



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

CHAMA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**INTERIM ORDER ON AN
APPLICATION FOR SUSPENSION OF
ACTION**

Counsel for the Applicant:
Edwin Nhiliziyo

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Alister Cumming, ALS/OHRM

Introduction

1. The Applicant is a staff member of the United Nations Interim Force in Lebanon (UNIFIL).

2. On 27 October 2015, he filed an Application for suspension of action pending management evaluation with the United Nations Dispute Tribunal (UNDT) in Nairobi challenging the decision to move him from the Joint Geographic Information System (JGIS) section to the Public Information Section on a three month Temporary Job Opening (TJO) contract.

3. The Respondent filed a Reply to the Application on 28 October 2015.

4. The Tribunal held an oral hearing on 29 October 2015. During the hearing, the Respondent was ordered to file staffing tables for the JGIS section.

Relevant facts

5. On 19 January 2015, the Report of the Secretary-General A/69/731 (Budget for the United Nations Interim Force in Lebanon for the period from 1 July 2015 to 30 June 2016) was issued. Paragraph 37 of the Report proposed to convert one FS level post in the JGIS section to a national post.

6. By letter dated 21 April 2015, the Applicant was informed that his post in the JGIS section was being abolished/nationalized in the 2015/2016 budget and that his contract would not be extended beyond 30 June 2015. The Applicant informed the Tribunal at the hearing that this contract was subsequently extended to 31 October 2015.

7. On 23 May 2015, the Applicant requested management evaluation of this decision. On 27 May 2015, the Management Evaluation Unit (MEU) informed the Applicant that his challenge was not receivable.

8. On 25 June 2015, the General Assembly adopted resolution A/RES/69/302 (Financing of the United Nations Interim Force in Lebanon). Paragraph 10 of the resolution endorsed the conclusions and recommendations contained in the Report of the Advisory Committee on Administrative and Budgetary Questions A/69/839/Add. 8 (Budget performance for the period from 1 July 2013 to 30 June 2014 and proposed budget for the period from 1 July 2015 to 30 June 2016 of the United Nations Interim Force in Lebanon) of 29 April 2015. This Report also proposed to convert one FS level post in the JGIS section to a national post.

9. The Applicant requested a second management evaluation of this decision on 22 October 2015. On 27 October 2015, MEU again informed the Applicant that his second challenge was not receivable.

10. On 29 October 2015, the Respondent filed Annex R5, the GIS Staffing Tables for the 2014/15 and 2015/16 Budget Cycles.

11. Later on 29 October 2015, the Respondent's Counsel filed a Motion seeking leave to file further submissions. In the said Motion, the Respondent submits,

1. During the hearing held on 29 October 2015, Counsel for the Respondent advised the Dispute Tribunal that a staff member had returned from MINUSMA to UNIFIL, and was an Engineering Assistant within the GIS section of UNIFIL. This was based on the content of the mission's staffing table for the 2015-2016 budget cycle. Pursuant to the Dispute Tribunal's directions, Counsel for the Respondent filed this staffing table as Annex R5.
2. Following the filing of this staffing table, Counsel for the Respondent was informed by UNIFIL Administration that the staffing table was incorrect, insofar as it relates to the staff member who returned from MINUSMA. Contrary to the submission from Counsel during the

hearing, UNIFIL Administration has clarified that this staff member is performing the functions of a Geographic Information Systems Assistant, at the FS-5 level.

3. In order to prevent the Dispute Tribunal from being misled about the functions performed by this staff member, the Respondent seeks leave to file these further submissions.

12. On 30 October 2015, the Applicant filed an Organization chart for UNIFIL GIS. In that chart, one Simon Burgess, described in the Respondent's Motion as performing the functions of a GIS Assistant at the FS5 level, is shown to be a British national from his identity information.

Deliberations and Order

13. In the light of the latest submissions by the Parties and, pursuant to arts. 19 and 36 of the Dispute Tribunal's Rules of Procedure, the Tribunal has decided to issue this interim order to maintain the status quo pending an oral hearing on Monday, 2 November 2015. In this respect the Tribunal recalls *Villamorán* 2011-UNAT-160 where the Appeals Tribunal held,

[w]here the implementation of an administrative decision is imminent, through no fault or delay on the part of the staff member, and takes place before the five days provided for under Article 13 of the Rules of Procedure of the UNDT (UNDT Rules) have elapsed, and where the UNDT is not in a position to take a decision under Article 2(2) of the UNDT Statute, i.e. because it requires further information or time to reflect on the matter, it must have the discretion to grant a suspension of action for these five days. To find otherwise would render Article 2(2) of the UNDT Statute and Article 13 of the UNDT Rules meaningless in cases where the implementation of the contested administrative decision is imminent.

THE TRIBUNAL ACCORDINGLY ORDERS

14. The decision to remove the Applicant from the function of GIS Assistant is hereby suspended until 2 November 2015.

15. The Tribunal shall hold a further hearing on 2 November 2015 at 2.00 p.m. Nairobi time in the UNDT Courtroom.

16. Counsel for the Respondent shall ensure the attendance of the Chief JGIS, Ms. Béatrice Puyo and Mr. Simon Burgess to give evidence at the hearing.

(Signed)

Judge Vinod Boolell

Dated this 30th day of October 2015

Entered in the Register on this 30th day of October 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi