



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/100
Order No.: 194 (NBI/2017)
Date: 14 November 2017
Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

HENRY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PURSUANT
TO ARTICLE 2.2 OF THE UNDT
STATUTE**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nusrat Chagtai, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a former FS-5 Close Protection Officer with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO).

2. On 2 November 2017, he filed an application before the United Nations Dispute Tribunal (UNDT) seeking suspension of the implementation of the decision of “retroactively modifying duty station after double mistake in contract.” The Applicant submits that the decision was made on 23 October 2017 and is yet to be implemented.

3. The Respondent filed a reply on 9 November 2017 and characterizes the contested decision as the correction of the Applicant’s “duty station reflected in Umoja for the time that he served with MONUSCO”.

Factual background

4. The Applicant was initially appointed to the Organization on 29 November 2010.¹

5. On 10 April 2015, MONUSCO issued a job opening for an FS-5 Close Protection Officer in Kinshasa.² The Applicant applied and was selected for the position. On 11 June 2015, he received MONUSCO’s offer of appointment, specifying Kinshasa as the duty station, which he accepted.

6. The Applicant commenced his appointment with MONUSCO on 6 September 2015. Following standard check-in procedures, he assumed his responsibilities as a Close Protection Officer in Kinshasa. A reappointment personnel action notification

¹ Annex 1 to the reply.

² Annex 2 to the reply.

(PA) was processed on 20 November 2015 stating that his fixed-term appointment was with “MONUSCO – Kinshasa”.³

7. The Applicant’s letter of appointment (LoA) indicated Goma as the duty station. The LoA was issued after the Applicant’s onboarding. According to the Respondent, this was an error caused by the transition from the IMIS human resources system to Umoja and that IMIS correctly reflected the Applicant’s duty station as Kinshasa, while Umoja showed it as Goma from 1 November 2015.⁴

8. Throughout his appointment with MONUSCO, which ended on 12 July 2016, the Applicant served as the Close Protection Officer to the Special Representative to the Secretary-General (SRSG) for the Democratic Republic of the Congo (DRC), whose office was based in Kinshasa. At no time was the Applicant stationed in Goma.⁵

9. The Applicant indicates in his application that he requested for management evaluation on 2 November 2011 but the email constituting his management evaluation request is dated 6 November 2017.

Applicant’s submissions

10. The Applicant, who is not legally represented and is, unfortunately, inarticulate in his written submissions, argues his case as follows.

Prima facie unlawfulness

11. He and the Respondent signed an LoA. The LoA was recorded in the human resources system.

12. The Administration does not accept that it made an error by identifying his duty station as Kinshasa instead of Goma.

³ Annexes to the application at page 34.

⁴ Annexes 1 and 3 to the reply.

⁵ *Ibid.*

Urgency

13. The Applicant submits that the Administration made a “quick decision” to attempt to illegally correct a “double way mistake” and to frustrate his action before the UNDT.

14. The Administration has breached its contract with him by failing to respect his rights as a staff member.

Irreparable harm

15. The Applicant submits that the consequence of the decision is damage to his reputation and integrity.

Respondent’s submissions

Prima facie unlawfulness

16. The Applicant has not demonstrated that the contested decision is *prima facie* unlawful.

17. The Organization has a duty to correct administrative errors. The Applicant accepted the job offer on the basis that the duty station was Kinshasa. The job opening for the Close Protection Officer position, which he applied for, stated that it was in Kinshasa. Throughout his appointment with MONUSCO, he was based in Kinshasa within the Office of the SRSG.

18. The Applicant is not entitled to be paid at the Goma rate for work performed in Kinshasa.

Urgency

19. The Applicant has not demonstrated any particular urgency.

Irreparable harm

20. The Applicant has not established that the implementation of the contested decision would cause him irreparable harm. Should the Administration decide to recover any overpayments, which may have occurred because of UMOJA incorrectly indicating Goma as the duty station, this would constitute a separate administrative decision.

21. In view of the foregoing, the Respondent requests that the Dispute Tribunal reject the application.

Considerations

22. Applications for suspension of action are governed by art. 2.2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal. Article 2.2 provides:

The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual requesting the Dispute Tribunal to 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.

23. Article 13.1 of the UNDT Rules of Procedure states:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to 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.

24. It is settled law that all three elements of the test must be satisfied cumulatively before the impugned decision can be stayed.

Prima facie unlawfulness

25. A human resources management system cannot generate legal relations. Rather, its function is only to reflect them.⁶ The Tribunal reiterates its concern about staff entitlements being susceptible to changes arbitrarily inserted in the human resources management system without the appropriate trail of underlying administrative decisions. The matter is even more serious when changes concern the terms of appointment.

26. An LoA is a fundamental act constituting a legal relationship between the staff member and the Organization. Any unilateral and retroactive change of any condition of appointment is a complex question which does not get readily solved in general reference to the duty to correct mistakes. Even where the issue was about an obvious mistake, the change cannot be effected by a click of a button but requires a corrigendum issued on the same level as the original LoA, that is, by a person authorized to act on behalf of the Secretary-General.

27. In the present case, there is no record of the LoA being so corrected which renders the decision *prima facie* unlawful, even without examining whether or not the mistake, considered how the relationship between the parties was implemented, would have qualified as obvious.

Urgency and irreparable harm

28. The Tribunal agrees with the Respondent that the Applicant did not make the *prima facie* showing of urgency and irreparable harm, or, at this point, of any harm. The application accordingly fails.

⁶ See for example *Eng* Order No. 193 (NBI/2017) at para. 35.

Conclusion

29. The application for suspension of action is **REJECTED**.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 14th day of November 2017

Entered in the Register on this 14th day of November 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi