



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:

Setondji Roland Adjovi, *Etudes Vihode*

Counsel for the Respondent:

AAS/ALD/OHR

Introduction

1. The Applicant is a staff member of the United Nations-African Union Hybrid Operation in Darfur (“UNAMID”). He filed an application on 11 February 2021 seeking suspension of the 14 January 2021 decision not to renew his fixed-term appointment (“FTA”) beyond 13 February 2021.

2. The application was served on the Respondent on 12 February 2021.

3. In light of the limited time between the filing of the current application and the date of implementation of the decision, the Tribunal decided to render a decision without awaiting a response from the Respondent.

Factual background

4. On 22 December 2020, the United Nations Security Council adopted resolution 2559, which ended UNAMID’s mandate on 31 December 2020. The Security Council requested that other than those personnel required for the mission’s liquidation, the Secretary-General commence the drawdown of UNAMID personnel on 1 January 2021 and complete the withdrawal of all uniformed and civilian UNAMID personnel by 30 June 2021.

5. The Applicant received a letter on 14 January 2021 from the UNAMID Director of Mission Support (“DMS”) informing him of the non-renewal of his FTA upon its expiration on 13 February 2021.¹

6. On 19 January 2021, the Applicant emailed the UNAMID Chief Human Resources Management Section (“Chief/HRMS”), with the Officer-in-Charge of UNAMID (“OIC UNAMID”), DMS and the UNAMID Chief of Staff (“CoS”) in copy, requesting an exceptional measure of a four-month contract extension to June 2021 to allow him to stay in service until his official retirement age of 62. The Chief/HRMS responded on 20 January 2021 that he would revert to him after

¹ Application, page 3 and annex 8.

management discussed his request. On 21 January 2021, the Applicant informed the Chief/HRMS and senior management that a United Nations Country Team (“UNCT”) member organization wanted to explore the possibility of a secondment for him throughout UNAMID’s drawdown period. The Applicant sought the Chief/HRMS’ guidance and support for this process.²

7. The OiC UNAMID emailed UNAMID Section Chiefs on 26 January 2021 requesting an immediate review of the work of their teams and the need for individuals to remain in Darfur. The OiC cautioned that only those directly supporting the physical drawdown and who are required on the ground to hand over key projects should remain in theatre.³ In response to the OiC’s email, the Chief of the Political Affairs Section (“Chief/PAS”) emailed the CoS and DMS on 27 January 2021 with a recommendation that the Applicant be allowed to continue in the KLO substantive Liaison functions role until 30 June 2021 since he had been performing multiple tasks with a great level of efficiency and dedication for two months.⁴

8. On 28 January 2021, the Chief/HRMS informed the Applicant that he was awaiting the mission leadership’s decisions on his requests for the exceptional four-month extension of his FTA and the secondment possibility.⁵ The Applicant followed up on his requests with the CHRMS on 5 February 2021.⁶

9. The Applicant emailed the Management Evaluation Unit (“MEU”) on 8 February 2021 requesting management evaluation and suspension of the non-renewal decision.⁷ On 10 February 2021, the MEU acknowledged receipt of the Applicant’s management evaluation request and rejected his request for suspension of action because it deemed the urgency of the request to have been self-created.⁸

² Application, annex 1 (emails between the Applicant and CHRMS).

³ Application, annex 5.

⁴ Ibid.

⁵ Application, annex 1 (emails between the Applicant and CHRMS).

⁶ Ibid.

⁷ Application, annex 1.

⁸ Application, annex 6.

Applicant's submissions

10. The Applicant's case is that the impugned decision is *prima facie* unlawful because it contradicts the 26 January 2021 recommendation of the Chief/PAS and is discriminatory because it does not follow the guidance in the 7 January 2021 Broadcast on prioritization of staff members. Temporary and recent staff members have been given priority and retained for the drawdown staffing while those with longer service are being terminated. Without providing reasons, the mission has refused his request for an exceptional extension to allow him to reach the mandatory retirement age and his request for a secondment. The Applicant also claims that he is eligible for a continuing appointment, but the administration has delayed the process unnecessarily.

11. The Applicant asserts that the matter is urgent because he will be separated on 13 February 2021. The urgency is not self-created because he was seeking informal settlement of the matter with UNAMID. Once he realized that informal settlement would not be possible, he sought management evaluation and suspension of action from the MEU and the Tribunal in a timely manner. The Applicant submits that he will suffer the irreparable harm of non-reinstatement should his FTA be allowed to lapse.

Considerations

12. Article 2.2 of the Statute of the Dispute Tribunal (Statute) and art. 13 of the Rules of Procedure (Rules) empower the Tribunal to grant an interim relief by way of a suspension of action in relation to an administrative decision that impacts on the contract or terms of employment of an individual provided the criteria of *prima facie* unlawfulness, urgency and irreparable damage are satisfied. All three elements must be satisfied for the Tribunal to grant this interim relief.

13. Imminent closure of a mission is a drastic circumstance where everybody is, more or less, in the same boat. While there are statutory priorities for staff retention

by the type of appointment, when it comes to the exercise within the same group, it is difficult to impeach specific choices made by the decision-makers as to the necessity of certain functions for short-term assignments. The criterion, in any event, should be the needs of the mission, and not humanitarian grounds. On this latter count, the Tribunal notes that June 2021 would be the date of the Applicant's mandatory retirement from the United Nations Secretariat, he, however, has already attained the age where he can take his retirement if he so wishes.

14. To the extent the Applicant relies on a recommendation of the Chief/PAS, such recommendation does not have the force of a decision of a Civilian Review Process, and while the Applicant may have hoped for its positive impact, maintaining the decision on his separation is not unlawful because UNAMID management did not follow the recommendation. While the Applicant advances comparative grievances based on -unsubstantiated - allegations of discrimination, unreasonable priority for certain groups etc., he does not make a showing that his functions were indispensable. To the contrary, by volunteering to go on secondment to a different agency, the Applicant belies the need for his position in the closing mission.

15. In light of the foregoing, the Tribunal concludes that the Applicant has not substantiated his claim that the impugned decision is *prima facie* unlawful. Since the Tribunal may grant suspension only if the three criteria are satisfied, there is no need to proceed further.

Order

16. The application is refused.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 12th day of February 2021

Entered in the Register on this 12th day of February 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi