 2014, granting the application.
6. On 23 September 2014, the Applicant filed her second Application for Suspension of Action. The Applicant complained that she had been subjected to "a series of actions which cumulatively amount to a decision to constructively dismiss her by depriving her of her functions". The "most recent decision" was made on 19 September 2014.
7. The Respondent argued that the Applicant's second application for suspension of action was not receivable as a matter of substance; that it did not meet the statutory timelines; and that it had, in any event, been implemented.
8. On 24 September 2014, the Tribunal issued Order No. 214 (NBI/2014) setting the matter down for hearing.

9. The Tribunal heard the Parties on 25 September 2014. The Applicant and one other witness testified. The Tribunal admitted the written statement of one further witness for the Applicant, without objection from the Respondent. For his part, the Respondent called one witness. Closing submissions were filed by both Parties on 26 September 2014.

10. On 30 September 2014, the Tribunal issued Order No. 218 (NBI/2014) in which it found the second application receivable and granted the stay that the Applicant sought, pending management evaluation.

11. On 10 October 2014, the Tribunal issued Order No. 224 (NBI/2014) in which it fully set out its position in respect of the receivability and merits of the second application.

12. On 7 November 2014, the Applicant moved for execution of Order No.224 (NBI/2014) pursuant to arts. 32.2 and 36 of the Rules of Procedure.

13. Also, on 7 November 2014, the Applicant received the outcome of her second request for management evaluation.

14. In response to the motion for execution, the Respondent took the position that the Tribunal does not have the jurisdiction to decide on the motion for execution as Order No. 224 (NBI/2014), which was issued pending management evaluation, was no longer in force.

15. On 12 November 2014, the Applicant filed an application on the merits and an Application for *interim* relief pursuant to art. 14 of the Rules of Procedure.

16. The Respondent replied to the Application on 13 November 2014, and the Applicant filed her Rejoinder to the Respondent's Reply on 16 November 2014.

17. On 19 November 2014, the Tribunal issued Order No. 255 (NBI/2014) granting the *interim* relief sought by the Applicant.

18. Also on 19 November 2014, the Tribunal issued Order No. 256 (NBI/2014) dismissing the Applicant's motion for execution.

19. On 20 November 2014, the Tribunal issued Order No. 259 (NBI/2014) urging the Parties to "consult and deliberate on having this matter informally resolved or mediated".

20. On 24 December 2014, the Parties jointly informed the Tribunal that "there is a likelihood that the case may settle informally." The Parties moved the Tribunal to formally refer the matter "for mediation."

DELIBERATIONS

21. The Tribunal commends the Parties for working towards having this matter resolved without recourse to litigation.

22. The Tribunal therefore **GRANTS** the Parties' motion for referral to mediation.

23. Pursuant to art. 10.3 of the Statute of the Tribunal and art. 15 of the Rules of Procedure, the Tribunal makes the following **ORDERS**

- a) The proceedings are suspended and referred to the Office of the United Nations Ombudsman & Mediation Services for mediation;
- b) The Office of the United Nations Ombudsman & Mediation Service will advise the Tribunal on the status of the mediation process by **6 February 2015**;

- c) The Registry will serve a copy of the present Order on the Office of the Ombudsman as stipulated in art. 15.4 of the Rules of Procedure.

(signed)

Judge Vinod Boolell

Dated this 6th day of January 2015

Entered in the Register on this 6th day of January 2015

(signed)

Abena Kwakye-Berko, Registrar, Nairobi