



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/040

Order No.: 113 (NBI/2020)

Date: 15 June 2020

Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

BASSEY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:

Sètondji Roland Adjovi

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR

Joseph Kavoi, AAS/ALD/OHR

Background

1. On 8 June 2020, the Applicant filed an application for suspension of action pending management evaluation of the decision to not extend his fixed-term appointment beyond 30 June 2020 (“the contested decision”).
2. The Respondent filed a reply on 10 June 2020.
3. With the leave of the Tribunal, the parties filed additional submissions on 11 and 12 June 2020.

Facts

4. The Applicant joined the Organization on 6 December 2010. At the time of filing the application, he served at the FS-5 level as Security Officer, Deputy Supervisor in the Special Investigation Unit of the Security and Safety Section with the United Nations Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”).
5. On 16 December 2019, the Applicant was informed of the non-renewal of his fixed-term appointment (“FTA”) and separation from the Organization effective 15 January 2020.¹
6. He sought management evaluation of the decision on 17 December 2019.
7. On 15 April 2020, the Applicant filed an application contesting the non-renewal of his fixed-term contract and separation from the Organization effective 15 January 2020. This application was registered as Case No. UNDT/NBI/2020/028.
8. On 29 May 2020, the Management Evaluation Unit (“MEU”) recommended that the decision not to renew the Applicant’s FTA beyond 15 January 2020 be upheld.

¹ Application, annex 3.

9. On 29 May 2020, Ms. Catherine Pollard, Under-Secretary-General for Management Strategy, Policy and Compliance endorsed the MEU's recommendation.²

10. By letter dated 29 May 2020, the MONUSCO Chief, Human Resources Section informed the Applicant that, in accordance with the MEU's recommendation, he would be separated from the Organization upon the expiry of his appointment on 30 June 2020.³

11. The Applicant sought management evaluation of the 29 May 2020 decision on 2 June 2020.

12. On 8 June 2020, the Tribunal issued Judgment No. UNDT/2020/085 in which it dismissed the application in Case No. UNDT/NBI/2020/028 as moot.

Considerations

13. Applications for suspension of action are governed by art. 2 of the UNDT Statute and art. 13 of the UNDT Rules of Procedure. Article 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 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 [emphasis added]**.

2. [...]

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

4. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

² Application, annex 1.

³ Ibid.

14. The impugned decision must be shown to be *prima facie* unlawful, the matter must be particularly urgently and it must be evident that implementation of the decision would cause the applicant irreparable harm. All three elements must be satisfied for the Tribunal to grant the injunction being sought, as the test is a cumulative one.

15. Additionally, a suspension of action application will only succeed where an applicant can establish a *prima facie* case on a claim of right, or where he can show that *prima facie*, the case he/she has made out is one which the opposing party would be called upon to answer and that it is just, convenient and urgent for the Tribunal to intervene and, without which intervention, the Respondent's action or decision would irreparably alter the *status quo*.⁴

***Prima facie* Unlawfulness**

16. The fact that an FTA does not carry any obligation for renewal is not contested. The Applicant's argument, however, is that the decision to separate him is the culmination of a series of unfair and biased actions taken by MONUSCO's Principal Security Advisor ("PSA") to get rid of him, including transferring him from his original parent post to place him on a vulnerable temporarily loaned post and his failed transfer to Kindu where MONUSCO's Special Representative of the Secretary-General and Chief of Staff overruled the PSA's decision following a 13 August 2019 intervention by the Chief of the Conduct and Discipline Team.

17. In its comments to MEU, the MONUSCO Administration submitted that the decision to separate the Applicant from service stemmed from "the downsizing that took place in MONUSCO" and that the post "the Applicant was originally encumbering was downsized in accordance with the provisions of the CRP" and that he was due to be separated on 30 June 2019.⁵ However, in his submissions dated 11 June 2020, the Respondent states that the post "previously encumbered by the Applicant, number 30037926, was not abolished. It was retained to finance the

⁴ See for example *Newland* Order No. 494 (NBI/2016).

⁵ Page 4 of the management evaluation response dated 29 May 2020.

continuing appointment of Mr. [D], effective 1 July 2019, who had not been retrenched.”⁶ Further, the Respondent did not rebut the Applicant’s arguments that,

The PSA has built fake grounds for the non-renewal of the appointment. For instance, he was told that his post was abolished while it was not. He was then told that the loaned post he was transferred onto was needed back in the office of the Director of Mission Support (“DMS”) yet the DMS uncompromisingly stated the contrary.

.. The claim by the Respondent that based on the terms of the comparative review exercise it was determined that no comparative review was required and that the post he was encumbering was to be abolished as a dry cut is not supported by the facts as the references to “dry cut” in the terms of reference of the comparative review process panel do not apply to him.

18. The Tribunal notes the Respondent’s contradictory positions on the real reasons for the non-renewal of the Applicant’s appointment. These when viewed in the background of the Applicant’s allegations against the PSA which seem to have some basis in the light of the administrative actions taken against him give credence to the Applicant’s averments that he was moved from his parent post to facilitate his unlawful removal from MONUSCO during the restructuring exercise.

19. All things considered, there are many questions that remain unanswered in relation to the legality of the non-renewal decision, for instance:

- a. The legality of reassigning the Applicant’s post to another staff member yet the rationale for his non-renewal was the abolition of that post?
- b. What is the relevant law which stipulates, as argued by the Respondent, that there was no requirement to abolish the specific post that the Applicant encumbered even though this is the rationale for not renewing the Applicant’s appointment?

20. In light of the foregoing, the Tribunal considers that a *prima facie* case of arbitrariness has been made out. The Applicant has also established a *prima facie* case

⁶ At para. 3.

that the decision may have been based on improper motives. The Tribunal finds that based on the foregoing a *prima facie* case of unlawfulness had been established.

Irreparable Harm

21. In the circumstances presented by the Applicant in this case, the Tribunal finds that the requirement of irreparable damage is satisfied. It would also adversely affect his reputation, emotional well-being and career prospects during these unsettling times of the COVID-19 Pandemic and global financial upheaval in a manner that may not be compensated for in any practical way.

Urgency

22. The urgency of this application is obvious given that the Applicant's contract of employment with MONUSCO ends on 30 June 2020.

ORDER

23. The application for suspension of action is **GRANTED** pending management evaluation.

(Signed)

Judge Margaret Tibulya

Dated this 15th day of June 2020

Entered in the Register on this 15th day of June 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi