



Before: Judge Francis Belle
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

MUTSOLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:

Self-represented

Counsel for Respondent:

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

Notice: This Order has been corrected in accordance with article 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. By application filed on 12 January 2024, the Applicant, a staff member at the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”), requests suspension of action, pending management evaluation, of the decision of the Regional Service Centre Entebbe (“RSCE”) to recover his Education Grant Advance (“EGA”) for the 2022-2023 academic year amounting to USD31,890.40, and to implement a salary overpayment of USD20,820.47 (“the contested decisions”).

2. The application was served on the Respondent who filed his reply on 17 January 2024.

Facts

3. On 14 September 2023, the Applicant submitted Education Grant (“EG”) forms to the Office of the Registrar of the New Jersey Institute of Technology, and requested for the forms to be signed so that he could claim reimbursement for the tuition fees that he had paid for his son for the 2022-2023 academic year.

4. On 11 December 2023, MINUSCA Human Resources returned the Education Grant request informing the Applicant that the EG forms completed by the school were outdated. He was advised to use the revised p41 forms.

5. On 29 December 2023, the Applicant received his December 2023 payslip which indicates, under the section titled “Deductions”, that an EG advance recovery of USD31,890.40 had been deducted. The payslip also indicated that a salary overpayment of USD20,820.47 had been implemented.

6. On 9 January 2024, the Applicant requested management evaluation of the contested decisions.

7. On 12 January 2024, the Applicant received notification that his EG request had been submitted for approval.

8. On 16 January 2024, the RSCE Education Grant Service Line informed the Applicant as follows:

- a. He had received an EG Advance of USD31,890.40;
- b. The EG entitlement computed at settlement was USD21,826.61;
- c. The EG Advance recovered with his December salary was USD11,069.93;
- d. The EG Advance balance recorded in his January salary (considered as “overpayment” in December) was USD20,820.47;
- e. The negative EG entitlement balance being USD10,063.79 and given that USD11,069.93 was recovered from his December salary, the difference of USD1,006.14 was added to his January salary; and
- f. He would receive his normal January salary plus the excess recovery of USD1,006.14.

Parties’ submissions

9. The Applicant’s principal contentions are:

- a. The decision to pay him nothing in December 2023 and to implement the salary overpayment, which will be recovered in January and February 2024 respectively, was done in an arbitrary manner with the aim of punishing him and his family and to subject him to financial hardships;
- b. The executors of these decisions failed to notify him of their plan to recover the EG, which is a violation of sec. 2.3 of ST/AI/2009/1 (Recovery of overpayments made to staff members);
- c. The executors of these decisions forcefully gave him a salary overpayment without informing him of the same and without discussion on the recovery plan which is in violation of ST/AI/2009/1;

d. He has been compelled to borrow money to fulfil his financial obligations, an act that has tarnished his reputation and demeaned his status as an international civil servant;

e. The payroll lock/freeze for international staff in Missions was most likely on or before 18 January 2024. If an order of suspension of the administrative decision to recovery salary overpayment is not issued, this will cause irreparable harm/damage;

f. Given that the EG forms that he submitted for the advance that was paid to him in the previous school calendar were returned, he cannot request for advance EG. Thus, he has to continue paying fees for his first dependent on a monthly basis pending final submission of the forms that are still with the college. Failure to pay the fees in monthly instalments may result in his dependent's suspension from class;

g. He is also having issues getting EG forms filled out by the college where his second dependent attends. Hence, he has to continue paying for his dependent's fees, which he has been doing from his salary for approximately one and half years pending submission of the EG forms to claim for the reimbursement; and

h. The recovery will result in the loss of USD20,842.47 in remuneration. Given his financial obligations, this recovery will be a significant financial burden. It will also cause him moral harm due to the mental distress caused given that he works at a stressful duty station.

10. The Respondent's principal contentions are:

a. The application is not receivable. There is no longer an existing or live controversy between the parties because the contested decision has been superseded. The RSCE has informed the Applicant that no further recoveries will be made for his EG claim for the 2022-2023 academic year. The outstanding amounts of the advance made to the Applicant were fully recovered in December 2023;

b. Under sec. 7.1 of ST/AI/2018/Rev.1 (Education grant and related benefits), an eligible staff member may request an advance against their EG entitlement. The Applicant requested and received an advance per that provision for the 2022-2023 academic year in the amount of USD31,890.40;

c. Pursuant to sec. 7.2 of ST/AI/2018/Rev.1, the advance to the Applicant was due to the Organization until the claim for payment of the EG and related benefits was received and processed or until the advance was recovered. The same section also provides for the recovery of the advance “after the third month of the end of the academic year”. In accordance with that provision, the amount of USD31,890.40 was due from the Applicant to the Organization after the third month of the end of the 2022-2023 academic year;

d. On 16 January 2024, the RSCE completed the processing of the Applicant’s EG claim for the 2022-2023 academic year. The RSCE determined that the Applicant received an advance in excess of his entitlement of USD21,826.61 for the EG for the 2022-2023 academic year; and

e. Since the RSCE had recovered USD11,069.93 through the Applicant’s December 2023 salary, the RSCE will not recover any further amounts from the Applicant. Rather, the RSCE will refund the Applicant USD1,006.14 in the January 2024 payroll. That amount represents the difference between the amount already recovered and the actual amount due for recovery ($11,069.93 - 10,063.79 = 1,006.14$).

11. The Respondent also requests the Dispute Tribunal to strike para. 5 of sec. VIII of the application form claiming that it contains language that is inappropriate before the Dispute Tribunal and within the United Nations. The Respondent submits that the Applicant’s use of a slur is unwarranted for the purposes of the litigation before the Dispute Tribunal, and contravenes art. 4.1 of the Code of conduct for Legal representatives and litigants in person and ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority).

Consideration

12. 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.

13. There is clear evidence of a salary overpayment of some USD28,820.47 shown in the Administration's response referred to in para. 5 above. Also, the facts outlined at para. 8 above lead to conclude at para. 8.f above that the Applicant will receive his normal January salary plus excess recovery of USD1,006.14. The Tribunal agrees that the basis of the Applicant's application has been resolved by the administrative action of "payment of excess recovery".

14. As stated at para. 12 above, the issuance of a suspension of action Order requires finding that the administrative decision appears unlawful, particular urgency and that the implementation of the contested decision would cause irreparable harm. All three findings must be present. However, in this case the Tribunal determines that the application is not receivable because none of the elements that would justify a suspension of action are present.

15. In the circumstances, the administrative action is moot because the impugned administrative action has been explained, and a further action has been taken to remove any possibility of damage to the Applicant.

16. The Tribunal does not agree that the Applicant's use of a term rises to the level that the Respondent describes but merely reflects an alleged fact related to the Applicant's situation. The Respondent's request to strike out para. 5 of sec. VIII of the application is therefore refused.

17. In view of the foregoing, IT IS ORDERED that the application for suspension of action pending management evaluation is not receivable and is moot. Consequently, the application is denied.

(Signed)

Judge Francis Belle

Dated this 22nd day of January 2024

Entered in the Register on this 22nd day of January 2024

(Signed)

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