



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/084
Order No.: 177 (NBI/2023)
Date: 29 December 2023
Original: English

Before: Judge Sean Wallace
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

OMARI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION
FOR SUSPENSION OF ACTION**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant seeks to suspend the decision not to renew his fixed-term appointment with the Office of the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (“MONUSCO”) upon its expiration on 19 December 2023.

2. On 27 December 2023, the Respondent filed his timely reply in which he submits that the contested decision is not receivable *ratione materiae*.

Facts

3. By memorandum dated 20 November 2023, the Human Resources Management Section of MONUSCO (“MONUSCO HR”) notified the Applicant that his appointment would not be renewed upon its expiration on 19 December 2023 on the grounds of unauthorized absence.

4. On 13 December 2023, the Applicant requested management evaluation of *inter alia* the above-mentioned decision. On the same day, the Applicant filed an incomplete application for suspension of action pending management evaluation, which he completed on 18 December 2023 with the assistance of the Tribunal’s Nairobi Registry.

Consideration

5. Art. 2.2 of the Tribunal’s Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are cumulative. In other words, they must all be met in order for a suspension of action to be granted. Furthermore, the burden of proof rests on the Applicant.

Prima facie unlawfulness

6. The Tribunal recalls that the threshold required in assessing this condition is that of “serious and reasonable doubts” about the lawfulness of the impugned decision (*Hepworth* UNDT/2009/003, *Corcoran* UNDT/2009/071, *Miyazaki* UNDT/2009/076, *Corna* Order No. 90 (GVA/2010), *Berger* UNDT/2011/134, *Chattopadhyay* UNDT/2011/198, *Wang* UNDT/2012/080, *Bchir* Order No. 77 (NBI/2013), *Kompass* Order No. 99 (GVA/2015)).

7. The Applicant challenges the ground of unauthorized absence that the Respondent advances in support of the non-renewal decision. He claims that he was separated while on sick leave, and that the withholding of his salary for more than eight months is abusive.

8. The Respondent claims *inter alia* that a fixed-term appointment does not carry any expectancy of renewal, and that the Applicant has not met the three conditions required to grant a suspension of action.

9. Pursuant to staff regulation 4.5(c) and staff rules 4.13 and 9.4, a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal, and shall expire automatically and without prior notice on the expiration date specified in the letter of appointment (see *Abdalla* 2011-UNAT-138, para. 22). Thus, there is nothing inherently unlawful about the non-renewal of the Applicant’s appointment upon its expiration.

10. The above notwithstanding, the Tribunal is also mindful of the jurisprudence of the United Nations Appeals Tribunal according to which even though the Secretary-General has broad discretionary power not to extend a fixed-term appointment, where a reason is provided for doing so—such as in the case at hand—that reason must be supported by the facts (see e.g., *Nouinou* 2019-UNAT-902, para. 50; *He* 2018-UNAT-825, para. 46; *Obdeijn* 2012-UNAT-201, paras. 33-39; *Islam* 2011-UNAT-115, paras. 29-32).

11. Moreover, the jurisprudence is clear that unauthorized absenteeism is a lawful basis for non-renewal of a fixed-term appointment (see *Agha* 2019-UNAT-916, para. 30-31; *Abdallah* 2010-UNAT-091, para. 24).

12. There is no proof that the Applicant had approved sick leave. He refers to documents regarding sick leave in 2019 but he fails to provide these documents. He also claims that the documentation in Umoja is fraudulent without presenting any evidence to prove this claim. He also fails to provide any explanation for why someone would enter fraudulent information into Umoja.

13. The Respondent asserts that “the Applicant’s allegation that he was separated while on sick leave is untrue” because MONUSCO HR determined that the Applicant was on unauthorized absence from 1 April 2023. In support of this, the Respondent submitted a four-page memorandum, dated 8 November 2023 and addressed to the Applicant, with detailed information about his unauthorized absence from 1 April to 8 November 2023. The memorandum also addresses the Applicant’s claims of fraudulent entries in Umoja.

14. Additionally, the record shows that the Applicant and MONUSCO HR have had exchanges on the Applicant’s unauthorized absence at least since the end of September 2023.

15. In sum, the Applicant has failed to establish that the non-renewal decision is *prima facie* unlawful. Given the cumulative nature of the conditions to be met for the granting of a suspension of action, the Tribunal does not find it necessary to consider whether the contested decision is urgent or whether it would cause irreparable damage (*Evangelista* UNDT/2011/212; *Dougherty* UNDT/2011/133).

Case No. UNDT/NBI/2023/084

Order No. 177 (NBI/2023)

16. In view of the foregoing, it is ORDERED THAT:

The application for suspension of action pending management evaluation is denied.

(Signed)

Judge Sean Wallace

Dated this 29th day of December 2023

Entered in the Register on this 29th day of December 2023

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi