



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NBI/2020/044  
Order No.: 202 (NBI/2021)  
Date: 23 September 2021  
Original: English

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Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

LOTO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON CASE MANAGEMENT**

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**Counsel for the Applicant:**

Sètondji Roland Adjovi, *Etudes Vihodé*

**Counsel for the Respondent:**

Jacon van de Velden, AAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant serves as a Mail Assistant at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”). He holds a fixed-term appointment at the FS-4 level and is based in Goma.

2. On 15 June 2020, the Applicant filed an application to challenge two decisions. Firstly, he challenges the Respondent’s 13 January 2020 decision to place him on administrative leave without pay (“ALWOP”) for not making a report on alleged sexual misconduct and meeting with others to negotiate a settlement with the alleged victim. Secondly, he challenges the 11 May 2020 decision to retroactively extend the ALWOP from 13 April 2020 for a further three months. The Applicant has been granted suspension of action regarding the decisions and he is currently on administrative leave with pay. His position in the instant application is that the prior decision to place him on ALWOP was unlawful.

## **Procedural background and historical facts**

3. On 10 December 2019, the Applicant received an email from the Office of Internal Oversight Services (“OIOS”) informing him that he was the subject of an investigation and that he was required to submit to an interview on 13 December 2019. On 13 January 2020, the Under-Secretary-General for Management, Strategy, Policy and Compliance (“USG-MSPC”), placed the Applicant on ALWOP for a period of three months pending completion of the investigation and any disciplinary process against him. On 13 May 2020, the Applicant was notified that the USG-MSPC had decided to extend his ALWOP for an additional period of three months from 13 April 2020, or until the completion of the disciplinary process, whichever comes earlier.

4. On 14 June 2020, the Applicant filed an application on the merits challenging the decision to place him on ALWOP.

5. On 17 June 2020, the Applicant filed a motion for interim measures pending proceedings seeking: (a) change of the administrative leave from ALWOP to ALWP, effective 13 January 2020, with payment of his full pay and entitlements issued through off-cycle payroll; (b) credit of his leave entitlements and associated point credits for home leave, rest and recuperation (“R&R”) to be awarded if they have been withheld during the period of his ALWOP.

6. In the alternative, the Applicant sought the payment of his full pay and entitlements for the period 13 April 2020 to 13 May 2020 through an off-cycle payroll disbursement while credit for his leave entitlements and associated point credits for home leave and R&R be awarded if they have been withheld during this period.

7. On 19 June 2020, the Assistant Secretary-General for Human Resources (“ASG/OHR”) rescinded the decision to place the Applicant on ALWOP on a retroactive basis, from 13 April to 12 May 2020. The ASG/OHR instructed MONUSCO to pay the Applicant his salary, including the corresponding allowances and entitlements, for this period.

8. By Order No. 119 (NBI/2020), issued on 25 June 2020, the Tribunal granted the Applicant’s motion for interim measures and ordered that the decision to deprive the Applicant of his salaries while he was on administrative leave pursuant to staff rule 10.4 be suspended until the completion of the investigations and the disciplinary process.

9. On 27 June 2020, the Applicant received an email from the Human Resources Officer (“HRO”), MONUSCO, informing him, among others, that the USG-MSPC’s decision of 13 May 2020 placing him on ALWOP would expire on 12 July 2020. In this regard, the Mission would advise on the Applicant’s status from 12 July 2020 onwards.

10. On 28 June 2020, the Applicant replied to the HRO and clarified that the Tribunal’s Order of 25 June 2020 requires him to be on ALWP from 13 January 2020.

11. On 29 June 2020, the Applicant received another email from the Chief Human Resources Officer (“CHRO”), MONUSCO, informing him that the Tribunal’s Order took effect from 25 June 2020, the very day it was published. The CHRO also informed the Applicant that the Order was going to be implemented by the Mission and that he would soon receive a new Personnel Action placing him on ALWP effective 25 June 2020.

12. By a motion filed on 30 June 2020, the Applicant requested execution of Order No. 119, recognizing his ALWP from 13 January 2020. This was granted by Order No. 132 (NBI/2020).

13. Following the determinations in the aforementioned motions, the application was docketed to the instant Judge on 1 September 2021 for determination on the merits. The Tribunal held a case management discussion (“CMD”) with the parties on 15 September 2021.

14. The Tribunal began by enquiring into whether the parties are amenable to *inter partes* settlement discussions. The Respondent informed the Tribunal that a sanction decision on the conduct of the Applicant is imminent, so that he was not in a position to engage in settlement discussions.

15. The Tribunal informed the parties that this matter will be adjudicated on the basis of their written submissions.

## **ORDER**

16. Having heard the parties on their respective positions, the Tribunal made the following ORDERS:

- a) The Respondent **to disclose to the Applicant the tape/transcript of the interview and meetings which were discussed at the CMD by 20 September 2021.**

- b) Should the parties agree that these were admissible, a transcript was to be disclosed to the Tribunal by **27 September 2021**.
- c) Should the parties disagree, their submissions on admissibility are due on **27 September 2021**.
- d) The Tribunal will then rule on admissibility by **30 September 2021**.
- e) A schedule was also set for the filing of closing submissions as follows:
  - i. **13 October 2021** - Applicant to file;
  - ii. **20 October 2021** - Respondent to file;
  - iii. **27 October 2021** - Applicant's response to the Respondent's closing submissions.

*(Signed)*

Judge Eleanor Donaldson Honeywell

Dated this 23<sup>rd</sup> day of September 2021

Entered in the Register on this 23<sup>rd</sup> day of September 2021

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi