



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/042
UNDT/NBI/2019/065
Order No.: 066 (UNDT/2020)
Date: 9 April 2020
Original: English

Before: Judge Eleanor Donaldson-Honeywell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

ORIES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

Counsel for applicant:

George G. Irving

Counsel for respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Nusrat Chagtai, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is an Associate Security Officer with the United Nations Mission in Iraq ('UNAMI'). He serves on a fixed term appointment at the P2 level. At the time of the Application, he was based in Erbil, Iraq.

Procedural History

2. On 6 April 2019, the Applicant filed an application challenging the Respondent's decision of 30 September 2018 which refused his request for a transfer to a different duty station on grounds of his medical condition. The medical condition arose from an incident when the Applicant was attacked on the job by a staff member in December 2013. Requests for transfer commenced in 2014. The application was registered by the Registry of the United Nations Dispute Tribunal in Nairobi as UNDT/NBI/2019/042.

3. The Applicant sought review of the decision by the Management Evaluation Unit ("MEU") on 26 November 2018.

4. The Respondent filed his Reply to this first application on 10 May 2019, contending that the application is neither receivable nor well-founded on the merits.

5. On 18 June 2019, the Applicant filed another application challenging what he called the Respondent's "failure to afford the Applicant the proper duty of care by continued delay and refusal to accommodate his medical condition by transferring him on medical grounds." The decision being impugned in this application was made on 21

April 2019. This application was registered by the Registry of the United Nations Dispute Tribunal in Nairobi as UNDT/NBI/2019/065.

6. The Applicant sought review of the decision by the MEU on 23 April 2019.

7. The Respondent filed his Reply to this second application on 19 July 2019, contending that it replicates the prior application and therefore cannot be accepted as receivable or succeed on the merits. Additionally, the Respondent argues that the issues raised have been appropriately addressed and are now moot.

8. The Applicant moved the Tribunal to consider the second application (UNDT/NBI/2019/065) together with the previous application (UNDT/NBI/2019/042).

Considerations and Directions

9. As a preliminary matter, the Tribunal notes that the Applicant has moved for both applications to be jointly considered. The Tribunal is amenable to this motion.

10. The Tribunal also notes that the Applicant had been advised by the MEU to consider having this dispute resolved *inter partes*.

11. The Tribunal further notes from the Respondent's submissions in response to UNDT/NBI/2019/065, that the Applicant has in fact been reassigned to Basra, following clearance by the Division of Healthcare Management and Occupational Safety and Health ("DHMOSH"). Since 11 July 2019, the Applicant has been working

remotely from home while awaiting his visa to return to Iraq and take up the position in Basra.

12. The Tribunal has reviewed the submissions of the parties and is of the firm view that this is a matter that can be equitably resolved between the parties.

13. In the interest of efficient use of the Tribunal's resources and the expeditious conduct of proceedings, the Tribunal, pursuant to articles 10.3 of the UNDT Statute and 15.1 of the Rules of Procedure, and being mindful of paragraph 27 of General Assembly resolution 69/203 (Administration of justice at the United Nations), strongly urges the parties in this matter to consult and deliberate on having this matter informally resolved or mediated.¹

14. Given the passage of time since the filing of both applications, and the change in circumstances surrounding the impugned decision, the Tribunal takes the view that meaningful discussions between the parties would be in both their interests.

15. However, the undersigned Judge notes that as her current term with the Dispute Tribunal is limited to three months, the parties will be required to strictly cooperate with observing the deadlines set out in the Tribunal's orders.

16. To this end, the Tribunal makes the following **Orders**:

- a) UNDT/NBI/2019/042 and UNDT/NBI/2019/065 are hereby **consolidated**;
- b) The parties are directed to **jointly** advise the Tribunal by **24 April 2020**:

¹ Paragraph 27 states: "Recalls the emphasis placed by the General Assembly on the resolution of disputes, and requests the Secretary-General to report on the practice of proactive case management by the judges of the United Nations Dispute Tribunal in the promotion and successful settlement of disputes within the formal system in his next report".

- i) on the likelihood of this matter being settled informally i.e. *inter partes* or with the assistance of the Office of the Ombudsman and Mediation Services; or

- ii) Whether the Tribunal should proceed on the papers before it to determine the case as to receivability and merits.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 9th day of April 2020

Entered in the Register on this 9th day of April 2020

(Signed)

Abena Kwakye-Berko, Registrar, UNDT, Nairobi