



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/075

Order No.: 085 (NBI/2019)

Date: 27 June 2019

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NSUBUGA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Christine Graham, AAS/ALD/OHR
Nusrat Chagtai, AAS/ALD/OHR

Introduction

1. The Applicant is serving as a Supply Assistant at the GL-3 level with the Supply Chain Management of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). His duty station is Entebbe, Uganda.

2. The Applicant filed the current application seeking suspension of the decision by MONUSCO, dated 3 June 2019, to separate him from service effective 30 June 2019.

3. On 21 June 2019, the Applicant uploaded several documents relating to his separation from service into the Tribunal's Court Case Management System (CCMS). He did not include a signed and dated application form with his documents.

4. By email dated 24 June 2019, the Registry of the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi (the Nairobi Registry) provided the Applicant with the Application form and directed him to complete and upload it into CCMS the same day. The Registry also called the Applicant on the same day to follow up on the application. The Applicant did not submit the application.

5. The Registry called the Applicant again on 25 June 2019 to follow up on the application. He then uploaded a draft application with track changes into CCMS, which did not meet the requirements of art. 8 of the UNDT Rules of Procedure. The Registry emailed him again the same day to tell him that he would have to file a properly completed/finalized application.

6. On 26 June 2019, the Applicant filed a completed application via CCMS, which was served on the Respondent the same day with a deadline of 1:00 p.m. on 27 June 2019 to submit a reply. The Respondent filed his reply the same day.

Facts

7. By a memorandum dated 2 April 2019, the MONUSCO Chief Human Resources Officer (CHRO) informed the Applicant that the Secretary-General had

proposed the abolition of 764 posts as part of MONUSCO's proposed budget for the period 1 July 2019 to 30 June 2020. He was further informed that in line with the budget proposal, MONUSCO was going to initiate a Comparative Review Process (CRP) where the number of remaining posts in the mission's new structure were less than the number of serving staff. In this respect, the CHRO requested that he submit his PHP and ePASes for 2016-2017 and 2017-2018 to the Human Resources Section for the CRP. The Applicant complied with the CHRO's request.

8. On 29 May 2019, the CHRO notified the Applicant that since the two positions of G-3 Supply Assistant proposed for abolishment in the Life Support Section in Entebbe have similar functions to his, the specific function was not subject to CRP. Since his position was going to be "dry cut", he was informed that his FTA would not be extended beyond 30 June 2019.

9. On 3 June 2019, the CHRO sent the Applicant an interoffice memorandum informing him of his separation from service with MONUSCO effective close of business on 30 June 2019.

10. The Applicant submitted a request for suspension of action and management evaluation of the non-renewal/separation decision on 4 June 2019 to the Management Evaluation Unit (MEU).

11. The MEU refused his request for suspension of action on 6 June 2019. The Applicant indicates in his application that he received the MEU response on 6 June 2019.

Considerations

12. Applications for suspension of action pending management evaluation are to be decided in accordance with art. 2.2 of the Statute of the Dispute Tribunal and art. 13 of the Tribunal's Rules of Procedure. Article 2.2 provides:

The Dispute Tribunal shall be competent to hear and pass judgement 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. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

13. For the Tribunal to grant an application for suspension of action, the Applicant must satisfy the three cumulative requirements in art. 2.2 of the Statute and art. 13 of the Tribunal's Rules of Procedure, namely that the decision appears to be prima facie unlawful, that the matter appears of particular urgency, and that the implementation of the decision would appear to cause irreparable damage.

14. In *Maloka Mpacko* UNDT/2012/081, the Tribunal recalled that:

If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (*Villamorán* UNDT/2011/126, *Dougherty* UNDT/2011/133, *Jitsamruay* UNDT/2011/206).

15. In the present case, the Applicant was notified of the non-renewal of his FTA as a result of the "dry cut" of his post on 29 May 2019 but he did not react. It was not until he received the separation decision on 3 June 2019 that he realized he needed to act. Consequently, he submitted a request for suspension of action and management evaluation on 4 June 2019 and received a negative response to his request for suspension of action on 6 June 2019. MEU further informed him that the management evaluation in his case would be completed by 20 July 2019.

16. Once again, the Applicant seems to have gone into a daze because he made no effort to approach the Tribunal until 21 June when he submitted documents without a formal application for suspension of action. Paragraphs 4-6 above detail the efforts made by the Registry to get the Applicant to submit a proper application between 24 and 25 June 2019. It was not until 26 June that the Applicant finally complied and submitted a proper/complete application that could be served on the Respondent.

17. The Applicant has not offered any explanation to the Tribunal for his inaction between 6 and 21 June.

18. Seeing that the onus is on applicants to demonstrate the particular urgency of their cases and the timeliness of their actions, the Tribunal finds that the Applicant in the current case failed to come to the Tribunal at the first available opportunity and that the urgency of this matter was self-created.

19. In light of the foregoing, the Tribunal holds that the Applicant has failed to satisfy the prerequisite for urgency.

Conclusion

20. Since the Applicant has not satisfied one of the prerequisites for a grant of suspension of action under art. 2.2 of the UNDT Statute and art. 13 of the Rules of Procedure, the Tribunal will not examine the prerequisites of *prima facie* unlawfulness and irreparable damage.

ORDER

21. This application for suspension of action is accordingly REFUSED.

(Signed)

Judge Nkemdilim Izuako

Dated this 27th day of June 2019

Entered in the Register on this 27th day of June 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi