



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/006

Order No.: 006 (NBI/2018)

Date: 12 January 2018

Original: English

Before: Judge Goolam Meeran

Registry: Nairobi

Registrar: Abena Kwakye-Berko

PIERRE

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
Nusrat Chagtai, ALS/OHRM

Introduction

1. The Applicant is a staff member at the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA). He is currently employed at the P-4 level, on a fixed-term appointment, as Civil Engineer in the Engineering Section of the Mission. based in Bamako.

The Application and Procedural History

2. On 11 January 2018, the Applicant filed an application for suspension of action of the Respondent's decision to reassign him to Kidal, in the Northeastern part of Mali.

3. The Application was served on the Respondent on the same day.

Submissions

4. It is the Applicant's case that the impugned decision was taken in retaliation for his objection to an initial reassignment. He submits that the decision was arbitrarily made, without due consultation nor regard for his security concerns and therefore *prima facie* unlawful. The Applicant further submits that a stay should be granted as a matter of urgency and that he will suffer irreparable harm to his reputation and the finalization of the Gao Airport Project he is currently managing will be jeopardized.

CONSIDERATIONS

5. This application is made under art. 2.2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal.

6. 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 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. The Registrar shall transmit the application to the Respondent.

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

7. It is clear that the Tribunal is under a duty to transmit a copy of the suspension of action application to the Respondent and to issue a decision within five days thereof. There is no requirement, either under art. 2.2 of the Statute or art. 13 of the Rules of Procedure, for the Tribunal to await the Respondent's response before the applicant's request is considered.

8. The Applicant is required to satisfy the Tribunal that the impugned decision appears *prima facie* to be 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. It is clear that the Statute does not require the Tribunal to make a definitive finding that the decision is in fact unlawful. The test is not particularly onerous since all the Tribunal is required to do at this stage is to examine the material in the application and to form an opinion as to whether it appears that, if not rebutted, the claim will stand proven. This means that the onus is on the Applicant to provide a sufficiency of material in order to satisfy the statutory test. Any such opinion is not a finding by the Tribunal and is certainly not binding should the matter go to trial on the merits. It is merely an indication as to what appears to be the case at the SOA stage. This does not mean that unsupported allegations and/or suspicions will suffice.

10. In a case like the present, the Tribunal will be vigilant to avoid interfering in the lawful and proper exercise of managerial discretion to deploy staff members to meet the needs of the Organization. Absent evidence of a possible retaliatory motive, any other impermissible, arbitrary or oppressive conduct, it is not for the Tribunal to interfere.

11. Having examined the material provided by the Applicant, the decision to deploy him to carry out duties in Kidal does not, without more, give the appearance of an unlawful or otherwise impermissible exercise of managerial discretion. Whether the Applicant's fears that the Gao Airport Project will be harmed if he is transferred are well-founded or not, is not for the Tribunal to decide. Further, at this stage there is not a sufficiency of material to support an inference that the decision maker was motivated by improper or impermissible motives like, for example, retaliation rather than by the interest of the Organization.

12. The Applicant's contentions and submissions do not satisfy the test of whether the impugned decision appears *prima facie* to be unlawful.

13. Since the threefold test is cumulative it is not necessary for the Tribunal to examine whether the other two limbs of the test for a successful application for suspension of action have been met.

ORDER

14. The application for suspension of action is refused.

(Signed)

Judge Goolam Meeran

Dated this 12th day of January 2018

Entered in the Register on this 12th day of January 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi