



Before: Judge Agnieszka Klonowiecka-Milart
Registry: Nairobi
Registrar: Abena Kwakye-Berko

HUMACKIC

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for the Applicant:
Tim Lemay

Counsel for the Respondent:
AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a Contract Management Officer at FS-6 level, working with the United Nations Interim Force in Lebanon (“UNIFIL”) based in Naqoura, Lebanon within the Acquisitions Management Section.
2. On 14 June 2022, she filed an application for suspension of action before the United Nations Dispute Tribunal in Nairobi. She seeks to suspend the decision dated 2 June 2022 by the UNIFIL Head of Mission and Force Commander (“HOM/FC”) to laterally reassign her from the UNIFIL Acquisitions Management Section on loan to the Procurement Section, Supply Chain Management effective 1 July 2022 (“the contested decision”).¹
3. The Tribunal considered that a reply from the Respondent was not necessary.

Facts

4. On 24 June 2020, the Applicant filed a complaint with the Investigations Division of the Office of Internal Oversight Services making allegations implicating her First Reporting Officer (“FRO”).²
5. On 12 March 2021, the UNIFIL HOM/FC informed the Applicant that after a full review of her allegations, and in consultation with the Regional Conduct and Discipline Section (“RCDS”), it had been determined that the allegations constituted unsatisfactory conduct and further contained issues which would be best addressed as performance management in order to provide the requested relief. Accordingly, he decided to take administrative action pursuant to ST/AI//2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) including requesting that the Chief of Supply Chain Management resume efforts to informally resolve the matter and ensure that both the Applicant and her FRO fully understood the operational expectations within the Acquisitions Management Section. The UNIFIL HOM/FC

¹ Application, Annex 2.

² *Ibid.*, at Annex 4.

further advised that if the renewed efforts to address the matter did not resolve the Applicant's concerns, that she should return to RCDS for further advice and consultation.³

6. According to the Applicant, following lengthy consultations involving RCDS, Human Resources, the Chief Supply Chain Management, the Ombudsman, herself and her FRO, on 28 January 2022, the Ombudsman sent a recommendation to the UNIFIL HOM/FC "to separate the two staff members from the supervisor and supervisory relationship".⁴

7. On 27 April 2022, the Applicant filed a request for management evaluation of the UNIFIL HOM/FC's implied rejection of, and failure to enact, measures to ensure a harmonious work environment and the prevention of prohibited conduct, in particular harassment, discrimination and abuse of authority against her by her FRO.⁵

8. By an inter-office memorandum dated 2 June 2022, the Applicant received the contested decision.⁶

9. On 6 June 2022, the Management Evaluation Unit ("MEU") informed the Applicant that the UNIFIL Administration had informed them that a decision had been taken to reassign her and her FRO to different offices within the Mission. The MEU further noted that she had been advised of her lateral reassignment pursuant to the 2 June 2022 inter-office memorandum. Based on this, the MEU found that the Applicant's request for a management evaluation had been rendered moot.⁷

10. On 10 June 2022, the Applicant filed another request for management evaluation challenging the reassignment decision.⁸

³ *Ibid.*

⁴ *Ibid.*, at section VII(2).

⁵ *Ibid.*, at Annex 5.

⁶ *Ibid.*, at Annex 2.

⁷ *Ibid.*, at Annex 6.

⁸ *Ibid.*, at Annex 3.

The Applicant's submissions

11. The Applicant argues that her reassignment is unlawful because it is effectively a punishment for having sustained a complaint under ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) against her supervisor; and that its essential effect is to discriminate against her for turning to the Organization to protect her rights as a victim of harassment. Further, that the decision is arbitrary, non-transparent, punitive in effect and has not been undertaken in the best interests of the Organization.

12. The Applicant submits that this matter is urgent because her employment as Contracts Management Officer at FS-6 level will end on 1 July 2022 if the decision is not suspended.

13. The Applicant further submits that the contested decision would sever her from a position she has incumbered for 13 years and move her, irreversibly, to a position for which she has not been trained for and has neither the experience nor the skills, and which is tenuous both as to its continued existence and its funding. The harm that would follow could not thereafter be halted or compensated for by mere payment of damages.

Considerations

14. Under art. 2.2 of the Dispute Tribunal's Statute, the Applicant must establish that: (i) the contested decision was *prima facie* unlawful; (ii) there is particular urgency; and (iii) implementation of the decision would cause irreparable harm. All three statutory requirements must be satisfied for the implementation of a contested decision to be suspended. The Tribunal, at this stage, does not conduct any profound factual examination.

15. The Tribunal finds that the Applicant has not made a showing of irreparable harm. The claim that once the reassignment is complete, she will lose her current employment and be placed in a new job from which she cannot return, is entirely

unsupported, as there is no basis in fact or law to presume irreversibility of the reassignment decision. What is at stake for the Applicant pending management evaluation, is, literally, a couple of weeks of a different work experience.

ORDER

16. The application is rejected.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 16th day of June 2022

Entered in the Register on this 16th day of June 2022

(Signed)

Eric Muli, Legal Officer, for

Abena Kwakye-Berko, Registrar, Nairobi