



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

BA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, ALS/OHRM

Procedural history

1. The Applicant is a staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).
2. On 17 October 2016, the Applicant filed a request for management evaluation contesting the decision to reassign him from Kinshasa to Goma and to end his special post allowance (SPA) at the P-5 level.
3. On 23 October 2016, the Applicant filed an incomplete Application with the United Nations Dispute Tribunal (the Tribunal) seeking suspension of the implementation of the decision to reassign him to the post that he originally encumbered in Goma and to end the payment of his SPA at the P-5 level. The Applicant completed his initial Application on 24 October 2016. The Application was transmitted to the Respondent on 25 October 2016.
4. The Respondent filed his Reply on 27 October 2016.

Facts

5. The Applicant joined MONUSCO in February 2010 as a Public Information Officer at the P-4 level in Kinshasa. In July 2014, the Applicant was transferred from Kinshasa to Goma. On 4 May 2015, the Applicant was temporarily assigned from Goma to Kinshasa to assume the functions of Officer-in-Charge, Radio Okapi, at the P-5 level. The Applicant was subsequently granted an SPA at the P-5 level for the period from 4 August 2015 to 3 August 2016.
6. In March 2016, MONUSCO advertised the position of Senior Public Information Officer/Chief, Radio Okapi, at the P-5 level, as recruitment from the roster. No suitable candidates were identified. The Applicant, who is not on the roster at the P-5 level, was ineligible to apply.
7. In July 2016, the Special Representative for the Secretary-General (SRSG) decided to fill the vacant position of Chief, Radio Okapi on a temporary basis. On 14 July 2016, a female candidate was selected.

8. By letter dated 7 October 2016, the Applicant was informed of the decision to reassign him to the post that he previously encumbered, from Kinshasa to Goma effective 1 November 2016. On 24 October 2016, the Applicant's SPA was extended until 31 October 2016 pending the assumption of duties by the selected candidate.

9. The facts as stated above are not in dispute.

Applicant's contentions

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

Prima facie unlawfulness

- a. The recruitment of the selected candidate for the post of Chief, Radio Okapi at the P-5 level is unlawful. There was no vacancy announcement. The selected candidate is not in the roster at the P-5 level and does not possess the required experience for the post;
- b. The Applicant was intentionally excluded from the selection process;
- c. He has been successfully performing the functions of Chief, Radio Okapi with an SPA for more than a year.

Urgency

- d. The selected candidate for the post of Chief, Radio Okapi at the P-5 level will be appointed effective 1 November 2016 and once the appointment is effective, it will be difficult to rescind the decision.

Irreparable damage

- e. He has suffered prejudice as he has been performing the functions of Chief, Radio Okapi at the P-5 level for more than a year with a SPA;
- f. He has been removed from the post of Chief, Radio Okapi without valid reasons.

Respondent's contentions

11. The Respondent's contentions may be summarized as follows:
- a. To the extent the Applicant challenges the selection decision, his claim is not receivable. The selection was made in July 2016 and the Applicant was informed immediately thereafter. He never requested management evaluation of the selection decision and therefore, the Tribunal is not competent to review that decision;
 - b. The decision to reassign the Applicant back to Goma on the P-4 post that he originally encumbered is lawful. He was aware that his assignment to Kinshasa was temporary and should have reasonably expected to return to the P-4 post he encumbered. The termination of the Applicant's SPA was also lawful. The Applicant is not entitled to receive SPA once his assignment to the P-5 functions has ended. SPA is temporary in nature;
 - c. The Applicant was reassigned back to the same functions and post he encumbered in the same duty station where he previously served before his temporary assignment. He has demonstrated no harm as a result;
 - d. There is no particular urgency. The Applicant continues to serve with the Organization.

Considerations

12. Pursuant to art. 2.2 of its Statute and art. 13.1 of its Rules of Procedure, the Dispute Tribunal is competent to hear and pass judgment on an Application filed by an individual requesting the Tribunal:

[T]o 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 (emphasis added).

13. The Applicant seeks suspension of the implementation of the decision to reassign him to the post that he originally encumbered in Goma and to end the payment of his SPA at the P-5 level. The Tribunal notes that these decisions have been taken as a consequence of the selection of a candidate for the post of Chief, Radio Okapi at the P-5 level. This selection decision is not the subject of the current application neither was it the subject of a request for management evaluation, therefore the Tribunal does not have jurisdiction to review it.

Does the decision appear prima facie to be unlawful?

14. Staff Regulation 1.2 (c) provides that “[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations”.

15. The evidence shows that on 4 May 2015, the Applicant was temporarily assigned from Goma to Kinshasa to assume the functions of Officer-in-Charge, Chief, Radio Okapi, at the P-5 level and that he was granted an SPA at the P-5 level for the period from 4 August 2015 to 3 August 2016. His SPA was further extended until 31 October 2016 pending the assumption of duties of the selected candidate for the post of Chief, Radio Okapi.

16. The Applicant’s assignment as Officer-in-Charge, Radio Okapi at the P-5 level was temporary in nature. Upon the selection of the Chief, Radio Okapi, it is reasonable to expect that the Applicant’s temporary assignment in that post will come to an end. The Tribunal notes that the Applicant will continue to serve as a Public Information Officer at the P-4 level in Goma without any loss of grade or pay. Therefore, the Applicant’s reassignment from Kinshasa to Goma is not unlawful.

17. The payment of an SPA is also temporary in nature and attendant to the fulfillment of functions at a higher level. Therefore, the end of the Applicant’s temporary assignment at a P-5 level entails the loss of basis for the payment of his SPA.

18. The Tribunal finds that since the Application does not meet one of the cumulative mandatory conditions for granting a suspension of action, that is *prima facie* unlawful, there is no need to consider the other conditions.

Conclusion

19. The Application for suspension of action is rejected.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 31st day of October 2016

Entered in the Register on this 31st day of October 2016

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi