



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/124

Order No.: 212 (NBI/2017)

Date: 11 December 2017

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TEFULA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:
Daniel Trup, OSLA

Counsel for the Respondent:
Camila Nkwenti, UNEP

Introduction

1. The Applicant is a staff member at the United Nations Environment Programme (UNEP). He serves as Chief of Finance at the D1 level.

The Application and Procedural History

2. On 4 December 2017, the Registry received an application for suspension of action pursuant to Rule 13 of the Rules of Procedure. The Applicant is challenging the Respondent's decision to "suddenly and unilaterally reclassify his post downwards and transfer him to a position not commensurate with his grade."

3. The Respondent filed his reply to the application on 6 December 2017.

4. The Tribunal afforded the Applicant the opportunity to respond to the Respondent's reply, which submissions he filed on 7 December 2017.

Submissions

5. It is the Applicant's case that the decision to reclassify the established post that he occupies without any advance formal consultation is an attempt by the Respondent to rid themselves of him. The Applicant contends that implementation of the impugned decision is imminent and therefore satisfies the test of urgency for the purposes of the present application. He submits further that the reclassification of his post and reassignment of himself "to a non-descript position of Finance Advisor" will cause irreparable harm to his career and professional reputation.

6. The Respondent, for his part, contends that the reassignment of the Applicant is lawful and within the Respondent's discretion; that the Applicant has not satisfied the test of urgency for this application as the Organization is still in the process of discussing and consulting on the decision, and that no irreparable harm will befall the Applicant as any decision to reassign him will be at the same level and grade as currently encumbered by him.

Deliberations

7. Applications for suspension of action are governed by art. 2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal. Art. 13 provides as follows:

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.**

2. [...]

3. The Dispute Tribunal shall consider an application for interim measures within five working days of the service of the application on the respondent.

4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

8. In making his case, the Applicant is required to satisfy the Court that the impugned decision is *prima facie* unlawful, is urgent and will cause him/her irreparable harm if implemented. *All* three elements of the test must be satisfied before the impugned decision can be stayed.

9. The Tribunal is not required at this stage to resolve any complex issues of disputed fact or law. All that is required is for a *prima facie* case to be made out by the Applicant to show that there is a triable issue before the court.¹

10. In this case, the Applicant has already sought a review of the impugned decision by management evaluation. This process is ongoing.

11. On the facts of the present case, the Respondent has made extensive submissions on the exigencies of work which led to the decision to reclassify the

¹ See also: *Hepworth* UNDT/2009/003 at para. 10, *Corcoran* UNDT/2009/071 at para. 45, *Berger* UNDT/2011/134 at para. 10, *Chattopadhyay* UNDT/2011/198 at para. 31; *Wang* UNDT/2012/080 at para. 18.

post currently encumbered by the Applicant and the resultant decision to reassign him. That process also has not been completed.

12. The Applicant's submissions in respect of the *prima facie* unlawfulness of the impugned decision do not persuade the Tribunal that the decision is tainted by the extraneous factors alleged – that it is not based on a genuine reorganization or any proven operational considerations. The Applicant's submissions in response to the Respondent's reply on this point are, at best, scanty.

13. The Respondent also submits that the “organization is still discussing and consulting with the staff member regarding possible reassignment” to dispel any argument that this matter satisfies the urgency requirement of the test. At this stage, the Tribunal is inclined to accept the Respondent's submission as an undertaking that his actions in respect of this reclassification and reassignment will be effected properly, in good faith and without harm to the Applicant's circumstances.

14. The Application for Suspension of Action is premature, has not satisfied the necessary requirements and is accordingly REFUSED.

(Signed)

Judge Nkemdilim Izuako

Dated this 11th day of December 2017

Entered in the Register on this 11th day of December 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi