



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/030

Order No.: 079 (NBI/2020)

Date: 27 April 2020

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

AMANI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:

Edwin Nhliziyo

Counsel for the Respondent:

AAS/ALD/OHR

Background

1. By application filed on 25 April 2020, the Applicant, an Engineer at the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”) seeks the suspension, pending management evaluation, of the disciplinary sanction of separation from service with compensation in lieu of notice and with 25% of the termination indemnity otherwise applicable (“the contested decision”).

2. The Tribunal does not deem it necessary to receive a response from the Respondent on the application and will rule on it *proprio motu*.¹

Facts

3. The facts below arise from the documents filed by the Applicant in support of his application.

4. By memorandum dated 16 October 2019, the Office of Human Resources notified the Applicant of allegations of misconduct against him.² Specifically, it was alleged that:

a. In 2007, while a staff member with the United Nations Operation in Côte d’Ivoire (“UNOCI”), he violated local laws relating to fraud by accepting payment from two Ivorian nationals in exchange for providing them with passports that were not genuine; and/or

b. In 2013, when submitting his Personal History Profile (“PHP”) through the Inspira system in relation to a job application with the Organization, he knowingly submitted false information that he had never been indicted, fined or imprisoned for an offence other than a traffic violation.

¹ See for example *Gehr* 2013-UNAT-313 and *Christensen* 2013-UNAT-335.

² Application, annex 2.

5. The Applicant submitted his response to the allegations on 31 January 2020.
6. By letter dated 22 April 2020, which the Applicant states that he received on that same date³, he was informed of the contested decision which was effective upon his receipt of the letter. He was informed that the decision had been taken pursuant to staff rule 10.2(a)(viii).
7. The Applicant requested management evaluation of the contested decision on 25 April 2020.⁴

Considerations

8. Article 2.2 of the Dispute Tribunal's Statute 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.

9. Article 13.1 of the Dispute Tribunal's Rules of Procedure is similarly couched,

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.

10. Staff rule 11.2(b) stipulates that,

A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a *decision taken at Headquarters in New*

³ Application, para. V(5).

⁴ Application, annex 3.

York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation (emphasis added).

11. It follows from the wording of art. 2.2 of the Tribunal's Statute and art. 13.1 of its Rules of Procedure that the Tribunal's jurisdiction to suspend the implementation of a contested administrative decision requires such decision to be the subject of an ongoing management evaluation. The Applicant's separation from service under staff rule 10.2(a)(viii) is governed by the exception to the management evaluation requirement provided by staff rule 11.2(b). The Applicant was not required to request management evaluation of the contested decision and the Tribunal is therefore not competent to review this request for suspension of action.

ORDER

12. The application for suspension of action pending management evaluation is rejected.

(Signed)

Judge Margaret Tibulya

Dated this 27th day of April 2020

Entered in the Register on this 27th day of April 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi