



Before: Judge Agnieszka Klonowiecka-Milart
Registry: Nairobi
Registrar: Abena Kwakye-Berko

BARUD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION
PURSUANT TO ART. 14 OF THE
UNDT RULES OF PROCEDURE**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
AAS/ALD/OHR

Notice: This Order has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The Applicant is an Administrative Assistant working with United Nations-African Union Hybrid Operation in Darfur (UNAMID), based in El Fasher. She serves on a fixed-term appointment at the FS-5/12.

2. On 23 June 2019, the Applicant filed an application before the United Nations Dispute Tribunal in Nairobi challenging the decision to separate her from service upon the expiry of her FTA on 30 June 2019.

3. The application was served on the Respondent with a deadline of 29 July 2019 to file a response.

4. On 28 June 2019, the Applicant filed an application for suspension of action pursuant to art. 14 of the UNDT Rules of procedure. She seeks suspension of the decision to separate her from service pending the UNDT proceedings in her substantive application.

5. The Tribunal considered that a reply from the Respondent was not necessary for the determination of the art. 14 application for suspension of action.

Facts

6. On 24 February 2019, the Applicant received a letter from the UNAMID Acting Director of Mission Support informing her that the post she encumbers is among the posts that will be abolished effective 1 July 2019, resulting in the non-extension of her current appointment beyond its expiry date on 30 June 2019.

7. On 11 April 2019, the Applicant wrote to the Management Evaluation Unit (MEU) requesting for management evaluation of the decision not to renew her FTA with UNAMID beyond 30 June 2019.

8. The Under-Secretary-General for Management Strategy, Policy and Compliance responded to the Applicant's request for management evaluation on 17 and 20 May 2019.

Applicant's submissions

9. The Applicant's case is that the contested decision is unlawful because it has not been established that her post has been abolished. She received an email from the UNAMID Human Resources Section (HRS), which listed the post titles subject to abolition as being "Engineering Technician, Facilities Management Assistant, Water and Sanitation Technician, Generator Technician and Electrician". Her post is clearly classified as an Administrative Assistant and yet she was included in a CRP with Facilities Management Assistants.

10. UNAMID HRS provided her with TORs for the Facilities Management Unit on 15 May 2018 and this is the sole justification for including her in a CRP with Facilities Management Assistants. She submits that she was provided with the new TORs five months prior to the CRP as a calculated move to justify her termination and this shows unlawful motive. Her placement within a CRP pool of Facilities Management Assistants represents a procedural error vitiating the decision to terminate her appointment.

11. The Applicant considers the matter to be urgent because she is scheduled to commence her repatriation travel from the mission on 29 June 2019 and her current contract will come to an end on 30 June 2019. The Applicant submits that implementation of the contested decision will cause irreparable harm for her because she will lose future career prospects with the Organization. Additionally, she is the sole source of support for her son who requires timely treatment and medicines.

Considerations

12. The application is made under art. 2.2 of the UNDT Statute and art. 14 of the UNDT Rules of Procedure, which allow the Tribunal to suspend the implementation of the impugned decision pending proceedings where the decision appears *prima facie* to be unlawful, where it is a case of particular urgency and where the implementation would cause irreparable damage. All three elements of the test must be satisfied before the impugned decision can be stayed.

13. The Tribunal recalls that it is established jurisprudence that a party may not invoke urgency which was self-created.¹ The Appeals Tribunal has stressed that in determining whether there was particular urgency, the UNDT should explicitly address the issue of whether the Applicant acted diligently.² When an applicant for suspension of action has failed to act timeously in approaching the Tribunal, the criterion of particular urgency is automatically forfeited.

14. In the present matter, the Applicant has been aware since 24 February 2019 of the results of the CRP and of UNAMID's decision to not renew her appointment beyond 30 June 2019. She received a negative response to her request for management evaluation on 17 and 20 May 2019 but did not approach the Tribunal with a substantive application until 23 June 2019 and an application for suspension of action under article 14 of the UNDT Rules of Procedure until 28 June 2019. She has not provided the Tribunal with an explanation for the delay.

15. The Tribunal finds that the Applicant failed to act diligently and therefore created the current urgency herself.

16. This finding relieves the Tribunal from considering the other prongs of the test.

¹ *Villamorán* UNDT/2011/126; *Dougherty* UNDT/2011/133; *Jitsamruay* UNDT/2011/206.

² *Villamorán* 2011-UNAT-160 para.45.

Conclusion

The application is refused.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 28th day of June 2019

Entered in the Register on this 28th day of June 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi